

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

**Administration's Response to the Proposals
by a Member of the Bills Committee**

Introduction

This paper sets out the response of the Administration to the proposals put forward by a Member of the Bills Committee to amend the Employees Compensation Assistance (Amendment) Bill 2002 (Amendment Bill).

Member's Proposals

2. The Hon. Lee Cheuk-yan put forward the following proposals to amend the Amendment Bill for consideration by the Bills Committee :

- (a) Payment of an additional monthly payment at \$30,000 to seriously injured employees who require long term care and attention by other persons;
- (b) Payment of relief payment in respect of damages awarded to the estate of the deceased employee in fatal cases;
- (c) Inclusion of brothers and sisters in the definition of "eligible person" for non-fatal cases such that they can be entitled to relief payment if the deceased employee does not leave any surviving spouse / cohabitee, child and parents; and
- (d) Increasing the amount of surcharge from three times the levy to ten times the levy.

Response of the Administration

(A) Additional Monthly Payment for Long Term Care and Attention

3. The proposal of providing further assistance to seriously injured employees who require long term care and attention by others has been discussed in the previous meetings of the Bills Committee. Regarding this

proposal, we have already consulted the Labour Advisory Board (LAB). However, there was no majority view among the LAB members on the issue. The Administration does not support any proposal which has not been not agreed by the LAB.

4. It should also be noted that under section 8 of the Employees' Compensation Ordinance (ECO), where an injured employee suffers from permanent incapacity and is unable to perform the essential actions of life without the attention of another person, the employer shall be liable to pay the compensation for attention. The maximum amount of this compensation shall be \$412,000.

5. Under the Amendment Bill, the Employees' Compensation Assistance Scheme will continue to pay the compensation under the ECO. Therefore, the compensation for attention under the ECO and the initial payment of the relief payment should be able to meet the needs of seriously injured employee for care and attention to a certain extent.

(B) Payment of relief payment for damages awarded to the estate of the deceased employee in fatal injury

6. Under section 20B(1) of the Amendment Bill, the amount of the proposed relief payment to an eligible person shall be the amount of damages for which the employer is liable to pay the eligible person. The amount of relief payment should also be reduced by any amount of statutory compensation or damages that has already been paid to the eligible person concerned.

7. For fatal cases, some items of damages, such as the pre-trial and post-trial accumulation of wealth, are awarded to the estate of the deceased employee. As these items of damages are not awarded to the eligible persons as defined under the Amendment Bill, the relevant amounts cannot be taken into account when determining the amount of relief payment to the eligible persons.

8. Moreover, the proposal to make relief payment in relation to the damages awarded to the estate of the deceased employee will go against the principle that the relief payment should be made for the benefit of the immediate family members of the deceased employee. It should be noted that damages awarded to the estate of the deceased have to be dealt with in accordance with the probate procedures, which is totally different from those for the award of damages to those who are aggrieved by the death of the employee concerned. The estate administrator of the deceased employee, in receiving such damages, has the duty to clear the debts of the deceased and then distribute

any remaining sum to those people who are entitled to have a share pursuant to the will or relevant legislation. It would not be fair to require the Board, which is financed by employers for the protection of injured employees and their family members, to make payment to some parties which are the beneficiaries of the estate of the deceased employee. Such beneficiaries might include debtors of the deceased, the Government if the deceased has owed any money to the Government as well as charitable bodies if the deceased has made donation in his/her will.

9. It should also be noted that the maintenance of the family members of the deceased employee should not be affected even though the damages awarded to the estate of the deceased employee is not counted as part of the relief payment. In determining the amount of damages awarded to the family members of the deceased employee, which would be counted as relief payment, the Court should have fully assessed the loss and needs of these persons. Therefore, it is reasonable and appropriate not to provide relief payment in relation to the amount of damages awarded to the estate of the deceased employee.

(C) Inclusion of brothers and sisters as “eligible person” for non-fatal injury

10. For a non-fatal injury where the injured employee dies before or after the damages has been awarded, relief payment shall be payable to the surviving spouse or cohabitee and child of the deceased employee who are the eligible persons as defined under the Amendment Bill. If the employee does not leave any surviving spouse or cohabitee and child, then the parents of the employee shall be the “eligible person” for the entitlement of relief payment.

11. We consider that the present proposal, which aims to provide assistance to the injured employee and his/her immediate family members, is reasonable. In a survey of 85 fatal personal accidents conducted in 2001, it was found that in none of the cases, the deceased persons were survived by brothers or sisters only without leaving any spouse/cohabitee, child or parent. Therefore, we do not support any proposal to further expand the scope of eligible persons to cover brothers or sisters of deceased employee for entitlement to relief payment in non-fatal accidents.

(D) Increase of the amount of surcharge

12. Under the Amendment Bill, it is proposed that employers who contravene the compulsory insurance requirement under the Employees’

Compensation Ordinance (ECO) should be required to pay a surcharge to the Board. The surcharge should be set at three times the levy payable to the Board when such offending employers subsequently take out an employees' compensation (EC) insurance.

13. We consider that the proposed level of surcharge, which is set at 3 times the levy payable to the Board, is reasonable and appropriate. With the enactment of the Amendment Bill, the levy rate for the Board will be increased to 3.1%. Therefore, the proposed level of surcharge will be roughly equivalent to 10% of the premium on the EC insurance. The majority view of the LAB also supported the proposed level of surcharge.

14. Moreover, we have accepted the views of the Bills Committee to impose a higher rate of surcharge against those employers who have been found contravening the compulsory insurance requirements under the ECO again within a period of 24 months. The relevant Committee Stage Amendment (to add a new section 36A(3A)) have been prepared and sent to the Bills Committee for reference. Therefore, we do not support further increasing the level of surcharge at this stage.