



立法會主席

PRESIDENT OF THE LEGISLATIVE COUNCIL

梁君彥, GBS, 太平紳士 Andrew Leung Kwan-yuen, GBS, JP

來函檔號 YOUR REF :

本函檔號 OUR REF : CB(3)/M/MR

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許智峯議員

許議員：

根據《致命意外條例》(第22章)提出的擬議決議案

你於2018年3月26日向立法會秘書作出預告，表示擬於2018年5月9日的立法會會議上，根據上述條例第4(5)條動議一項擬議決議案，旨在把該條例第4(3)條所訂就親屬喪亡之痛而裁定給予的損害賠償款額(“喪痛賠償額”)，由150,000元增至220,000元。為根據《議事規則》考慮該擬議決議案可否提出，我已邀請政府當局就該擬議決議案給予意見(附錄1)，並請你回應政府當局的意見(附錄2)。

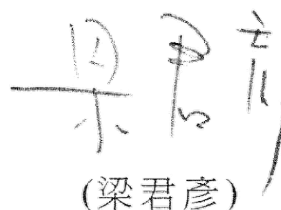
就你的擬議決議案而言，我必須指出，在一般情況下，法案及修訂主體或附屬法例的擬議決議案(“立法建議”)均由政府當局完成有關檢討或諮詢有關各方後提出，而議員可就立法建議提出修訂；在政府當局沒有提出該些立法建議的情況下，若議員擬自行提出立法建議(如你的擬議決議案或議員法案)，在作出有關預告及／或尋求立法會主席批准將有關建議列入立法會議程前，應在切實可行的情況下先諮詢相關事務委員會，讓有關各方可就有關建議表達意見。事實上，《內務守則》第22(q)條亦訂明，凡屬重要及／或可能引起爭議的立法建議，在提交立法會前，應先諮詢有關的事務委員會。然而，正如政府當局在附錄1的函件指出，你提出上述立法建議前，並未經相關事務委員會(即司法及法律事務委員會)討論。

我注意到，在2018年3月26日的司法及法律事務委員會會議上，你曾詢問委員是否須要討論你的立法建議，而事務委員會主席當時已表示同意討論有關建議，並會與政府當局商討時間安排。我已向事務委員會了解，政府當局已建議事務委員會於5月28日的會議上討論有關議題。

請你察悉，何俊仁議員亦曾於1997年2月25日，要求當時立法局的司法及法律事務委員會，討論他有關提高喪痛賠償額的擬議決議案。該事務委員會因當時議程繁重，故於會議上決定不討論何議員的擬議決議案。其後何議員才向立法會秘書作出預告，擬於1997年4月16日的立法會會議上動議該擬議決議案。

我認為，議員提出立法建議之前，應遵循上述機制，先諮詢相關事務委員會，讓有關各方可及早提出意見，以便委員會可全面考慮該立法建議，之後才交由立法會審議(若該立法建議獲准提出)。因此，我決定待司法及法律事務委員會完成討論有關議題後，才考慮你的擬議決議案可否提出。

立法會主席



(梁君彥)

2018年4月27日

連附件

副本送：司法及法律事務委員會主席梁美芬議員
立法會其他議員

律政司
法律政策科

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13 April 2018

By Fax : 2810 1691
(Total 5 pages including this page)

Miss Lilian Mok
Senior Council Secretary (3)2
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Miss Mok,

Proposed resolution under the Fatal Accidents Ordinance (Cap. 22)

Thank you for your letter of 28 March 2018, inviting the Government's views on whether Hon HUI Chi-fung's proposed resolution to amend the *Fatal Accidents Ordinance* (Cap. 22) ("FAO") is contrary to Rule 31(1) of the *Rules of Procedure of the Legislative Council* ("RoP") and on the relevancy of the proposed resolution.

Fatal Accidents Ordinance

2. The long title of the FAO provides that the purpose of the Ordinance is to "repeal and replace existing provision for the compensation of dependants of persons killed as a result of tortious acts". The FAO enables actions to be brought for the benefit of specified categories of

dependants for recovery of damages where the deceased, had he lived, could have maintained an action in tort in respect of some wrongful act, neglect or default. Section 4(3) of the FAO provides that, subject to specified exception, the sum to be awarded as damages for bereavement (“**bereavement sum**”) shall be \$150,000. Section 4(5) of the FAO empowers the Legislative Council (“**LegCo**”) to vary the bereavement sum specified under section 4(3).

Review of the bereavement sum

3. The bereavement sum under section 4(3) of the FAO was last revised to the current amount of \$150,000 in 1997 (L.N. 144 of 1997). Since there was an overall deflation from 1997 to 2010, the amount was not adjusted during this period. In 2014, the Department of Justice (“**DoJ**”) commenced a review proposing a revised amount based on the inflation rate but so far, consensus has not yet been reached with relevant stakeholders on the review mechanism and thus on the revised amount.

Hon HUI’s proposed resolution

4. Hon HUI has given notice to move under section 4(5) of the FAO, at the LegCo meeting of 9 May 2018, a proposed resolution to raise the bereavement sum under section 4(3) of the FAO from \$150,000 to \$220,000.

Admissibility of Hon. HUI’s proposed resolution

Charging effect

5. Rule 31(1) of RoP provides that “[A] motion or amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by –

- (a) the Chief Executive; or
- (b) a designated public officer ; or
- (c) a Member, if the Chief Executive consents in writing to the proposal.”

6. It has been established in previous rulings of the LegCo President¹ that a bill would have a charging effect under Standing Order 23², if there is a proposal whereby “the Administration ‘would incur a liability or a contingent liability payable out of money to be voted by Parliament’ (Legislative Council in Hong Kong) (Erskine May, 21st Ed., para. (a)(4) on p. 714)”³. It is also noted that in a former President’s ruling, the President did not disagree with the then Counsel to the Legislature’s advice that “[E]ven though the likely increased expenditure cannot be forecast with accuracy (because there are many contingencies in the scenario ...), S.O. 23 is worded in terms of an amendment which ‘may’ charge the revenue. Hence, it is only nominal (or, in lawyers’ language, ‘de minimis’) additional expenditure which can properly be ignored under S.O. 23.”⁴

7. The effect of Hon HUI’s proposed resolution is to raise the bereavement sum specified under section 4(3) of the FAO from \$150,000 to \$220,000 which has the same effect as the proposed resolution moved by Hon Albert HO in 1997 to raise the bereavement sum from \$70,000 to \$150,000. The then Attorney General’s Chambers (“AGC”) objected to the proposed resolution on the ground of charging effect, invoking Standing Order 23. Hon HO’s proposed resolution was eventually moved and passed, apparently with no formal ruling from the then President on that proposed resolution’s admissibility.

8. The FAO is not itself expressed to apply to the Government. However, section 66(1) of the *Interpretation and General Clauses Ordinance* (Cap. 1) makes it clear that an ordinance may also bind the State (including the Government) if that “appears by necessary implication”. In

¹ See for example, the President’s ruling on Employees’ Compensation (Amendment) Bill 1996 dated 28 March 1996.

² Standing Order 23 is substantially the same as Rule 31(1) of RoP.

³ The same principle is re-produced in Erskine May, 24th Ed. on p. 747.

⁴ Paragraph 6 of the President’s ruling on Employees’ Compensation (Amendment) Bill 1996 dated 28 March 1996.

the case of the FAO, the necessary implication is that the Government might by virtue of the *Crown Proceedings Ordinance* (Cap. 300) be liable for tortious acts committed directly by the Crown itself or by its servants or agents, and hence would be sued for damages for bereavement by dependants of persons killed as a result of such tortious acts. Applying the principles as set out in paragraph 6 above, there is a charging effect of Hon HUI's proposed resolution, if carried, whereby the Government " 'would incur a liability or a contingent liability payable out of money to be voted by Parliament' (Legislative Council in Hong Kong)".⁵ A contingent liability is enough. Even though the likely increased expenditure cannot be forecast with accuracy because there are many contingencies in the scenario, Rule 31(1) of RoP is worded in terms of an amendment which 'may' charge the revenue. It is only nominal additional expenditure which can properly be ignored under Rule 31(1) of RoP, which is unlikely to be the case in the present scenario.

9. Having regard to Rule 31(1) of RoP, we submit that Hon HUI's proposed resolution should be ruled inadmissible.

Relevancy of the proposed resolution

10. We do not have any comment on the relevancy of Hon HUI's proposed resolution.

Referral to the AJLS Panel

11. The Government is committed to carrying out the review of the bereavement sum in an expeditious manner. To this end, the LegCo Panel on Administration of Justice and Legal Services ("**AJLS Panel**") is, in our view, the appropriate forum for the matter to be first properly discussed and in order that the views of the LegCo Members be listened to, with the view to facilitating the reaching of an early consensus on the revision of the bereavement sum in order that a resolution be moved by the Government with expedition.

⁵ See footnote 3 above.

12. Moreover, it should be noted that Hon HUI's resolution was proposed without any prior consultation with the Government or the relevant stakeholders. We therefore take a strong view that it will be premature for the resolution to be moved at the Council before any discussion at the AJLS Panel. In this regard, you may wish to note that we are in liaison in parallel with the Madam Chairman of the AJLS Panel in order that the matter can be included as an agenda item at the first available opportunity.

Yours sincerely,



(Ms Adeline Wan)

Senior Assistant Solicitor General (Policy Affairs)

c.c. Ms Kitty Choi, JP, Director of Administration



立法會 LEGISLATIVE COUNCIL

許智峯議員 Hon HUI Chi-fung

立法會秘書處

高級議會秘書(3)(1)

林康錦先生

林先生 台鑒：

附錄 2

Appendix 2

(只備中文本

Chinese version only)

根據《致命意外條例》(第 22 章)提出的擬議決議案

有關 2018 年 4 月 16 日的來信，在信中提及律政司因《議事規則》第 31(1)條的規定，認為本人的擬議決議案應被裁定不可提出。我並不同意政府當局的意見，原因如下：

具有由公帑負擔的效力

根據《議事規則》第 31(1)條，立法會主席或全體委員會主席如認為任何議案或修正案的目的或效力可導致動用香港任何部分政府收入或其他公帑，或須由該等收入或公帑負擔，則該議案或修正案只可由以下人士提出 –

- (a) 行政長官；或
- (b) 獲委派官員；或
- (c) 任何議員，如行政長官書面同意該提案。

根據《香港特別行政區立法會歷史、規則及行事方式參考手冊》(下稱《手冊》)指出，《議事規則》第 31(1)條如何應用，視乎個別情況而定¹。立法會主席決定擬議議案或修正案是否具有由公帑負擔的效力時，通常會參考若干指導性準則，而該指導性準則包括：

1. 該項建議會否施加一項新增而獨特的法定職能，而此項職能在現行法律中並沒有訂明；
2. 該項建議會否需要動用一筆為數並非象徵式或微不足道的公帑；
3. 以及該項建議會否令根據法定權限可收取的政府收入減少。

本人建議將《致命傷命條例》第 4(3)條下的親屬喪亡之痛賠償額由 150,000 元調整至 220,000，並無違反以上準則。

《手冊》第 10 章 10.54 段指出「立法會主席在考慮政府承擔法定責任的程度時，亦會顧及政府運用收入或其他公帑履行法定責任的“間接程度”，以及牽涉的金額數目是否屬象徵式或微不足道而可輕易由政府現時的預算支付，因而就《議事規則》第 31(1)所指的“由公帑負擔的效力”而言，可不予理會。」

《致命傷命條例》本身並無訂明適用於政府，只有在官方直接干犯的或其受僱人或代理人干犯相關條例，需為死者的死亡錯誤作為、疏忽或過失承擔損害賠償之債負上賠償之責時，才會被死者親屬申索親屬喪亡之痛賠償。在本人的建議下，並不會直接增加公帑開支，而且調整親屬喪亡之痛賠償所涉及的財政資

¹ 請參閱《香港特別行政區立法會歷史、規則及行事方式參考手冊》第 10 章 10.48 段。



立法會 LEGISLATIVE COUNCIL

許智峯議員 Hon HUI Chi-fung

源，亦屬微不足道及可輕易由政府現時的預算支付。政府當局亦未能交代過去因《致命傷命條例》第4(3)條下的親屬喪亡之痛而招致的開支，因此本人認為有關開支是微不足道及可以忽略。而且有關開支非持續性，並不會對公共開支構成持續負擔²，不能視調整親屬喪亡之痛賠償為政府的必要開支。

就以上理據，本人認為本人的擬議決議案並無違反《議事規則》第31(1)條。

諮詢相關持份者

本人於2018年3月22日召開記者會預告本人打算在立法會提出決議案，並在同日以電郵方式將新聞稿傳至律政司、司法及法律事務委員會主席梁美芬議員、司法及法律事務委員會副主席郭榮鏗議員及立法會議員(保險界)陳健波議員，請各方提供意見。並在2018年3月23日以電郵及郵寄方式諮詢香港律師會及香港大律師公會。本人亦於2018年3月26日的司法及法律事務委員會上提出詢問各委員會否認為此方有需要在事務委員會作出討論，因過往兩次檢討都未有經過事務委員會討論，如沒有委員反對，本人將準備在立法會會議提出決議案。同日較後時間，本人向秘書處提出議案預告。事前本人已通知政府及相關持份者。但有否諮詢相關持份者意見，在法律上並非主席裁決需要的考慮因素。

此外，律政司在1997年曾承諾確保款額會繼續按通脹調整，並打算兩年檢討一次此賠償金額，但已經過去了21年都未有檢討及作任何調整。因此，本人認為事隔21年，在5月9日的立法會大會討論已是有足夠的時間讓各方準備。

如有進一步查詢，請與本人或本人助理吳小姐(2869 9522)聯絡。

立法會議員許智峯 謹啟

二零一八年四月十八日

² 請參閱立法會主席就李卓人議員修訂《2010年〈最低工資條例〉(生效日期)(第2號)公告》的擬議決議案的裁決
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