

Bills Committee on the Medical Registration (Amendment) Bill 2016

**Government's response to the follow-up actions arising from the
discussion at the meeting on 9 May 2016**

Response to the motion proposed by the Hon LEUNG Ka-lau

This note provides the Government's response to the motion proposed by the Hon LEUNG Ka-lau.

Motion proposed by the Hon LEUNG Ka-lau

2. At the Bills Committee meeting held on 9 May 2016, the Hon LEUNG Ka-lau proposed to move a motion to request the Government to provide adequate resources to the Medical Council Secretariat ("MC Secretariat") to facilitate MCHK to handle complaints and achieve the performance pledges specified by him, with or without the passage of the Medical Registration (Amendment) Bill 2016 ("the Bill").

3. Having regard to the existing provisions and restrictions of the Medical Registration Ordinance ("MRO") (Cap. 161) and the actual day-to-day operation of MCHK in the past years, we are of the firm view that it would not be possible to achieve the performance pledges specified by the Hon LEUNG Ka-lau without the passage of the Bill. We have critically reviewed the performance pledges specified by the Hon LEUNG Ka-lau and our observations are as follows -

- (a) **Shortening the time required for formation of an inquiry panel and scheduling of an inquiry date** - The Hon LEUNG Ka-lau proposes that the time required for formation of an inquiry panel and scheduling of an inquiry date could be shortened from 20 months to 60 days with the provision of resources and implementation of administrative measures. This is impossible without the passage of the Bill. Due to the statutory requirement that the Legal Adviser to MCHK must be present at every inquiry held by MCHK and the fact that MCHK could only appoint one Legal Adviser under the existing legislation, MCHK could only

conduct one inquiry hearing at one time. Currently, there are 80 some cases scheduled for inquiry. The average time taken for a case referred by the Preliminary Investigation Committee (“PIC”) to be heard at the disciplinary inquiry meeting in the past three years was 28 months. According to the latest information provided by the MC Secretariat, the case referred by PIC in April 2016 for disciplinary inquiry has to wait until April 2019 to be heard. Therefore, without passage of the Bill, it is impossible to clear the backlog of cases and shorten the waiting time for inquiry. The provision of additional resources or administrative support would not help address the problem as the constraint is with the single Legal Adviser permitted to be appointed by MCHK under the existing MRO.

- (b) **Shortening the time required for procedures involving Government Counsel (“GC”)** - The Hon LEUNG Ka-lau proposes that the time required for those procedures¹ involving GC could be shortened from five months to two months with the provision of resources and implementation of administrative measures. Under the existing legislation, the Secretary for Justice (“SJ”) may appoint only legal officers of the Department of Justice (“DoJ”) to carry out the statutory duties of the Secretary of MCHK in inquiries. This indeed is constrained by DoJ’s capacity of in-house legal counsels. The Bill provides that SJ may appoint any counsel or solicitor in private practice (besides legal officers of DoJ). Therefore, it is impossible to substantially increase the legal support provided to MCHK for conducting inquiries without the passage of the Bill.
- (c) **Shortening the time for procedures which are beyond the control of MCHK and MC Secretariat** - The Hon LEUNG Ka-lau proposes that the total time required for (i) “obtaining statutory declaration of the complainant and/or consent of the patient” and (ii) “seeking and receiving medical records/ reports from the clinic(s)/ hospital(s)” could be shortened from six months to about 10 weeks with the provision of resources and

¹ Including (i) PIC stage - to seek DoJ’s comments on the draft PIC notice containing charge(s) against the doctor (from three months to one month) and (ii) Inquiry stage - GC to study the case in depth and comment the draft Notice of Inquiry (from two months to one month).

implementation of administrative measures. We consider that such proposal is not feasible or possible as the time required to complete the procedure is determined by the complexity of the case and the time required for the complainant and the clinic(s)/hospital(s) concerned to provide the relevant information, which is beyond the control of MCHK and MC Secretariat.

- (d) **Procedures which processing time could be shortened through implementation of administrative measures** - We consider that the time required for the following procedures would be shortened in total by five months with the implementation of administrative measures and provision of resources, including –
- (i) “Inviting expert(s) to give opinions for the complaint cases at the pre-PIC stage”;
 - (ii) “Drafting PIC Notice containing charges against the doctor”;
 - (iii) “Preparing the case bundle for discussion of the complaint case at its monthly PIC meeting”; and
 - (iv) “MC Secretariat to secure an expert witness for the inquiry”.

4. Without the passage of the Bill, the overall processing time may at best be shortened by five months. This means that, assuming that the backlog of inquiry case is kept constant, the average processing time could at best be reduced from the current 58 months to 53 months in the absence of legislative amendments. However, in reality, as the capacity of holding only one inquiry hearing at any one time is far from sufficient to clear the backlog and hear new inquiries, the reduction of processing time will be largely offset by the waiting time for inquiry. As the backlog cases at different stages increase over time, the waiting time for taking forward new complaint cases will only be further increased.

5. To sum up, without the passage of the Bill, MCHK can only set up one PIC and one inquiry at any one time to process complaint cases, and thus it would not be possible to significantly reduce the processing time without the passage of the Bill.

6. To clear the existing backlog of complaint cases and deal with the new complaint cases received, upon the passage of the Bill, we expect MCHK to form at least two, and more if possible, PICs. The refined quorum requirement, accompanied with the proposed increase in the number of lay Council Members, medical assessors and lay assessors and the increased legal support and flexibility under the Bill, will facilitate MCHK to conduct inquiry more frequently and in parallel. With the implementation of administrative measures and after clearing the backlog of cases, our latest assessment is that the estimated handling time of a case would be shortened from 58 months to around 30 months. Details are at [Annex](#) and summarised below -

	Pre-PIC	PIC	Disciplinary inquiry	Total
Average time required for handling complaint cases in the past three years	17 months	13 months	28 months	58 months
Expected time required with the implementation of administrative measures only	15 months	11 months	27 months or more	53 months or more
Expected time required with the implementation of administrative measures and passage of the Bill	13 months	8 months	9 months	30 months

**Food and Health Bureau
Medical Council Secretariat
May 2016**

Annex

Estimated processing time at Pre-PIC Stage

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
1. Complaint received				
2. To seek the PIC chairman's directive	1 month	1 month	✗ 1 month	✗ 1 month
3. To obtain the statutory declaration of the complainant and/or consent of the patient for release of medical records/reports from the clinic(s)/hospital(s)	3 months	14 days	✗ 3 months	✗ 3 months
			The time required to complete the procedure is determined by the complexity of the case and the time required for the complainant to provide the relevant information. Some submitted within a couple of weeks while others could take longer than three months, in particular, for those who needed to re-submit further information after the first submission. The estimate is based on the average time taken in the past three years.	
4. To seek and receive the medical records/reports from the clinic(s)/hospital(s)	3 months	56 days	✗ 3 months	✗ 3 months
			The time required to complete the procedure is determined by the complexity of the case and the time required for the clinic(s)/ hospital(s) concerned to provide the relevant information. Some provided the records/ reports within a month, while others could take longer than three months, in particular, those with a long patient history involving multiple clinics/hospitals. The estimate is based on the average time taken in the past three years.	
5. To seek the PIC chairman or deputy chairman's directive after the medical records/reports have been obtained	2 months	2 months	✗ 2 months	✓ 1 month
			Caseload of PIC chairman or deputy chairman can be shared out with setting up of more than one PIC.	
6. To invite expert(s) to give opinions for the	4 months	2 months	✓ 2 months	✓ 2 months

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
complaint cases			There is a possibility that the processing time of obtaining an independent expert opinion can be reduced by two months with the provision of honorarium as a token of appreciation to experts who provide independent expert opinion.	
7. Expert(s) to provide opinions based on the medical documents sent to the expert(s)	2 months	1 month	✗ 2 months	✗ 2 months
			The time required to complete the procedure is determined by the complexity of the case. The estimate is based on the average time taken in the past three years.	
8. To seek the PIC chairman or the PIC deputy chairman's directive after the opinions from the expert(s) have been obtained	2 months	2 months	✗ 2 months	✓ 1 month Caseload of PIC chairman or deputy chairman can be shared out with setting up of more than one PIC.
9. Proceed to PIC Stage				
Total	17 months	10.5 months	15 months	13 months

Estimated processing time at PIC Stage

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
1. PIC chairman or PIC deputy chairman decides to refer the case to PIC				
2. To draft PIC Notice containing charge(s) against the doctor	3 months	1 month	<p style="text-align: center;">✓ 2 months</p> <p>The processing time would be shortened with additional manpower resources provided to the Medical Council Secretariat.</p>	<p style="text-align: center;">✓ 1.5 months</p> <p>Caseload of PIC chairman can be shared out with setting up of more than one PIC as PIC chairman's directive is required for drafting of PIC notice. The processing time would be shortened with additional manpower resources provided to the Medical Council Secretariat.</p>
3. To seek Department of Justice (DoJ)'s comments on the draft PIC Notice	3 months	1 month	<p style="text-align: center;">✗ 3 months</p>	<p style="text-align: center;">✓ 1.5 months</p> <p>At present, the Secretary for Justice may only appoint legal officers of DoJ to carry out the statutory duties of the Secretary of MCHK in inquiries. With passage of the Bill, the Secretary for Justice may appoint any counsel or solicitor in private practice (besides legal officers of DoJ).</p>
4. To seek the PIC chairman or the PIC	2 months	2 months	<p style="text-align: center;">✗ 2 months</p>	<p style="text-align: center;">✓ 1 month</p>

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
deputy chairman's directive upon receipt of comments from DoJ on the draft PIC Notice				Caseload of PIC chairman or deputy chairman can be shared out with setting up of more than one PIC.
5. To issue the PIC Notice to the defendant for written explanation to PIC (may grant up to three months' time to the defendant)	3 months	3 months	✗ 3 months	✗ 3 months
			The defendant doctor should submit a written explanation within one month upon receiving the Notice of PIC meeting. Extension of time will be granted at the discretion of the PIC chairman if there are cogent reasons and no extensions will be granted beyond three months, except in very exceptional situation. Some submitted within a month, some between two to three months while others more than three months. The estimate is based on the average time taken in the past three years.	
6. To prepare the case bundle for discussion of the complaint case at its monthly PIC meeting	2 months	1 month	✓ 1 month	✓ 1 month
			The processing time will be shortened with additional manpower resources provided to the Medical Council Secretariat.	
7. PIC convenes meeting to decide whether to refer the case to inquiry				
Total	13 months	8 months	11 months	8 months

Estimated processing time at Inquiry Stage

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
1. a) Secretariat to secure an expert witness for the inquiry	1 - 3 months	1 month	✓ 2 months	✓ 2 months
b) GC to study the case in depth and comment the draft Notice of Inquiry	2 months		<p>a) On average, it takes around two months for the Medical Council Secretariat to secure an expert witness for the inquiry. New invitation is required if the expert at the pre-PIC stage has declined to continue to provide expert assistance.</p> <p>b) As GC would need to take a fresh look at the charge having regard to the evidence provided by the defendant and the discussion at PIC, sufficient time needs to be allowed for the GC to comment on the draft Notice of Inquiry.</p>	
2. GC to seek funding approval to engage the expert witness; Secretariat to consult GC on the instructions letter to the experts regarding the draft expert report	1 month	1 month	✗ 1 month	✗ 1 month
3. To seek the expert's draft supplementary opinion for GC's consideration	1 month	1 month	✗ 1 month	✗ 1 month
4. GC and Secretariat to tidy up the case information and interview the complainant and expert witness with a view to producing the witness statement and finalising the expert report	2 months	2 months	✗ 2 months	✗ 2 months

	Average time taken in the past three years (2012-2014)	Performance pledges proposed by Hon LEUNG Ka-lau	whether processing time can be shortened and estimated time required	
			<u>without</u> passage of the Bill	<u>with</u> passage of the Bill
4a. Formation of inquiry panel and scheduling of the inquiry date	20 months ¹	60 days	✗ 20 months or more ¹	✓ 2 months The estimate is based on that, with the passage of the Bill, MCHK can conduct inquiry more frequently and in parallel after clearance of the backlog.
5. Secretariat to prepare the inquiry bundle in consultation with GC	0.5 month	0.5 month	✗ 0.5 month	✗ 0.5 month
6. Issue bundles to all parties 10 days before inquiry	0.5 month	0.5 month	✗ 0.5 month	✗ 0.5 month
Total	28 months	8 months	27 months or more ^{Note}	9 months

Note As the capacity of holding only one inquiry hearing at a time is far from sufficient to clear the backlog and hear new inquiries, the reduction of processing time will be largely offset by the waiting time for inquiry. As the backlog cases at different stages increase over time, the waiting time for taking forward new complaint cases will only be further increased.

¹ According to the latest information provided by the Medical Council Secretariat, the case referred by PIC for disciplinary inquiry in April 2016 has to wait until April 2019 to be heard.