Bills Committee on
Occupational Deafness (Compensation)(Amendment) Bill 2002

The Administration's Response

Introduction

In the meeting held on 20 January 2003, due to time constraints the Administration is not able to answer all the enquiries raised by labour/concerned organizations/individuals and members in detail. This paper sets out the response of the Administration to the written submissions made by eight labour/concerned organizations (the Hong Kong Construction Association, the Hong Kong Federation of Trade Unions, the Hong Kong Occupational Deafness Association, the Alliance of Self-Help Groups for the Occupational Injuries & Diseases, the Hong Kong Workers' Health Centre, the Federation of Hong Kong & Kowloon Labour Unions, the Hong Kong & Kowloon Trades Union Council and the Association for the Rights of Industrial Accident Victims) and Dr YU Tak-sun of the Department of Community and Family Medicine, the Chinese University of Hong Kong to the Bills Committee on the Occupational Deafness (Compensation)(Amendment) Bill 2002 and the oral questions raised by members in the meeting held on 20 January 2003.

(1) Relaxation of the requirement on employment in specified noisy occupations

Views of organizations/individuals/members

2. Several organizations suggested that the scope of compensation for occupational deafness should be expanded to cover all industries so that an employee would be entitled to compensation if his occupational deafness is substantiated by evidence. There are other organizations which called for an expansion of the scope of protection under the Occupational Deafness (Compensation) Ordinance to the effect that the claimants would be eligible for compensation if they are certified by qualified audiologists or medical specialists to be suffering from occupational deafness.

3. Besides, a doctor indicated that the examining doctor can base his diagnosis on the past history (including occupational history) of the patient and clinical examination. The current requirement of assessing "occupational entitlement" with prescribed occupations and prescribed durations of exposure as a prerequisite for the diagnosis of occupational deafness is against the principle of professional autonomy in medical practice.

The Administration's response

4. Sensorineural hearing loss can be caused by a number of factors including noise, old age, medication and diseases. Hearing tests can diagnose sensorineural hearing loss but cannot identify its cause. Even if clinical diagnosis can differentiate noise-induced hearing loss, still it cannot give any clue on whether the noise comes from the daily activities or pursuit of amusement of the deafness sufferer. The doctor may in his diagnosis attribute the cause of deafness to the occupation of his patient by eliminating all other possible causes, yet it is impossible for him to make a straightforward diagnosis that the case is one of occupational deafness. The examining doctor will also find it difficult to check the accuracy of the worker's occupational history as alleged.

5. In the absence of data on the noise level in individual workplaces, the examining doctors can only rely on their own knowledge to decide on whether certain occupations are noisy or not. As different doctors may have different perception on whether a particular occupation should be classified as noisy, and the public virtually have no idea on how individual doctors define a noisy occupation, it would be difficult if not impossible to have a homogeneous standard if the judgment were to be left to individual doctors. Disputes and incidents of inequity may abound. We therefore consider that it is more desirable to list out the specified noisy occupations for the sake of transparency and consistency.

(2) Service requirement in noisy occupations

Views of organizations/individuals/members

6. A doctor and an organization called for the Administration to remove the requirement on the minimum years of service in noisy occupations. The doctor indicated that Singapore, the United States of America (USA) and

Australia do not have such a requirement. In the second meeting of the Bills Committee held on 20 January 2003, some members proposed that a provision stipulating the minimum years of employment should be laid down in the law to cater for those claimants who are not in the specified noisy occupation but who are certified by medical specialists to be suffering from occupational deafness.

The Administration's response

7. In the United Kingdom, Singapore and the state of Queensland in Australia, they have specified the minimum requirement for employment in the occupation concerned. In UK and Singapore, the minimum requirement is 10 years' employment. In Queensland, the requirement is for at least 5 years' experience and the employee has to prove his employer's liability for compensation. In the majority of states in USA, there is no such requirement but the employee has to prove his employer's liability and provide evidence on his exposure to hazardous noise at work. The employer can also put forward his defence.

8. As occupational deafness develops insidiously over a long period of exposure to hazardous noise in the work environment and the labour turnover in Hong Kong is high, it would be a difficult task for the employees to produce evidence in this regard in the absence of information on pre-employment hearing test and physical examination. Therefore, the existing occupational deafness compensation system in Hong Kong operates on the basic of employers' collective liability. Under the present Ordinance, a claimant suffering from sensorineural deafness will be presumed to be suffering from occupational deafness if he has worked in any of the specified noisy occupations for at least ten years or in any of the specified more noisy occupations for at least five years. There is no need for him to prove the cause of his deafness. It is therefore considered that setting a requirement on the minimum service in specified noisy occupations is to the advantage of the employees in their claim for compensation.

9. Moreover, as mentioned in paragraphs 4 and 5 above, we consider it not viable for a medical doctor to prove a claimant to be suffering from sensorineural deafness. The Administration objects to expanding the Scheme to cover persons not employed in the specified noisy occupations.

(3) Time limit to serve application and the requirement on employment under a continuous contract

Views of organizations

10. An organization called for the Administration to remove the requirement on employment under a continuous contract within the 12 months before the date of application.

The Administration's response

11. Deafness can be caused by many factors other than employment. Such other factors included old age or diseases. If a claimant has quitted a noisy occupation for a prolonged period of time, it would be enormously difficult to determine from the medical angle that the hearing loss is caused by noise at work. The purpose of stipulating an application deadline is for the claimants to serve application for compensation and undergo hearing assessment as early as possible so as to eliminate the effect of ageing and other diseases on hearing. By doing so, we can ensure that this compensation scheme funded by employers' levy will not provide compensation for deafness caused by non-employment-related factors.

12. On the other hand, the longer the claimant has left employment, the more difficult it would be for him to collect evidence to substantiate his employment in noisy occupation(s). Extending or even abolishing the deadline for application may not be beneficial to the claimant. Therefore we consider it necessary to retain the requirement for the claimant to serve application within 12 months after leaving the noisy occupation.

13. The Occupational Deafness (Compensation) Ordinance stipulates that a claimant has to be employed under a continuous contract in any specified noisy occupation at any time within the 12 months before the date of application. The term "continuous contract" under the Ordinance has the same meaning as in section 3 of the Employment Ordinance, which stipulates that an employee who works continuously for the same employer for four weeks or more, with at least 18 hours in each week is regarded as working under a continuous contract. We consider that the requirement on employment under a continuous contract stipulated under the Occupational Deafness (Compensation) Ordinance is far from stringent. Removal of the requirement that a claimant has to be

employed under a continuous contract in any specified noisy occupation at any time within the 12 months before the date of the relevant application will render the time limit for application mentioned above virtually non-existent.

14. In fact, since the implementation of the Occupational Deafness Compensation Scheme in 1995, the Occupational Deafness Compensation Board (the Board) has widely publicized the time limit for application and urged people working in noisy occupations to make application as soon as possible through various channels e.g. television & radio broadcasting and putting up posters both in the MTR and KCR trains and stations.

(4) Requirement on minimum hearing loss

Views of individuals

15. A doctor indicated that according to the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairments, hearing impairment begins when the average of the hearing levels at 500, 1 000, 2 000 and 3 000 Hz exceeds 25 dB in the worse ear. As there exists a great difference between the statutory requirement on hearing loss under the Occupational Deafness (Compensation) Ordinance and the hearing loss proclaimed in the AMA Guides, the doctor proposed to review the current qualifying level of 40 dB loss for entitlement to compensation. In the second meeting of the Bills Committee held on 20 January 2003, some members further considered that if based on the professional judgement of specialists an employee is diagnosed to be suffering from occupational deafness and the hearing loss is marginally short of 40 dB, the Board should be allowed to exercise flexibility in relaxing the requirement on the minimum level of hearing loss.

The Administration's response

16. We learnt that the standards proclaimed by AMA measure hearing loss averaged over 500, 1 000, 2 000 and 3 000 Hz. As this measurement differs from the one adopted under the Scheme which measures hearing loss averaging over 1 000, 2 000 and 3 000 Hz, it is not appropriate to draw a direct comparison between the two standards. Besides, as there is only mild hearing loss at 500 Hz in case of occupational deafness, if we eliminate the hearing loss at 500 Hz, the standard proclaimed by AMA will be close to the threshold

adopted under the Scheme which denotes the level where hearing impairment begins.

17. According to the International Civil Aviation Organization, a pilot of Jumbo 747 is allowed to renew his pilot licence so far as his hearing loss is not more than 35dB at 500, 1 000 and 2 000 Hz and 50dB at 3 000 Hz, i.e. the average of 40dB at 1 000, 2 000 and 3 000 Hz. The same hearing level is set for a UK's policeman. With a hearing loss not exceeding 40 dB, an UK's policeman is allowed to continue to carry out his police duties. Therefore, the Administration cannot see any reason to lower the minimum hearing threshold of 40dB under the Occupational Deafness (Compensation) Ordinance.

18. In response to members' suggestion that flexibility should be applied to those claimants whose hearing loss is marginally short of 40dB, we consider that no matter where we set the minimum level, there could possibly be claimants who still could not obtain compensation since his hearing loss is marginally short of that prescribed level. It is considered that there should be clear cut standard on the minimum hearing loss, otherwise the Board will have to face a great number of disputes. The Administration objects to the suggestion of the said flexibility treatment.

(5) Requirement on the degree of deafness in both ears

Views of organizations/individuals

19. One organization indicated that under the Employees' Compensation Ordinance, employees suffering hearing impairment in one ear as a result of occupational diseases or injuries at work are entitled to compensation. The organization therefore called for the Administration to relax the statutory requirement such that employees suffering from sensorineural hearing loss in one ear at the level of 40 dB are also eligible to seek compensation.

The Administration's response

20. The Occupational Deafness Compensation Scheme compensates claimants for the loss of working ability and hence earning capacity as a result of deafness. The Occupational Deafness (Compensation) Ordinance currently in force provides that a claimant must have sensorineural deafness amounting to at least 40 dB in both ears for entitlement to compensation. According to

audiologists and otorhinolaryngologists, a person can communicate with other people if he has normal hearing ability in one ear. Furthermore, the degree of deafness in both ears will, generally speaking, be similar if the deafness is caused by noise. In case there is a substantial gap in the degree of deafness in both ears, then it is highly likely that the deafness is caused by other factors such as diseases. As a person with hearing loss in one ear will still be able to communicate with other people at work, we consider that the requirement for at least 40 dB sensorineural hearing loss in both ears should be maintained as a criteria for eligibility for compensation.

(6) Threshold for designating a job process as noisy occupation

Views of individuals

21. A doctor opined that exposures to noise levels of over 80 dB(A) have been shown to cause occupational deafness. As such, the prescribed noisy occupations should be expanded to include all other occupations that would involve exposure to noise at a daily equivalent level of 80 dB(A) as assessed by a specialist in Occupational Medicine.

The Administration's response

22. According to the method of calculation proclaimed by the International Standard Organization, a person exposed to noise at work at a level of 80 or 85 dB(A) daily for eight hours per day for ten years will only suffer mild hearing impairment (hearing loss at 0.3 dB to 2.7 dB). The resultant hearing loss is far from the level adopted under the Occupational Deafness Compensation Scheme which represents the threshold where the ability to communicate begins to suffer impairment. Moreover, a majority of countries worldwide adopt 90 dB(A) as the standard which triggers off the need to implement noise control measures. Implementing noise control measures means designating noise control zones in which employees have to wear ear protectors and the noise level has to be reduced as far as is reasonably practicable. The Administration is not convinced that there are justifiable grounds to lower the current standard of 90 dB(A) in designating a job process as noisy occupation.

(7) Maximum and minimum levels of compensation for occupational deafness

Views of organizations

23. A business association considered that as Hong Kong is currently facing serious economic down-turn and budget deficit, it is not appropriate to raise the maximum and minimum levels of compensation for occupation deafness at this moment.

The Administration's response

24. The existing maximum and minimum levels of compensation under the Occupational Deafness (Compensation) Ordinance have been adopted since the drafting of the Ordinance in 1994. As the wage element for the calculation of compensation has changed with the lapse of time, there is a need to adjust the maximum and minimum levels of compensation with reference to the wage movement in order to preserve the value of compensation previously approved by the Legislative Council.

25. The actual amount of compensation is calculated according to the monthly earnings of the claimant, subject to the maximum level of compensation set under the Ordinance. If a claimant cannot provide any documentary proof concerning his monthly earnings, the Board will make reference to the median monthly employment earnings of the total employed population of Hong Kong for the quarter immediately before the relevant date of his application when computing the amount of compensation.

(8) Increasing the maximum percentage of permanent incapacity

Views of organizations/individuals

26. A doctor indicated that there is no medical reason why the maximum permanent incapacity for occupational deafness should be capped at 60%. He opined that as workers suffering from deafness as a result of occupational injuries or occupational diseases under the Employees' Compensation Ordinance are entitled to a maximum incapacity of 100%, the cap of 60 % should be removed and the table for permanent incapacity be adjusted upwards. The request to raise the maximum percentage of permanent incapacity is also raised by some other organizations.

The Administration's response

27. The Occupational Deafness Compensation Scheme compensates claimants for the loss of working ability and hence the earning capacity as a result of deafness. Unlike total deafness resulting from an industrial accident which is traumatic in nature, occupational deafness of an employee normally develops insidiously over a long period of time and the employee with noise-induced hearing loss is more likely to be able to continue working without total loss of earning capacity. Therefore, there are justifiable grounds accounting for the discrepancy between the maximum percentage of permanent incapacity under the Employees' Compensation Ordinance and the Occupational Deafness (Compensation) Ordinance.

28. The degree of permanent incapacity awarded for total deafness ranges from 35 to 60 % in Singapore, certain states of Australia and USA.

29. Moreover, under the existing system in Hong Kong, we allow for an independent assessment of the percentage of permanent incapacity in respect of each incident of work injury or occupational disease. As a result, the sum of permanent incapacity of an individual in consequence of several incidents may exceed 100%. In countries under the auspices of a social security system (e.g. UK), while total incapacity is awarded for total deafness, the percentage of total incapacity of an individual will be capped at 100%. It is therefore inappropriate to compare the percentage of permanent incapacity adopted in Hong Kong with that adopted in countries with a social security system.

(9) Multiplying factor for compensation by age groups

Views of organizations

30. Two organizations suggested that the Administration should abolish the approach of determining compensation by age groups. Instead, compensation should be computed by offsetting the sufferers' actual age with his retirement age of 65. To determine compensation by age groups implies age discrimination for the older workers.

The Administration's response

31. The amount of compensation for occupational deafness is calculated according to the age of the claimant at the relevant date of application with

reference to a multiplying factor specified against three age groups. A bigger multiplying factor is adopted for the younger workers whilst a smaller multiplying factor is adopted for the older workers.

32. The purpose of establishing the Occupational Deafness Compensation Scheme is to compensate for the loss of earning capacity as a result of occupational deafness. As young workers with a longer working life from retirement suffer greater loss of earning capacity than those who are near retirement, younger workers therefore receive a greater amount of compensation under the Scheme. The intent of the Ordinance is in line with the spirit of the organizations' suggestion and has nothing to do with age discrimination.

(10) Compensation for pain and suffering and subsistence allowance

View of organizations

33. An organizaton stated that due to financial constraints, the Administration had in the past set the compensation rate at an unreasonable level. They requested the Administration to reimburse workers who had been awarded compensation in the past with compensation for pain and suffering and subsistence allowance.

The Administration's response

34. The increase in the number of applications after the implementation of the Amendment Ordinance, the percentage of applications that were subsequently awarded compensation and the average amount of compensation all turned out as projected. The financial surplus was actually a combined effect of the continuous reduction in the number of applications in the ensuing years and the continuous surge in the rate of employees' compensation insurance premium leading to an increase in the amount of levy collected.

(A) Compensation for pain and suffering

35. The Occupational Deafness Compensation Scheme operates on a "no fault" principle and compensates employees suffering from occupational deafness for the loss of working ability. As "compensation for suffering" or "compensation for loss of amenities" is related to claims for damages due to an employer's negligence, it should be dealt with under the common law.

36. Under the current legislation, even if an occupational deafness sufferer has received compensation from the Board, he can still claim for damages against his employer in accordance with the Law of Tort if he has sufficient proof that his hearing loss was due to his employer's negligence.

37. Besides, the Occupational Deafness Compensation Scheme is funded by a levy imposed on premium payable by all employers (including those employers not using any noisy work process) in respect of any employees' compensation insurance policy taken out by them. If the Board were to award compensation for damages, it would mean that all employers were paying compensation for damages collectively on behalf of individual negligent employers in the noisy occupation. This arrangement is unfair and will indirectly encourage irresponsible behavior of these employers. Therefore, if there is proof that occupational deafness is caused by the negligence of individual employers, then the relevant employers should shoulder their own responsibility of paying compensation for damages for their negligent act. The Board operating on the basis of employers' collective liability should not be responsible for such compensation.

(B) Subsistence Allowance

38. The hearing condition of persons suffering from occupational deafness will not become more serious after he has left the noisy occupation or after he has used appropriate hearing protective device. It is more likely that they can continue to work and do not require to rely upon subsistence allowance funded by employers collectively.

(11) Re-assessment of hearing loss

Views of organizations/individuals

39. A doctor and an organization called for regular re-assessment (e.g. every 2 to 3 years) be conducted for workers who had received compensation from the Board but had continued employment in specified noisy occupations with a view to providing further compensation for additional hearing loss after discounting the ageing factor.

The Administration's response

40. When conducting the current review of the Occupational Deafness Compensation Scheme, the Labour Advisory Board (LAB) have divergent views over this issue. Some LAB members supported the proposal of regular re-assessment for further compensation whilst others have reservation in view of the following-

(i) noise-induced deafness is preventable if appropriate hearing protective device is worn;

(ii) through publicity, education and enforcement of relevant legislation, employers and employees should know clearly by now the importance and the methods of hearing conservation;

(iii) employees have the responsibility to take active steps to protect their own hearing against further hearing loss after the assessment of their occupational deafness. Some LAB members worried that re-assessment for further compensation would have the undesirable outcome of inadvertently encouraging workers not to take hearing conservation seriously.

41. In addition, LAB members held divergent views on the frequency of re-assessment and could not reach consensus.

42. As the argument against re-assessment is very reasonable and there is a need to balance the interests of employers and employees, the Administration considers it not commendable to press for re-assessment of hearing loss without the consensus of the LAB.

(12) Retrospective effect

Views of organizations/individuals

43. An organization stated that due to financial constraints, the Administration had in the past set the compensation rate at an unreasonable level. They requested the Administration to reimburse workers who had been awarded compensation in the past with the differential amount of compensation that had been "underpaid". A doctor raised the view that retrospective arrangement should be provided for employees in the employment of the four

newly added noisy occupations such that they are allowed to enjoy with retrospective effect the benefits conferred by the Occupational Deafness (Compensation) Ordinance to employees suffering from occupational deafness since its enactment in 1995.

The Administration's response

44. The increase in the number of applications after the implementation of the Amendment Ordinance, the percentage of applications that were subsequently awarded compensation and the average amount of compensation all turned out to be as projected. The financial surplus was actually a result of the continuous reduction in the number of applications in the ensuing years and the continuous surge in the rate of employees' compensation insurance premium leading to an increase in the amount of levy collected. As regards the reimbursement of the amount of compensation that had been "underpaid", it is stipulated in the Occupational Deafness (Compensation) Ordinance that where a claimant has received compensation from the Board, he loses his right for further compensation.

45. It is a general legal principle that legislation should not have retrospective effect. The Administration is of the view that any claimant who has been awarded compensation in accordance with the ordinance previously in force should not be entitled to additional compensation as a result of the upward adjustment of the table of percentage of permanent incapacity or increasing the minimum and maximum levels of compensation. Should there be such a practice, it is believed that any future proposed amendments for the purpose of improvement could hardly gain the support of the employers.

(13) Stepping up education effort on the prevention and reduction of noise

Views of members

46. In the second meeting of the Bills Committee held on 20 January 2003, some members called for the Administration to liaise with the employers of the four newly added noisy occupations with a view to preventing and reducing the effect of noise on employees.

The Administration's response

47. We will step up our liaison with employers of the four newly added noisy occupations to impress upon them the importance of hearing conservation. We will also promote the awareness of hearing conservation to the employers and employees of these occupations through organizing promotional activities.

48. Besides, we are developing a guide for the entertainment industries to promote awareness among workers in the trade that loud music is also a culprit for noise-induced hearing loss and to assist the trade in preventing noise hazard at work.

(14) Pre-employment and post-employment hearing tests

Views of individuals

49. A doctor proposed that resources be allocated to provide or conduct pre-employment and post-employment hearing tests for workers engaged in noisy occupations.

The Administration's response

50. The Occupational Deafness Compensation Scheme is set up with the principal aim to provide compensation for employees who suffer from deafness due to exposure to noise in the work environment. Provision of pre-employment and post-employment hearing tests should be the responsibility of individual employers. The Administration considers that the Board should not take over the responsibility of the employers in this regard.

(15) Reimbursement of expenses in relation to hearing assistive devices

51. Some organizations have expressed views on the reimbursement of expenses in relation to hearing assistive devices. Regarding the questions raised on the prices of hearing assistive devices, we have separately prepared a paper in response. The Administration's feedback in relation to the other major views raised is given below.

View (1)

52. There are comments that the Administration should clearly define the meaning of "a person belonging to a category of persons".

The Administration's response (1)

53. Under the proposed newly added section 27B(3), expenses incurred in relation to a hearing assistive device that is a hearing aid shall not be reimbursed under section 27B(1) unless advice in writing indicating that the applicant reasonably requires the use of the hearing aid has been given by a person belonging to a category of persons designated under section 36(1)(e).

54. In operation, the Board will designate the category of persons who can give advice in writing. We have liaised with the Board and learnt that the Occupational Deafness Medical Committee, after studying the issue, is of the view that the Board can consider designating the following persons to give advice on whether an applicant reasonably requires the use of the hearing aid:

(i) Medical practitioners conferred by the Hong Kong Academy of Medicine with the designation of Fellow of the Hong Kong Academy of Medicine (Otorhinolaryngology); or

(ii) Medical practitioners conferred by the Hong Kong Academy of Medicine with the designation of Fellow of the Hong Kong Academy of Medicine (Community Medicine) and in the subspecialty of occupational medicine;

(iii) Audiologists with a degree of master of Science in Audiology issued by the University of Hong Kong or its equivalent; or

(iv) Audiology technicians with relevant certificate issued by institutions recognized by the British Association of Audiologists/British Society of Audiology.

55. According to the proposed amendments, hearing assistive devices that require the written advice given by a person belonging to a category of designated persons only confine to hearing aids. The purpose of the proposal is to ensure the proper use of resources through making certain that the hearing aids purchased meet the need of individual applicants. There is no such requirement for the other types of hearing assistive devices.

View (2)

56. Hearing assistive devices should not confine to the three types of devices mentioned in the Bill, namely, hearing aid, telephone amplifier and desktop telephone. Applicants should be allowed to purchase devices that can overcome hearing problems such as fax machines, amplifying earphones for telephone and hand-free earphones for mobile phones specially designed for people with hearing impairment.

The Administration's response (2)

57. Under the proposed new Schedule 6, apart from the three types of hearing assistive devices (i.e. hearing aid, telephone amplifier specially designed for use by persons with hearing difficulty and desktop telephone with flashing light or other visual device to indicate ringing), the Board can also determine upon the advice of the Medical Committee that any device the use of which by a person suffering from noise-induced deafness is reasonably necessary.

58. We learnt from audiologists that only persons with total or profound deafness will need to rely on fax machines to communicate with other people. Besides, mobile phones are not hearing assistive devices and as such the expenses thus incurred are not reimbursable.

View (3)

59. The Board should settle with the suppliers of hearing assistive devices the expenses for the purchase and relevant services on behalf of the applicants through the use of invoice, or the Board should reimburse the expenses in relation to hearing assistive devices to the applicants with a one-off amount. This will save the Board a lot of unnecessary administrative expenses.

The Administration's response (3)

60. Realizing that some applicants may not be able to pay for the expenses on hearing aids, the Board has discussed on whether it should be allowed to pay the expenses directly to suppliers of hearing aids. After discussion, the Board considered this procedure feasible and has planned to liaise with suppliers of hearing aids and hearing assistive devices.

61. As the Board will provide reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices to applicants on the exact amount spent, verification of the receipts in connection with the request for reimbursement is therefore essential. Furthermore, as the Occupational Deafness Compensation Fund comes from the levy contributed by employers who take out employees' insurance policies, both the Administration and the Board have the responsibility to ensure that all the payment made is for the reimbursement of expenses used on the purchase, repair and replacement of hearing assistive devices.

View (4)

62. Is there a mechanism to allow an applicant to seek review if they fail to obtain reimbursement of expenses on hearing assistive devices?

The Administration's response (4)

63. Under the new section 27F, an applicant may request the Board to review the determination. An applicant who is dissatisfied with the result of a review may appeal to the District Court.

(16) Other views

Views of individuals (1)

64. A doctor suggested that Schedule 2 of the Occupational Deafness (Compensation) Ordinance should be amended to reflect the establishment of the Occupational Medicine Subspecialty in the Hong Kong Academy of Medicine. He also pointed out that a similar amendment to the Ordinance was made in 1998 with regard to the establishment of the Hong Kong College of Otorhinolaryngologist in the Hong Kong Academy of Medicine.

The Administration's response (1)

65. We consider that to have one member of the Medical Committee being "1 medical practitioner nominated by the Hong Kong College of Community Medicine of the Hong Kong Academy of Medicine" under item 1(1)(d) in Schedule 2 of the Occupational Deafness (Compensation) Ordinance is appropriate. It is not justifiable to accord the role of nomination under that item to "the Occupational Medicine Subspecialty Board of the Hong Kong

College of Community Medicine of the Hong Kong Academy of Medicine" as proposed by the doctor because the Occupational Medicine Subspecialty Board in question is neither a faculty nor a college. The proposed amendment is dissimilar in nature to the amendment made in 1998 to item 1(1)(c) in Schedule 2 with regard to the establishment of the Hong Kong College of Otorhinolaryngologist in the Hong Kong Academy of Medicine. That amendment was to replace "the Faculty of Otorhinolaryngology of the College of Surgeons of Hong Kong" with "the Hong Kong College of Otorhinolaryngologist".

Views of organizations (2)

66. An organization expressed that the Occupational Deafness Compensation Scheme has bountiful reserve because the Administration had intentionally suppressed the percentage of permanent incapacity of workers suffering from occupational deafness. As a result, most of the workers received a lump sum compensation in the range of HK$10,000 to HK$30,000 while some received as little as HK$3,000.

The Administration's response (2)

67. Please refer to paragraphs 27–29 for the Administration's response in respect of the percentage of permanent incapacity.

68. In the second meeting of the Bills Committee on 20.1.2003, we have, based on available information in hand provided by the Board, reported to members that since the inception of the Occupational Deafness Compensation Scheme in 1995 up to August 2002, the average compensation amount for each successful application for compensation was HK$98,385. After the said meeting, we have obtained the latest information up to December 2002 from the Board. From the fresh information, we note that the average compensation amount for each successful application for compensation from 1995 up to December 2002 is HK$97,821 whilst the lowest compensation amount ever made since 1995 is HK$4,080.

Labour Department
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