

**Bills Committee on
Electronic Health Record Sharing System Bill**

**The Administration's Response to the issues arising from the
discussion at the meeting on 18 May 2015**

This paper sets out the Administration's response to the issues arising from the discussion of the Bills Committee on the Electronic Health Record Sharing System (eHRSS) Bill on 18 May 2015.

(a) Code of Practice (CoP)

2. The eHR Commissioner (eHRC) may issue a CoP pursuant to Clause 51 of the bill. As explained in our letter dated 23 February 2015 to the Assistant Legal Advisor (ALA) (vide LC Paper No. CB(2)911/14-15(01)), subject to the usual evidential rules, the CoP, like any other public document, is admissible in legal proceedings.

3. In her letter dated 10 February 2015 and at the meeting on 18 May 2015, the ALA raised four examples (i.e. Section 13 of the Personal Data (Privacy) Ordinance (PDPO, Cap. 486), Section 63C of the Construction Workers Registration Ordinance (Cap. 583), Section 41 of the Buildings Energy Efficiency Ordinance (Cap. 610), and Section 30 of the Unsolicited Electronic Messages Ordinance (UEMO, Cap. 593)) which provide that a failure to observe any provision of a CoP may be relied upon as tending to establish a particular matter in the proceedings or as taking such matter as proved. In this connection, we wish to point out that there are many other ordinances with CoP that do not have such specific clauses, such as the Marriage Ordinance (Cap. 181), the Aerial Ropeways (Safety) Ordinance (Cap. 211), the Noise Control Ordinance (Cap. 400), the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470), the Land Survey Ordinance (Cap. 473) and the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566). We have re-examined our context and are satisfied that the current drafting of Clause 51 of the bill is able to meet our policy intent.

(b) Information about the Administrative Appeals Board (AAB)

4. At the meeting of 18 May 2015, a member requested for information on the handling procedures and performance pledge for the processing of appeal by the AAB. Having consulted the Secretariat of AAB, we would like to provide the following response.

5. AAB was established in July 1994 under the AAB Ordinance (Cap. 442). It is an independent appeals board dealing with statutory appeals against a wide range of administrative decisions. At present, AAB has jurisdiction to hear and determine appeals against decisions made under 73 ordinances and regulations, such as the PDPO, Fisheries Protection Ordinance, Security and Guarding Services Ordinance, Firearms and Ammunition Ordinance, Gambling Ordinance, etc.

6. Appeals are heard by hearing boards which are formed in accordance with section 5(3) of the AAB Ordinance. A three-member hearing board shall be presided by either the Chairman or one of the Deputy Chairmen of AAB, together with two members to be drawn from AAB's panel of members.

7. All members of AAB are appointed by the Chief Executive. There are at present one Chairman, seven Deputy Chairmen and 41 Members in AAB. Chairman and Deputy Chairmen are persons qualified for appointment as District Judges under Section 5 of the District Court Ordinance (Cap. 336).

8. The AAB Ordinance provides for the powers and procedures of the AAB to hear and determine appeals made in respect of an appellant and which falls within its jurisdiction. After an appeal has been received, AAB shall serve a copy of the Appellant's notice of appeal on the respondent (i.e. the decision authority against whose decision has been appealed against) within 14 days. The Respondent will be required to lodge with AAB and other parties to the appeal (i.e. the appellant and the person(s) bound by the decision appealed against, if any) within 28 days thereafter a statement setting out the reasons and policy for the decision. The appellant may make written representations on the statement to AAB within a specified period. A hearing board will be

formed after all statements/written representations have been filed and all interlocutory applications have been dealt with. Pursuant to Section 16 of the AAB Ordinance, a notice of hearing shall be served on the parties to the appeal not less than 28 days before the date of hearing.

9. In 2014, a total of 63 appeals were received and 50 appeals were heard. Whilst the AAB has specific requirement regarding the timeframe for submission of statements and written representations, it does not have specific performance pledge **for processing an appeal** as this would depend on a variety of factors, such as the number of applications received at around the same period and the time required due to additional requests/procedures made/caused by parties to the appeal (e.g. application for extension of time to make written submissions, the need to schedule a later hearing date due to unavailability of appellant/respondent/representing lawyer to an earlier session, applications for discovery of documents, anonymity order, adjournment of hearings, etc.).

(c) Protection of public officers etc.

10. Clause 58 of the bill provides that a public officer or a person appointed by the eHRC under Clause 48(3) is not civilly liable for an act done or omitted to be done by the person in good faith in (purportedly) performing a function / exercising a power under the eHRSS Ordinance, but this does not affect the liability of the Government for the act or omission. At the meeting on 18 May 2015, a member has enquired whether similar provisions are common in existing ordinances.

11. We would like to confirm that such provisions are indeed common in Hong Kong law. Examples include Section 11A of the PDPO (Cap. 486), Section 23 of the Hospital Authority Ordinance (Cap. 113), Section 19 of the Consumer Council Ordinance (Cap. 216), Section 30 of the Occupational Safety and Health Council Ordinance (Cap. 398), Section 26 of the Chiropractors Registration Ordinance (Cap. 428), Section 20 of the Legislative Council Commission Ordinance (Cap. 443), Section 4 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), Section 9 of the Human Organ Transplant Ordinance (Cap. 465), Section 42B of the Mandatory Provident Fund

Schemes Ordinance (Cap. 485), Section 13 of the Social Workers Registration Ordinance (Cap. 505), Section 39 of the Securities and Futures Ordinance (Cap. 571), Section 19 of the Construction Industry Council Ordinance (Cap. 587), Section 13 of the Prevention and Control of Disease Ordinance (Cap. 599), and Section 133 of the Competition Ordinance (Cap. 619). The above are not exhaustive.

Food and Health Bureau
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