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**Paper for the House Committee meeting
on 11 April 2003**

**Report of the Bills Committee on Occupational Deafness
(Compensation) (Amendment) Bill 2002**

Purpose

This paper reports on the deliberations of the Bills Committee on the Occupational Deafness (Compensation) (Amendment) Bill 2002.

Background

2. The Occupational Deafness Compensation Scheme (the Scheme) was set up in 1995 under the Occupational Deafness (Compensation) Ordinance (Cap. 469) (the Ordinance) to provide compensation to employees who have been engaged in specified noisy occupations and suffered from noise-induced deafness.

3. The Scheme is administered by the Occupational Deafness Compensation Board (ODCB) and is currently financed by a levy of 1.2% on the employees' compensation insurance premium paid by employers. The Scheme was last reviewed in 1996 and most of the recommendations of the review were implemented by the Occupational Deafness (Compensation) (Amendment) Ordinance 1998 (the Amendment Ordinance 1998). However, due to financial constraints, three recommendations to improve the benefits to employees were not implemented. These included regular review of the minimum and maximum levels of compensation, adjusting upwards the percentage of permanent incapacity and providing hearing assistive devices. During the legislative process in 1998, the Government undertook to carry out a further review of the Scheme two years after the enactment of the Amendment Ordinance 1998.

4. A Working Group was appointed in December 2000 to conduct a further review of the Scheme. The Working Group completed the review in July 2001 and put forward a number of recommendations, including the three recommendations not implemented in 1998 and three other improvements to

the Scheme.

The Bill

5. The Bill seeks to amend the Ordinance to -
- (a) increase the minimum and maximum levels of compensation in accordance with the rate of nominal wage increase;
 - (b) adjust upwards the percentage of permanent incapacity whilst maintaining the maximum level at 60%;
 - (c) make provision for reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices;
 - (d) add four new specified noisy occupations;
 - (e) empower the Board to conduct or finance rehabilitation programmes; and
 - (f) disregard no-pay leave in determining a claimant's earnings

The Bills Committee

6. At the House Committee meeting on 26 April 2002, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Dr Hon LO Wing-lok, the Bills Committee has held six meetings with the Administration and met with representatives of 12 labour, employer and professional organisations. It has also considered written submissions from six organisations. A list of the organisations is in **Appendix II**.

Deliberations of the Bills Committee

Threshold for designating a job process as a noisy occupation

7. Under the Scheme, an occupation is designated as a "noisy occupation" if the mean daily personal noise exposure over a continuous period of eight hours reaches 90 dB(A) or above. The Administration has pointed out that the benchmark noise exposure level of 90 dB(A) is the commonly accepted criterion for defining noisy occupations in most countries such as the United Kingdom (UK) and the United States of America (USA).

Specified noisy occupations

Addition of four specified noisy occupations

8. To be eligible for compensation under the Ordinance, claimants have to prove that they have worked for a minimum period of time in any of the specified noisy occupations. At present, there are 25 specified noisy occupations in Schedule 3 of the Ordinance. Having made reference to the results of noise surveys conducted by the Labour Department (LD) in respect of 43 work processes/posts and a noise survey report of Singapore on disc jockeys, the Administration proposes that the list of specified noisy occupations should be expanded to include -

- (a) slaughterhouse employees working wholly or mainly in the vicinity of a place where the electric stunning of pigs for the purpose of slaughter takes place;
- (b) mahjong parlour workers employed wholly or mainly to play mahjong;
- (c) bartenders and waiters working near the dancing area in discotheques; and
- (d) disc jockeys working in discotheques.

Occupations in mahjong parlours

9. Hon Andrew CHENG has asked the Administration to consider expanding the scope of protection to cover all employees working in mahjong parlours instead of only those employed wholly or mainly to play mahjong.

10. The Administration has pointed out that in mahjong parlours, noise is largely generated during each inning when tiles are forcefully discarded on the mahjong plank and during the reshuffling of tiles when each inning is done. Employees of mahjong parlours who might be exposed to the noise source are the attendants, substitute players and cashiers. The major duties of an attendant are to receive guests and serve them with tea and towels, while the job of a substitute player is to join the game whenever there are only three guests round a mahjong table. The cashier of a mahjong parlour usually works at a counter not in close proximity to mahjong tables. As the job of mahjong playing by a substitute player requires skills, not all employees of mahjong parlours are entrusted with such duties. It is rare for attendants and cashiers to take up such duties, even temporarily.

Noise surveys conducted by LD

11. The Occupational Hygiene Division of the LD has conducted noise

assessments in 10 mahjong parlours to measure the daily personal noise exposure of attendants, substitute players and cashiers in mahjong parlours. The results in each mahjong parlour show that the daily personal noise exposure of substitute players is between 88 dB(A) and 93 dB(A), that of attendants is between 85 dB(A) and 89 dB(A), while that of cashiers is between 80 dB(A) and 89 dB(A). Based on the daily personal noise exposure of each noise assessment for substitute players, attendants and cashiers in all the mahjong parlours surveyed, the mean daily personal noise exposures for substitute players, attendants and cashiers are 91 dB(A), 88 dB(A) and 86 dB(A) respectively. The formula adopted in such calculations is based on internationally accepted standard.

12. The Administration has further explained that the intensity of sound is measured in decibel by a logarithmic scale. A 3 dB reduction of noise level is equivalent to a 50% reduction of sound intensity. As revealed from this "3-dB rule", though the difference in the mean daily personal noise exposure between attendants and substitute players in mahjong parlours is only 3 dB(A) in absolute terms, attendants are subject to only half the sound intensity to which substitute players are exposed. Since the difference in the mean daily personal noise exposures between the cashiers and substitute players is 5 dB(A), cashiers are exposed to sound intensity which is less than half of that of substitute players.

13. Hong Kong has followed the practice of most countries in adopting 90 dB(A) as the level in the control of noise at work and in determining the list of specified noisy occupations for the purpose of occupational deafness compensation. As the mean daily personal noise exposures of attendants and cashiers are 88 dB(A) and 86 dB(A) respectively, and in view of the "3dB rule" as outlined in paragraph 12 above, the Administration has no plan to expand the scope of protection to cover posts other than those playing mahjong as their major duty inside the parlour. The Administration has also pointed out that no matter where the threshold for designating a work process as a specified noisy occupation is set, there would always be posts that marginally fail to reach the threshold.

14. Hon LI Fung-ying has indicated that she is unable to accept the Administration's explanation in paragraph 12 above. Hon Cyd HO considers adopting 90 dB(A) as the level in determining the list of specified noisy occupations is not entirely satisfactory and flexibility should be allowed. Hon LEE Cheuk-yan also disputes adopting 90 dB(A) as the benchmark. He has pointed to the fact that the higher end of the range of daily personal noise exposure for both attendants and cashiers already reaches 89 dB(A), which is only slightly lower than the benchmark of 90 dB(A). Hon Andrew CHENG shares the same views and considers that all the three categories of posts in mahjong parlours should be included.

Discotheques

15. Members have asked the Administration to provide information on the daily noise exposures of waiters, bartenders and cashiers.

16. The Administration has informed members that the results of noise assessments conducted in 15 discotheques show that the daily personal noise exposure of waiters is between 83 dB(A) and 95 dB(A), the daily personal noise exposure of bartenders is between 85 dB(A) and 94 dB(A) while the daily personal noise exposure of cashiers is between 80 dB(A) and 85 dB(A).

17. Based on the daily personal noise exposure of the noise assessment for the three groups in all the discotheques surveyed, the mean daily personal noise exposure for waiters and bartenders is 91 dB(A) while that for cashiers is 82 dB(A). According to the "3-dB rule" referred to in paragraph 12 above, although the difference in the mean daily personal noise exposures between waiters/bartenders and cashiers in discotheques is 9 dB(A) in absolute terms, cashiers are subject to only one-eighth of the sound intensity to which waiters/bartenders are exposed.

18. Some members have pointed out that the drafting of new paragraph (zb) of Schedule 3 "work wholly or mainly in the immediate vicinity of the dancing area of a place commonly known as a 'discotheque'" is not able to clearly indicate which categories of employees are included. Members have also asked the Administration to consider adding a definition of "discotheque".

The Administration's proposed amendments

19. As suggested by the Bills Committee, the Administration has agreed to add a definition of "discotheque" to clause 3 of the Bill. The Administration has also proposed Committee Stage amendments (CSAs) to paragraphs (z), (za), (zb) and (zc) of Schedule 3 to more clearly reflect the legislative intent of adding four noisy occupations as set out in paragraph 8 above.

The Bills Committee's proposed amendments

20. A majority of members present at the last meeting of the Bills Committee, including Hon Cyd HO, Hon LEE Cheuk-yan, Hon CHAN Kwok-keung, Hon LI Fung-ying and Hon Andrew CHENG, have voted in support of CSAs to be moved by the Bills Committee to widen the scope of protection to cover all categories of employees who work wholly or mainly in the immediate vicinity of a pig slaughterhouse, in a mahjong parlour or a discotheque.

21. Hon Kenneth TING has voiced objection to the proposed CSAs to be moved by the Bills Committee as they will deviate from the current mechanism of designating a work process as a specified noisy occupation which is based on the objective measurement of the mean daily personal noise exposure collected in noise surveys. Besides, it will likely lead to an increase in

insurance premium. Moreover, since the Labour Advisory Board (LAB) has been consulted and agrees with the proposed amendments in the Bill, he considers that the agreed benchmark of 90 dB(A) should be respected and not be lightly changed.

22. The Administration has also stated its opposition to the proposed CSAs to be moved by the Bills Committee for the reasons given in paragraphs 7, 11, 12, 13 and 17 above. In addition, the Administration has pointed out that the LAB has endorsed the Administration's proposal to add the noisy occupations based on the mean daily noise exposure level at 90 dB(A) collected in the LD's noise surveys. The CSAs in question will not only deviate from the current standard of designating a job process as a noisy occupation, but will also extend the coverage under the Ordinance to job processes/occupations the mean daily personal noise exposure level of which is below 90 dB(A). For example, the proposed CSAs will render cashiers in discotheques, who are subject to only 82 dB(A) and one-eighth of the sound intensity as compared with that of waiters/bartenders, eligible to claim compensation under the Ordinance.

23. The Administration has also asked members to note that sensorineural hearing loss can be caused by a number of factors including noise, old age, medication and diseases. Current technology cannot differentiate whether the sensorineural hearing loss is due to noise at work or the daily activities or pursuit of amusement of the person concerned. By including occupations with mean daily noise exposure level below 90 dB(A), the proposed CSAs would be requiring employers, who finance the Scheme under collective liability, to compensate hearing loss which may be due to factors other than noise at work.

Other work processes with high noise levels

24. Some members have expressed concern that kitchen workers in Chinese restaurants who work near cooking stoves with blower fan, maintenance workers at air-conditioning/ventilation plant rooms and sales persons in retail outlets of electrical appliances and CDs/records are also exposed to high noise levels. The Administration has informed members that based on noise surveys conducted recently, the mean daily personal exposures for the occupations concerned are 84, 87.6 and 74 dB(A) respectively. As they are below the exposure threshold of 90 dB(A), they should not be included in the list of specified noisy occupations.

Requirement on employment in specified noisy occupations

25. Some members of the Bills Committee have 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 he is certified by qualified audiologists or medical specialists to be suffering from occupational deafness.

26. In response to the above suggestion, the Administration has pointed out that 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. Although the doctor may in his diagnosis attribute the cause of deafness to the occupation of his patient by eliminating all other causes, yet it is impossible for him to make a straightforward diagnosis that the case is one of occupational deafness.

27. The Administration has further pointed out that in the absence of data on the noise levels in individual workplaces, the examining doctors can only rely on their knowledge to decide on whether certain occupations are noisy or not. As different doctors may have different perceptions of a noisy occupation, and the public have virtually no idea as to 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. As the situation will likely lead to disputes and incidents of inequity, the Administration considers it more desirable to list out the specified noisy occupations for the sake of transparency and consistency.

Excess risk at different levels of noise exposure

28. Members have asked the Administration to provide information on the excess risk of noise-induced hearing impairment under different levels of noise exposure between 85 dB(A) and 90 dB(A) as determined by the International Organization for Standardization. The Administration has informed members that the excess risk for a person at different levels of noise exposure of developing noise-induced hearing impairment of 40 dB averaged over 1 000, 2 000 and 3 000 Hz is as follows -

- (a) a person at the age of 55 after having been exposed for 10 years to a daily noise level between 85 dB(A) and 89 dB(A), will not be subject to excess risk; and
- (b) even if the period of noise exposure is doubled to 20 years, a person at the age of 55 after having been exposed to a daily noise level between 85 dB(A) and 88 dB(A) will not be subject to excess risk. Moreover, such a person will only have negligible (less than 1%) excess risk when exposed to a daily noise level of 89 dB(A) for the same period.

29. Having considered the standards adopted by most countries and the negligible excess risk of developing noise-induced hearing loss at noise exposure levels below 90 dB(A), the Administration considers that the current

noise control limit in the workplace in Hong Kong is reasonable. The Administration also considers that adoption of the same standard in specifying noisy occupations for the purpose of compensation under the Ordinance is reasonable and has no plans to change the standard.

Service requirement in noisy occupations

30. The minimum service requirement under the Ordinance is at least 10 years' employment in aggregate in any specified noisy occupation, or at least five years' employment in aggregate in any of the "more noisy" occupations specified in paragraphs (c), (j), (k) and (y) of Schedule 3 of the Ordinance.

31. A representative of the Department of Community and Family Medicine of the Chinese University of Hong Kong and one other organisation have called for the removal of the requirement for minimum years of service in noisy occupations.

32. The Administration has explained that the existing Scheme in Hong Kong operates on the basis of employers' collective liability on a "no fault" principle. 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 10 years or in any of the "more noisy" occupations for at least five years. There is no need for him to prove the cause of his deafness. As occupational deafness develops insidiously over a long period of exposure to hazardous noise in the work environment, it would be a difficult task for the employees to provide information in this regard in the absence of information on pre-employment hearing tests and physical examination. The Administration therefore considers that setting a requirement for minimum service in specified noisy occupations is to the advantage of the employees in their claim for compensation.

Pre-employment and post-employment hearing tests

33. As to the suggestion that resources be allocated to provide or conduct pre-employment and post-employment hearing tests for workers engaged in noisy occupations, the Administration has pointed out that provision of such tests should be the responsibility of individual employers. Since the 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, the Administration considers that the ODCB should not take over the employers' responsibility in this regard.

Legislation and practices in other countries

34. In response to members' request, the Administration has conducted a study on the legislation and practices in respect of compensation for occupational noise-induced hearing loss in five countries including UK,

Singapore, Malaysia, USA and Australia (three states, namely, Queensland, Victoria and Western Australia). The Administration has found that except for Malaysia where noise-induced hearing loss arising from employment is not an occupational disease and no compensation is payable, compensation for noise induced hearing loss resulting from employment is laid down in statute in the other four countries.

35. UK has in place an occupational deafness compensation scheme that requires the claimants to have worked in any of the 24 listed occupations for at least 10 years. The occupational deafness compensation system in Hong Kong is modelled on the UK system. However, in UK, compensation for occupational deafness is paid from a social security system financed from general taxation, whereas in Hong Kong, the Scheme is operated on employers' collective liability.

36. In Singapore, USA and Australia, it is the employer's individual liability to pay compensation to his employees. Employees have to prove their employers' responsibility for causing the noise-induced deafness to establish their employers' liability to pay compensation. Although these countries have not laid down a list of noisy occupations in the law, the insurance/compensation agencies in these countries still have a list of noisy occupations for internal reference to facilitate the processing of claims.

Time limit for application and the requirement of employment under a continuous contract

37. Under the Ordinance, 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. Hon CHAN Yuen-han has queried the need for setting such requirements.

38. The Administration has pointed out that deafness can be caused by many factors other than employment as highlighted in paragraphs 23 and 26 above. If a claimant has left 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 claimant to serve an application for compensation and undergo a hearing assessment as early as possible so as to eliminate the effect of ageing and other diseases on hearing.

39. Moreover, the longer the claimant has left employment, the more difficult it would be for him to collect evidence to substantiate his employment in noisy occupations. For this reason, the Administration is of the view that extending or abolishing the deadline for application may not be beneficial to the claimant.

40. As to the term "continuous contract", the Administration explains that it

has the same meaning as in section 3 of the Employment Ordinance. 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. The Administration considers that the requirement of employment under a continuous contract stipulated under the 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 virtually non-existent.

41. The Administration has pointed out that the Board has widely publicised 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 and radio broadcasting and putting up posters in Mass Transit Railway and Kowloon Canton Railway trains and stations.

Minimum level of hearing loss

42. Under the Ordinance, "noise-induced deafness" means sensorineural hearing loss amounting to not less than 40 dB in each ear, where such loss is due in the case of at least one ear to noise and being the average of hearing losses measured by audiometry over the 1 000, 2 000 and 3 000 Hz frequencies.

43. Some members have queried whether the current qualifying level of 40 dB loss for entitlement to compensation is appropriate. The Administration has pointed out that according to the International Civil Aviation Organisation, a pilot of Jumbo 747 is allowed to renew his licence so far as his hearing loss is not more than 35 dB at 500, 1 000 and 2 000 Hz and 50 dB at 3 000 Hz, i.e. an average of 40 dB at 1 000, 2 000 and 3 000 Hz. With a hearing loss not exceeding 40 dB at 1 000, 2 000 and 3 000 Hz, a UK policeman is allowed to continue to carry out his police duties. The Administration therefore cannot see any reason to lower the minimum hearing threshold of 40 dB under the Ordinance.

44. Some members consider that if based on the professional judgment of specialists, an employee is diagnosed to be suffering from occupational deafness but the hearing loss is marginally short of 40 dB, the ODCB should be allowed to exercise flexibility in relaxing the requirement of minimum level of hearing loss.

45. The Administration has pointed out that no matter where the minimum level is set, there would be claimants who could not obtain compensation if their hearing loss is marginally short of the prescribed level. The Administration considers that there should be clear cut standard on the minimum hearing loss, otherwise the ODCB will have to face a large number of disputes.

Reimbursement ceilings for hearing assistive devices

Ceilings proposed in the Bill

46. Deafness at a certain level would hamper a claimant's ability to communicate with other people and thus affect his earning capacity. As recommended by the Working Group, the Administration proposes to provide reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices to claimants who were successful in obtaining compensation for permanent incapacity under the Ordinance. Based on the advice of audiologists and otorhinolaryngologists and taking into consideration of prices of hearing assistive devices, the Administration proposes to set the ceilings of reimbursement at \$6,000 for the initial purchase of hearing assistive devices and at \$15,000 in aggregate for the purchase and maintenance of hearing assistive devices and for expenses reasonably incurred in such purchase and maintenance.

Common types of hearing assistive devices

47. To facilitate their consideration of the issue, members have asked the Administration to provide information on common types of hearing assistive devices and their prices. Members note that the most common type of hearing assistive devices that can assist a person in communicating with people is a hearing aid. In addition, telephone amplifier specially designed for use by persons with hearing difficulty and desktop telephone with flashing light or other visual device to indicate ringing are also common instruments to enable persons with hearing difficulty to keep in touch with people beyond their domicile.

Hearing aids

48. Following a detailed study on the types of hearing aids and the factors affecting their prices, the Administration has advised members that there are basically four types of hearing aid, namely, the Body-worn (i.e. can be put inside the pocket), Behind-the-ear, In-the-ear and In-the-canal types. Analog or conventional models are available for all the four types while digital models are available for the last three types only. The price of analog Body-worn hearing aids ranges from around \$600 to about \$2,300, whereas that of analog Behind-the-ear hearing aids ranges from around \$1,000 to about \$3,800. For In-the-ear and In-the-canal types of analog hearing aids, their prices are between \$2,500 to \$3,100. Behind-the-ear digital hearing aids cost from around \$2,600 to about \$9,000, while In-the-ear and In-the-canal digital hearing aids cost around \$4,800 to about \$12,900.

49. As regards the comparative performance of analog and digital hearing aids in suppressing frivolous noise, both types of hearing aids have built-in

mechanisms to reduce frivolous noise, only the methods used are different. The Administration has pointed out that its attention has been drawn by audiologists to the fact that the choice of high quality hearing aids should not be judged by their price. What is more important is the suitability and receptivity of individual users in using specific types and models of hearing aids. For example, it might not be appropriate to prescribe a digital In-the-ear or In-the-canal hearing aid to elderly users as they might find it difficult to adjust the control buttons of the hearing aids, bearing in mind that the dexterity of fingers of a person will deteriorate with age. The choice of a suitable hearing aid should be vested with specialists who would prescribe an appropriate model to their client on the basis of their professional judgement with due consideration to the special circumstances of the user.

50. The Administration has also informed members that the predominant price range of hearing assistive devices on the recommended list of the Hospital Authority is from \$1,800 to \$3,000.

Other hearing assistive devices

51. The price of telephone amplifier specially designed for use by persons with hearing difficulty ranges from \$200 to \$360. The installation of flashing light device on a regular telephone costs less than \$100, while desktop telephones with flashing light or other visual device to indicate ringing together with built-in amplifier and inductive coil costs around \$800.

Members' views on the proposed ceilings of reimbursement

52. To ensure the proper use of resources, the Administration proposes that the hearing aids must be purchased on the recommendation of qualified professionals in order to make sure that the applicant will benefit from the appropriate device that suits his need. The Administration has invited members to note that audiologists have supported the setting of a reimbursement ceiling. Since the payments will be in the form of reimbursement of actual expenses and the acquisition of such devices requires professional recommendation and guidance, some members have requested the Administration to remove the ceilings of the reimbursable amount. Some other members are of the opinion that the ceilings should be raised. Views supporting the reimbursement ceilings proposed in the Bill have also been expressed.

Consultation with the LAB

53. In the light of members' views, the Administration has consulted the LAB on the proposed ceilings. LAB members consider that the more expensive hearing aids might not be the most suitable ones for individual applicants. They have also pointed out that the recommendation of qualified professionals is a prerequisite only for the purchase of hearing aids, while the

expenses on other types of hearing assistive devices, the accessories and the maintenance of these devices are not subject to such a requirement. Furthermore, the reimbursement of expenses for hearing assistive devices will be a new item under the Ordinance and will be the collective liability of all employers, irrespective of trade and industry. The LAB maintains that the reimbursement ceilings must be retained as the removal of such ceilings will mean an open-ended liability for the ODCB.

54. The LAB has also considered the latest information that an inductive loop system and an inductive coil installed inside a telephone set used in conjunction with the "T" switch of hearing aids can effectively drive out the disturbance of interfering noise generated from the environment. These two devices cost \$1,000 to \$2,000 and \$1,000 respectively. Taking into consideration the views expressed by audiologists, the majority of LAB members agree to raise the reimbursable ceiling for the initial purchase from \$6,000 to \$9,000 and the aggregate amount of reimbursement per applicant from \$15,000 to \$18,000.

The Administration's proposed amendment to raise the ceilings

55. It has been the Administration's policy that it will not take on a labour policy proposal that is not agreed by the LAB, which is the most well-established consultative body on labour matters with equal representation of employers and employees in Hong Kong. Accordingly, the Administration will not remove the reimbursement ceilings for expenses incurred for the purchase, repair and replacement of hearing assistive devices. However, it will propose a CSA to raise the reimbursement ceiling for the initial purchase to \$9,000 and the overall ceiling per person to \$18,000. The Administration has also pointed out that as a matter of fact, apart from the reimbursement ceiling for the initial purchase and the overall ceiling per applicant, there is no restriction on the amount of reimbursement to the applicant in each year.

Whether doctor's fees would be included as part of the reimbursement

56. Members note that new section 27B of the Bill provides that reimbursements will be made for any expenses "reasonably incurred in the acquisition, fitting, repair or maintenance of a hearing assistive device". Members have raised the question as to whether doctor's fees would be covered.

57. The Administration has explained that if the new section 27E relating to determination of application is enacted, the ODCB will be empowered to determine whether any expenses are reasonably incurred, based on the specific facts of an individual case. If a person consults a doctor in connection with his health problems, and the medical consultation does not lead to the acquisition, fitting, repair or maintenance of a hearing assistive device, then the fees of consulting the doctor may not be reimbursable. On the other hand, if a

person has been advised by a doctor to use a hearing aid, and is referred to a designated person under section 36(1)(e) to seek advice as to which type of hearing aid should be acquired, the fees for the medical consultation as well as for obtaining the designated person's advice may also be reimbursable as they are directly related to the subsequent acquisition of the hearing aid.

Enforcement and education efforts on noise control in the workplace

Statutory requirements on noise control work

58. Members note that the general duties provision of the Occupational Safety and Health Ordinance (Cap. 509) stipulates the responsibilities of employers and employees to ensure safety and health at work through, inter alia, the prevention of noise-induced hearing loss. They also note that Hong Kong has followed the practice of most countries in adopting 90 dB(A) as the level in the control of noise at work. Under the Factories and Industrial Undertakings (Noise at Work) Regulation, a proprietor should ensure as far as it is practicable that -

- (a) the area within the workplace where the employees will likely be so exposed is demarcated and identified as an ear protection zone by means of signs and notice sufficient to indicate that the employees should wear suitable approved ear protectors while in the zone;
- (b) an employee should wear a suitable approved ear protector; and
- (c) the noise generated is reduced at source.

The Regulation also sets a requirement for employers to conduct noise assessment for the purpose of reducing the noise level as far as practicable other than by the provision of approved ear protectors to the employees.

Enforcement efforts

59. Occupational Safety Officers of the LD regularly conduct inspections to workplaces all over the territory to enforce the legislation. In 2002, a total of 13 419 inspections on noise hazards were conducted, among which 275 detailed noise surveys were carried out to collect evidence for enforcement purposes. Arising from the results of these detailed noise surveys, the LD issued 80 written warnings, 24 improvement notices and took out four prosecutions for breaches of the statutory requirement.

Education efforts

60. The Administration has pointed out that the LD has placed as much effort in education for the purpose of prevention as in enforcement. The LD has collaborated with the ODCB and other occupational safety and health organisations in organising a large number of promotional projects and activities on prevention of occupational deafness, including exhibitions, talks and site visits to selected trades.

61. The LD will issue letters to the trades involved in the four newly added specified noisy occupations to impress upon the operators and employees the importance of hearing conservation. The LD is also 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 hazards at work.

Committee Stage amendments

62. The CSAs to be moved by the Chairman on behalf of the Bills Committee are in **Appendix III**. The CSAs to be moved by the Administration are in **Appendix IV**. They include the amendments mentioned in paragraphs 19 and 55 above, adaptation of references resulting from the changing over and the implementation of the accountability system, as well as a number of technical and textual amendments.

Recommendation

63. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 7 May 2003.

Advice sought

64. Members are invited to note the recommendation of the Bills Committee in paragraph 63 above.

Council Business Division 2
Legislative Council Secretariat
10 April 2003

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

Membership List

Chairman	Dr Hon LO Wing-lok
Members	Hon Kenneth TING Woo-shou, JP Hon Cyd HO Sau-lan Hon Albert HO Chun-yan Hon LEE Cheuk-yan Hon CHAN Kwok-keung Hon CHAN Yuen-han, JP Hon Bernard CHAN, JP Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP Hon LEUNG Yiu-chung Hon YEUNG Yiu-chung, BBS Hon Ambrose LAU Hon-chuen, GBS, JP Hon Andrew CHENG Kar-foo Hon LI Fung-ying, JP Hon Michael MAK Kwok-fung Hon Frederick FUNG Kin-kee Hon Audrey EU Yuet-mee, SC, JP

(Total : 17 Members)

Clerk Ms Doris CHAN

Legal Adviser Miss Kitty CHENG

Date 23 December 2002

Appendix II

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

List of deputations

- Alliance of Self-Help Groups for the Occupational Injuries & Diseases
- Association for the Rights of Industrial Accident Victims
- Department of Community and Family Medicine
The Chinese University of Hong Kong
- Hong Kong Society of Audiology
- Hong Kong Workers' Health Centre
- Ng Fung Hong Slaughter House
- Occupational Deafness Compensation Board
- The Federation of Hong Kong & Kowloon Labour Unions
- The Hong Kong Construction Association Ltd
- The Hong Kong Federation of Trade Unions /
Hong Kong Construction Industry Employees General Union
- The Hong Kong Occupational Deafness Association
- Tsuen Wan Slaughter House

Organisations which have provided written submissions only

- Employers' Federation of Hong Kong
- Federation of Hong Kong Industries
- Hong Kong & Kowloon Trades Union Council
- Hong Kong Live Pig and Meat Trade Workers Union
- The Hong Kong College of Community Medicine
- The Hong Kong Society for the Deaf

Appendix III

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL

2002

COMMITTEE STAGE

Amendments to be moved by the Doctor Honourable LO Wing-lok

Clause

Amendment Proposed

16

By deleting paragraph (c) and substituting –

"(c) by adding –

"(z) work wholly or mainly in the immediate vicinity of a slaughterhouse designated or deemed to have been designated under section 76A of the Public Health and Municipal Services Ordinance (Cap. 132) where slaughter of pigs takes place;

(za) work wholly or mainly in a mahjong parlour licensed under section 22(1)(b) of the Gambling Ordinance (Cap. 148);

(zb) work wholly or mainly in a discotheque; or

(zc) work in controlling or operating a system for playing back and broadcasting recorded music in a discotheque."."

Appendix IV

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for Economic
Development
and Labour

Clause

Amendment Proposed

3

By adding -

““discotheque” (的士高) means any premises used mainly for the purpose of carrying out an activity where -

- (a) the main attribute of the activity is dancing by the persons participating in the activity;
- (b) recorded music characterized by a heavy rhythmic element is provided for the activity; and
- (c) the control or operation of a system for playing back and broadcasting the music referred to in paragraph (b) by a disc jockey forms part of the activity;”.

New

By adding -

“4A. Government payments

Section 7(1) is amended by repealing “法局” and substituting “法會”.

New

By adding -

“5A. Director of Audit’s

examination

Section 10(3) is amended by repealing “局” and substituting “會”.

**5B. Statements and reports
to be laid on table of
Legislative Council**

Section 11 is amended -

- (a) by repealing “Governor” where it twice appears and substituting “Chief Executive”;
- (b) by repealing “法局” and substituting “法會”.

7 By deleting everything after “額，” and substituting “而與該裁定有關的根據第15條提出的申請不論於何日提出，該裁定須按照在該裁定的日期有效的附表5作出。”.

New By adding -

**“14A. Regulations by Chief
Executive in Council**

Section 37 is amended by repealing

“Governor” and substituting “Chief Executive”.

15 (a) By deleting paragraph (a) and substituting -

(a) in subsection (1), by repealing “Governor” and substituting “Chief Executive”;

(aa) in subsection (2) -

(i) by repealing “and 5” and substituting “, 5 and 7”;

(ii) by repealing “局” and substituting “會”;

(b) In paragraph (b), by deleting “教育統籌局”.

New By adding -

“15A. Provisions with respect to the Board and members thereof

Schedule 1 is amended -

- (a) in section 3(1), by repealing “Governor” wherever it appears and substituting “Chief Executive”;
- (b) in section 3(3), by repealing “Governor” and substituting “Chief Executive”;
- (c) in section 4(2), by repealing “Governor” where it twice appears and substituting “Chief Executive”;
- (d) in section 4(3), by repealing “Governor” and substituting “Chief Executive”;
- (e) in section 4(4), by repealing “Governor” and substituting “Chief Executive”;
- (f) in section 5, by repealing “Governor” wherever it appears and substituting “Chief Executive”.

15B. Provisions with respect to the Medical Committee and members thereof

Schedule 2 is amended, in section 1(1)(e),

by repealing “覺” and substituting “力”.

16 By deleting paragraph (c) and substituting -

“(c) by adding -

- “(z) work wholly or mainly in the immediate vicinity of a place where the electric stunning of pigs for the purpose of slaughter takes place;
- (za) playing mahjong (as the main duty) inside a mahjong parlour licensed under section 22(1)(b) of the Gambling Ordinance (Cap. 148);
- (zb) preparing or serving drinks (as the main duty) in the immediate vicinity of the dancing area of a discotheque; or
- (zc) controlling or operating a system for playing back and broadcasting recorded music in a

discotheque.””.

19

In the proposed Schedule 7 -

(a) in item 1, by deleting “\$6,000” and substituting “\$9,000”;

(b) in item 2, by deleting “\$15,000” and substituting “\$18,000”.