

*Compensation Mechanism for Shop Operators  
Affected by Construction Projects  
in Major Overseas Cities*

*15 February 1999*

**Prepared by**

**Ms Eva LIU  
Mr Joseph LEE**

**Research and Library Services Division  
Legislative Council Secretariat**

**5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong**

**Telephone: (852) 2869 7735**

**Facsimile : (852) 2525 0990**

**Website : <http://legco.gov.hk>**

**E-mail : [library@legco.gov.hk](mailto:library@legco.gov.hk)**

# CONTENTS

	<i>Page</i>
<b>Acknowledgements</b>	
<b>Part 1 - Introduction</b>	<b>1</b>
Background	1
Objective and Structure	1
Methodology	2
<b>Part 2 - Overseas Experience</b>	<b>3</b>
Determination of Compensation	3
<i>Australia</i>	3
<i>Singapore</i>	4
<i>South Korea</i>	4
<i>The United Kingdom</i>	4
<i>The United States</i>	6
Measures to Mitigate the Impact on Shop Operators Affected by Construction Projects	7
<i>Australia</i>	7
<i>Singapore</i>	7
<i>South Korea</i>	8
<i>The United Kingdom</i>	8
<i>The United States</i>	8
Court Cases	9
<i>Case 1</i>	9
<i>Case 2</i>	9
<b>Part 3 - The Situation in Hong Kong</b>	<b>10</b>
Compensation of Mass Transit Railway works for Shop Operators along Nathan Road in 1975-76	10
The West Kowloon Drainage Improvement Project in Nathan Road in 1998	11
<b>Part 4 - Analysis</b>	<b>13</b>
<b>References</b>	<b>15</b>

---

*The Legislative Council Secretariat welcomes the re-publication, in part or in whole, of this research report, and also its translation in other languages. Material may be reproduced freely for non-commercial purposes, provided acknowledgement is made to the Research and Library Services Division of the Legislative Council Secretariat as the source and one copy of the reproduction is sent to the Legislative Council Library.*

## **ACKNOWLEDGEMENTS**

We gratefully acknowledge the assistance given to us by many people in this research project. More specifically, we would like to thank Mr. Wilson Pang of the Works Bureau for providing information and materials in Hong Kong and some overseas countries. We wish to thank Mr. Neville Potter of the Commonwealth Department of Transport and Regional Services for providing information on the compensation mechanism in Australia. We also wish to thank Mr. John Smith, Director for the Planning Group of the Department of Transport for providing information and material on the compensation mechanism in New South Wales, Australia. In addition, information on Victoria, Australia provided by Mr. Tim Holden of Property Services Department and material on Queensland, Australia provided by Mr. Jim Carrington is very much appreciated. We also wish to thank Ms Petrina Theo of the Ministry of Law in providing information and material of the compensation mechanism in Singapore and Mr. Hyun-Chul Park of the Ministry of Construction and Transportation in explaining the mechanism in South Korea. We would like to express our gratitude to Mr. William Longland of the Department of Environment, Transport and the Regions for providing information on the compensation mechanism in the United Kingdom. Sincere gratitude should also be extended to Mr. Stephan Phippen of the Metropolitan Transportation Authority for sending us valuable materials and publications concerning the compensation mechanism in Los Angeles.

# **COMPENSATION MECHANISM FOR SHOP OPERATORS AFFECTED BY CONSTRUCTION PROJECTS IN MAJOR OVERSEAS CITIES**

## **PART 1 - INTRODUCTION**

### **1. Background**

1.1 In October 1998, Members received a petition made by a group of shop operators along Nathan Road who considered that the Government should make ex-gratia compensation for the loss of business arising from the temporary diversion of traffic and re-route of buses in Nathan Road, as a result of the West Kowloon Drainage Improvement project.

1.2 Members also requested the Research and Library Services Division (RLS) of the Legislative Council Secretariat to conduct research on the compensation mechanism for shop operators affected by construction projects in major overseas cities.

### **2. Objective and Structure**

2.1 The objective of this research is to obtain information on the compensation mechanism for shop operators affected by construction projects in major overseas cities. An analysis is also provided.

2.2 Part 2 of this report describes overseas experience in providing compensation for shop operators affected by construction projects. Part 3 discusses the situation in Hong Kong. Part 4 provides an analysis of the information.

### **3. Methodology**

3.1 To obtain the necessary information, enquiries were sent to the Works Bureau (WB) in Hong Kong and relevant authorities in a number of overseas cities, namely London, Los Angeles, Melbourne, New York, Perth, Seoul, Singapore, Sydney and Taipei. However, up to the time of preparing the report, New York and Taipei did not respond, and some responded at national or state level. The RLS also searched for court cases of a similar nature in Australia, Singapore, the United Kingdom and the United States to ascertain whether there is any compensation to shop operators if their businesses are affected by construction projects. Two relevant court cases were found in the United States from Lexis-Nexis, a legal database provider. This research report is based on the available information from these sources.

## PART 2 - OVERSEAS EXPERIENCE

### 4. Determination of Compensation

4.1 None of the places which responded to our enquiry indicated that there is any compensation for shop operators due to construction projects as long as these construction projects are permitted under the existing statutory powers. Neither is compensation payable to shop operators when traffic is diverted or buses are re-routed. These places include New South Wales, Victoria, Queensland, Seoul, Singapore, London and Los Angeles.

#### Australia

4.2 **No compensation** is made to shop operators in Australia because access is usually maintained during the construction period. Similarly, **no compensation** is made in cases where traffic is diverted by a town bypass or affected by other means such as dividing the road by a median strip<sup>1</sup>.

#### *New South Wales*

4.3 Compensation for those affected by construction projects in New South Wales is at the discretion of the Minister for Roads. In the case of traffic diversion or re-route of buses, **no compensation** is made to shop operators. If land is to be acquired due to any construction projects, it is purchased at market value. This is different from the payment of compensation for loss of business as a result of road works.

#### *Victoria*

4.4 **No compensation** is made to shop operators for financial loss as a result of construction projects in Victoria. Shop operators are entitled to compensation only if their properties are acquired.

#### *Queensland*

4.5 Shop operators affected by construction projects are **not entitled to compensation** in Queensland. Shop operators are entitled to compensation only if land is resumed.

---

<sup>1</sup> A median strip is a series of blocks used to separate different lanes of a road.

### Singapore

4.6 The Fourth Schedule of the Land Transport Authority Act states that **no compensation** is made to shop operators in case of financial loss resulting from the interference with any trade or business attributable to the construction of any railway or road in Singapore. Compensation is made only if damage has been made to shop operators' properties.

### South Korea

4.7 Even if the construction projects are permitted under the legal framework, there is **no compensation** for shop operators in South Korea. No compensation is payable for shop operators whose businesses are affected by diversion of traffic as a result of construction projects permitted under legal framework. However, if damage is caused by the construction projects, shop operators may claim in a civil suit against those responsible for the projects. In this case, the court would decide on whether compensation is due and how much if so.

### *Seoul*

4.8 The Seoul Metropolitan Government **does not compensate** for economic loss of shop operators due to construction projects. Compensation is made only when land or buildings are acquired as a result of the construction projects.

### The United Kingdom

#### *London*

#### **ROAD AND HIGHWAY WORKS**

4.9 When a highway authority properly executes construction projects under its statutory powers in the United Kingdom, there is **no compensation** to anyone for loss of trade resulting from a drop of pedestrian flow.

4.10 There is no plan to introduce a statutory duty to pay compensation for loss of trade. It is because such works ultimately benefit the whole community, including businesses and others who may be adversely affected in the short term. In the view of the Department of the Environment, Transport and the Regions (DETR), to impose such a duty to pay compensation for temporary disruption could simply increase the costs of the works. These costs, in turn, would be passed on to the public, including the affected businesses. In addition, trade may fluctuate for a variety of reasons, and accurately assessing the losses directly attributable to construction projects is difficult.

4.11 There may be entitlement to compensation if works are carried out improperly such as the blocking of access without authority. The DETR does not decide on whether the works have been carried out improperly or negligently. Where it is believed that there may have been mal-administration on the part of the highway authority concerned, a complaint can be addressed to The Commission for Local Administration in England, i.e. the Local Government Ombudsman.

4.12 The Commission for Local Administration in England (The Commission) was established by Part III of the Local Government Act 1974. The Commission comprises four members: three Local Government Ombudsmen and a Parliamentary Ombudsman who is an ex-officio member of The Commission. The three Local Government Ombudsmen are appointed by Her Majesty on the recommendation of the Secretary of State for the Environment. The Secretary of State is also responsible for appointing the chairman and the vice-chairman from the three Local Government Ombudsmen. The expenditure of the Commission is paid for by the Government.

#### **UTILITY WORKS**

4.13 The compensation mechanism regarding utility works is similar. When a utility company properly executes construction projects under the statutory powers, there is **no liability to compensate** anyone for loss of trade resulting from a drop of pedestrian flow. If works are carried out improperly, there may be entitlement to compensation.

4.14 As in the case of highway works, it is not for DETR to decide whether a utility company is liable for compensation because it has carried out construction projects improperly or negligently. The decision rests with The Commission for Local Administration in England.

### The United States

4.15 The Federal Highway Administration (FHA) is responsible for monitoring the Federal-aid highway programme in the United States. The FHA does not, however, construct Federal-aid highway projects. Instead, the FHA makes Federal-aid highway funds available to the State transportation departments each year. The State transportation departments work with local officials to decide on which projects are to be undertaken. The State transportation departments are also responsible for the design, right-of-way acquisition, construction, and maintenance of Federal-aid highway projects. In implementing these projects, the State transportation departments make every effort to reduce traffic disruption and maintain access to businesses. However, some disruptions do occur and some businesses are affected by changes in traffic patterns. The FHA **does not compensate** businesses for losses due to these disruptions.

### *Los Angeles*

4.16 In Los Angeles, the City Government **does not compensate** shop operators for financial loss caused by construction projects nearby. Similarly, the City Government **does not compensate** shop operators when buses are re-routed and traffic is diverted as a result of construction projects. The following case is quoted as an illustration. A street re-construction project was undertaken in one of the highest volume commercial districts in the city in late 1998. The buses were re-routed to the next street parallel, but **no compensation** was made to shop operators. However, the City Government required the construction activity to be stopped during the holiday shopping season to minimize the impact, from the middle of November to the first of January.

## 5. Measures to Mitigate the Impact on Shop Operators Affected by Construction Projects

5.1 Although none of the places makes compensation for shop operators, there are measures to mitigate the loss of shop operators due to construction projects. These measures include maintaining access to shops at all times, reducing the impact of the construction projects on shops, completing the construction projects within the shortest possible time, stop the construction projects during peak shopping season and erect signage to areas where traffic is diverted.

### Australia

#### *New South Wales*

5.2 Contractors have to **maintain access** during the construction period at all times in New South Wales. Impact on pedestrian flow will therefore be minimized.

#### *Victoria*

5.3 The RLS sought to obtain information on the measures to mitigate the impact of construction projects on shop operators in Victoria. However, the Property Services Department has not provided any information in this respect.

### Queensland

5.4 The RLS sought to obtain information on the measures to mitigate the impact of construction projects on shop operators in Queensland. However, the Department of Transport has not provided any information in this respect.

### Singapore

5.5 The RLS sought to obtain information on the measures to mitigate the impact of construction projects on shop operators in Singapore. However, the Ministry of Law has not provided any information in this respect.

## South Korea

### *Seoul*

5.6 Contractors have to **complete the construction projects within the shortest possible time**. This also aims at reducing the impact on pedestrian flow.

## The United Kingdom

### *London*

5.7 Contractors are required to carry out works to **reduce the impact** of the construction projects on the nearby shops or residents in London. These works chiefly aim at reducing air pollution and noise generated by the construction projects.

## The United States

### *Los Angeles*

5.8 Contractors are required by regulations to **maintain access** to properties adjoining the construction projects at all times in Los Angeles.

5.9 In addition, contractors may have to **stop their construction activities during peak shopping season**. The example given in paragraph 4.16 is one instance.

5.10 In Los Angeles, contractors are also required to carry out works to **reduce the impact** of the construction projects to the maximum possible extent on the nearby shops or residents. For the financial year 1997-98, the Metropolitan Transportation Authority (MTA) spent US\$490,032 on works to reduce the impact of the construction projects on the nearby shops or residents. For the financial year 1998-99, the MTA planned to spend US\$600,000. This is to be spent on a number of areas including works aiming at reducing the impact of the construction projects, **erecting signage** to the area where traffic is diverted and **advertising campaign** for shops affected by the construction projects.

## 6. Court Cases

6.1 The RLS also searched for court cases of a similar nature in Australia, Singapore, the United Kingdom and the United States to ascertain whether there is any compensation to shop operators if their businesses are affected by construction projects and traffic diversion. Two relevant court cases were found in the United States. In both cases, no compensation was made.

### Case 1

6.2 The plaintiff operated a hotel and the defendant was the War Department, which leased premises in front of the hotel. Because of the activities of the military academy, traffic was diverted occasionally. Although the hotel continued in operation, the plaintiff claimed that the traffic diversion resulted in a drop of pedestrian flow, which affected the business of the hotel.

6.3 The court decided that the traffic diversion from the road in front of the hotel did not materially interfere with the enjoyment or use of the premises. In addition, although the pedestrian flow was affected, the number affected was undetermined. **The plaintiff was not entitled to any compensation.**

### Case 2

6.4 The plaintiff operated a fuel station on Highway 100 in the Franklin county of Missouri, adjacent to Interstate 44 (I-44). The defendant's truck hit the I-44 flyover near the plaintiff's station on 24 May 1993, which resulted in the closing of the flyover for 27 days until 19 June 1993. Traffic was diverted and the plaintiff sued for alleged loss of business, in the form of fuel sales, during and after the period in which the flyover was closed.

6.5 The court found that the closing of the flyover did not completely eliminate access to the fuel station, but merely eliminated eastbound I-44 travellers' direct access. Although this effect might have impacted the plaintiff's fuel sales for the 27 days during which the flyover was closed, the fuel station remained accessible to westbound traffic on I-44 and to travellers on Highway 100. **The plaintiff was not entitled to any compensation.**

## **PART 3 - THE SITUATION IN HONG KONG**

### **7. Compensation of Mass Transit Railway works for Shop Operators along Nathan Road in 1975-76**

7.1 In 1975-76, the mass transit railway system was constructed by the Mass Transit Railway Corporation (MTRC) along Nathan Road, the main avenue in the centre of Kowloon peninsula. The project resulted in the closure of Nathan Road and adjacent roads at various stages. Under the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276), persons whose land was resumed or who suffered financial loss as a result of the work of the MTRC were entitled to claim compensation for their loss or disturbance caused during the construction period.

7.2 Compensation was paid for the financial loss of shop operators due to :

- reduced trade from temporary closure of the premises;
- reduced trade from restricted access to the premises;
- forced sale for goods as a result of removal of shops; and
- legal advertising of removal notice.

7.3 Anyone who claimed to have suffered a loss as a result of the MTRC project could submit a claim for compensation to the Lands Department, specifying the amount and how it was arrived at. The Director of Lands was responsible for the assessment of the claims. If the claim was considered excessive, a counter offer would be made, following which negotiations would usually take place until an agreement was reached. If, after negotiations, the two parties could not agree to the amount of compensation, the case could be referred by either party to the Lands Tribunal for the determination of a fair compensation.

7.4 With the enactment of the Railways Ordinance (Cap. 519) on 11 July 1997, all future MTR projects will be dealt with in accordance with the Cap. 519 instead of Cap. 276.

## **8. The West Kowloon Drainage Improvement Project in Nathan Road in 1998**

8.1 Following the several incidents of serious flooding in Mongkok in recent years which brought considerable disruption to both the social and commercial activities in the district, the Government decided to advance the West Kowloon Drainage Improvement project to commence on 11 October 1998.

8.2 The West Kowloon Drainage Improvement project led to the closure of roads and diversion of traffic in Nathan Road for 19 months. Shop operators worried that road closure and traffic diversion might affect their business. They considered that the Government should make compensation for their loss of business arising from the construction project. The Government maintained that the temporary traffic diversion from Nathan Road to Portland Street was authorised by the Commissioner for Transport under the Road Traffic Ordinance (Cap. 374). Under this Ordinance, there is no provision for such compensation.

8.3 The Government pointed out that the impact of the West Kowloon Drainage Improvement project on each shop was likely to be short since the construction activity in front of each shop would only last for about two months. The impact of the West Kowloon Drainage Improvement project on individual shop would not last throughout the entire construction period of 19 months as perceived by the operators.

8.4 Shop operators affected by the project have made reference to the works of MTRC in Nathan Road in 1975-76 whereby compensation for loss of business was made. According to the reply of the WB, however, there were significant differences in terms of scope and nature between the West Kowloon Drainage Improvement project in late 1998 and the MTRC's works in 1975-76. For instance, the West Kowloon Drainage Improvement project only involved the laying of pipes at shallow depths (up to three metres) and the occupation of half of Nathan Road at all times. In addition, all existing pedestrian footpaths and crossings have been maintained during the construction period.

8.5 A pedestrian flow survey was also conducted in Nathan Road and Portland Street from 2 October 1998 before the West Kowloon Drainage Improvement project commenced. According to findings of the survey, the number of pedestrians had not notably decreased after the commencement of the work on 11 October 1998. There were some recorded increase and decrease of pedestrian in different survey points. However, the fluctuations varied daily and hourly, and it was difficult to establish a firm pattern or reasons for such variations.

8.6 In addition, the following mitigating measures were implemented to minimise the impact of the West Kowloon Drainage Improvement project on the nearby shops and residents:

- all major facilities were maintained or re-provided at appropriate locations: new bus stops were positioned at reasonable distance from their original locations, sufficient numbers of loading/unloading bays were provided, pedestrian footpaths and MTR exits were not occupied, and adequate pedestrian crossings were also made;
- railings below eye level were used instead of hoarding to enable full visibility;
- the contractor was required to minimize and control emission of noise, dust and vibration from its construction activities;
- a dedicated patrol team was set up by the Government to check daily that the construction site and its vicinity was clean, and adequate lighting and fencing was always maintained;
- the Government continued to listen to suggestions by the shop operators on possible measures to reduce disturbance to their business;
- a 24-hour hotline was set up by the Government for receiving enquiries and complaints from the public such that any concerns from the nearby shops and residents could be addressed quickly; and
- a consultative group was also set up in the Yau Ma Tei Provisional District Board.

**PART 4 - ANALYSIS**

9.1 In the overseas places which have responded to us, i.e. London, Los Angeles, New South Wales, Queensland, Seoul, Singapore and Victoria, none has indicated that there is any compensation for shop operators due to construction projects even if these projects are permitted under existing laws. Also, no compensation is payable to shop operators when traffic is diverted or buses are re-routed (Table 1).

**Table 1 - Compensation and Measures to Mitigate the Impact on Shop Operators Affected by Construction Projects in Major Overseas Places**

Place	Compensation	Measures to Mitigate the Impact on Shop Operators
New South Wales	nil	<ul style="list-style-type: none"> <li>maintaining access to shops at all times</li> </ul>
Queensland	nil	(n.a.)
Victoria	nil	(n.a.)
Singapore	nil	(n.a.)
Seoul	nil	<ul style="list-style-type: none"> <li>completing the construction projects within the shortest possible time period</li> </ul>
London	nil	<ul style="list-style-type: none"> <li>reducing the impact of the construction projects on shops</li> </ul>
Los Angeles	nil	<ul style="list-style-type: none"> <li>maintaining access to shops at all times;</li> <li>reducing the impact of the construction projects on shops;</li> <li>stop the construction projects during peak shopping season; and</li> <li>erect signage to areas where traffic is diverted</li> </ul>

Remark : n.a. represents information not available.

Sources : Commonwealth Department of Transport and Regional Services, Australia  
 Department of Transport, New South Wales, Australia  
 Property Services Department, Victoria, Australia  
 Department of Transport, Queensland, Australia  
 Ministry of Law, Singapore  
 Ministry of Construction and Transportation, South Korea  
 Road Planning Division, Seoul Metropolitan Government, Seoul, South Korea  
 DETR, The United Kingdom  
 FHA, Department of Transportation, The United States  
 MTA, Los Angeles, The United States  
 Public Works Department, Los Angeles, The United States

9.2 Although these places do not make compensation for shop operators, there are measures to mitigate the loss of shop operators due to construction projects. These measures include maintaining access to shops at all times, reducing the impact of the construction projects on shops, completing the construction projects within the shortest possible time, stop the construction projects during peak shopping season and erect signage to areas where traffic is diverted (Table 1).

9.3 The RLS also searched for court cases of a similar nature in Australia, Singapore, the United Kingdom and the United States to ascertain whether there is any compensation to shop operators if their businesses are affected by construction projects and traffic diversion. Two relevant court cases were found in the United States. In both cases, no compensation was made.

9.4 In Hong Kong, the MTRC construction project resulted in the closure of roads in 1975-76 and persons who suffered financial loss as a result of the work were entitled to claim compensation for their loss or disturbance caused during the construction period under Cap. 276.

9.5 The West Kowloon Drainage Improvement project which commenced in late 1998 led to the closure of roads and diversion of traffic in Nathan Road for 19 months. The temporary traffic diversion was authorised by the Commissioner for Transport under Cap. 374 and there is no provision for the payment of compensation for economic loss resulted from road closure or traffic diversion under this Ordinance.

9.6 According to the WB, there were significant differences in terms of scope and nature between the two projects. Besides, the impact of the West Kowloon Drainage Improvement project on each shop was likely to be short since the construction activity in front of each shop would only last for about two months although the whole project would take 19 months. A pedestrian flow survey also indicated that the number of pedestrians had not notably decreased after the commencement of the work.

## References

### Australia

1. Commonwealth Department of Transport and Regional Services Homepage - <http://www.dot.gov.au/>
2. New South Wales Department of Public Works and Services Homepage - <http://www.dpws.nsw.gov.au/>
3. New South Wales Department of Transport Homepage - <http://www.transport.nsw.gov.au/>
4. Victoria Property Services Department Homepage - <http://www.roads.vic.gov.au/>
5. Queensland Department of Transport Homepage - <http://www.transport.qld.gov.au/>

### Singapore

1. Ministry of National Development Homepage - <http://www.gov.sg/mnd/>
2. Ministry of Law Homepage - <http://www.gov.sg/molaw/>

### South Korea

1. Ministry of Construction and Transportation Homepage - <http://www.moct.go.kr/>
2. Seoul Metropolitan Government Homepage - <http://www.metro.seoul.kr/>

### The United Kingdom

1. DETR Homepage - <http://www.detr.gov.uk/>
2. The Commission for Local Administration in England, *Annual Report*.
3. The Commission for Local Administration in England Homepage - <http://www.open.gov.uk/lgo/>
4. Westminster City Council and Government Homepage - <http://www.westminster.gov.uk/>

The United States

1. Board of Public Works Homepage - <http://www.ci.la.ca.us/dept/bpw/>
2. MTA Los Angeles Homepage - <http://www.mta.net/>
3. United States Department of Transportation Homepage - <http://www.dot.gov/>
4. United States FHA Homepage - <http://www.fhwa.dot.gov/>