

張超雄立法會議員辦事處 Fernando Chiu Hung Cheung Legislative Councilor's Office

(傳真:2509 9055)

福利事務委員會 主席*酈*俊宇議員 <u>立法會CB(2)210/18-19(01)號文件</u> LC Paper No. CB(2)210/18-19(01)

鄺主席:

提交由張超雄議員擬議的條例草案之

摘要說明及法案草擬本 (最新版)及有關剪報三則

本人於 2018 年 7 月 18 日致函,要求事務委員會討論本人就《安老院條例》(第 459 章)及 《殘疾人士院舍條例》(第 613 章)提出的擬議修訂。同年的 8 月 15 日,本人向本委員會提交 《侵害人身罪條例》(第 212 章)(下稱"《條例草案》")提出的擬議修訂及其摘要說明(只限英 文版)和法案草擬本。與之同時,本人也提供《安老院(修訂)條例草案》、《殘疾人士院舍(修 訂)條例草案》(下稱"《條例草案》")的摘要說明(只限英文版)和法案草擬本。

本人現來信事務委員會,提交最新版的《條例草案》摘要說明(只限英文版),以取代過 去提供的《條例草案》的摘要說明。另外,本人向事務委員會提供有關剪報三則,以供委員參 考。

順祝

台安!

立法會議員

張超雄 謹啟 二零一八年十一月六日

(\$ (852) 2613 9200

(852) 2799 7290

cheungchiuhung.org.hk facebook.com/fernandocheungchiuhung



<u>Explanatory Notes</u> <u>Residential Care Homes (Elderly Persons) (Amendment) Bill 2018</u>

- The current amendment bill seeks to amend the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (Ordinance) and the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. Leg. A) to require the licensee of a residential care home for the elderly be a natural person and that the Director of Social Welfare must consider a list of elements of the license applicant regarding the person's character, past financial, criminal and professional records, including any records of non-compliance of the Ordinance.
- 2. In the past five years, the Licensing Office of Residential Care Homes for the Elderly and the Licensing Office of Residential Care Homes for Persons with Disabilities (collectively referred to as "Licensing Offices") of the Social Welfare Department (SWD) received each year on average a total of about 300 complaints relating to residential care homes for the elderly (RCHEs) and residential care homes for persons with disabilities (RCHDs). In terms of subject matter, the above complaints received mainly involved care services (about 40 per cent), management (about 15 per cent), meals, environment and facilities (about 10 per cent), etc.¹
- 3. As at end of June 2018, there are 736 licensed RCHEs. There are 655 RCHEs licensee registered by Body Corporate², which represents nearly 90%, of all licensees. The remaining licensees are partnership (7.06%) and solo proprietorships (3.94%).
- 4. Since the majority of RCHEs licensees are operated and registered as a body corporate, the principals can continue to operate the business even when the RCHE's license is revoked, so long as they can transfer the license to another body corporate under their control. Under the current ordinance, the principals do not hold any individual liability in managing or operating residential care homes.
- 5. In 2015, the Tai Po RCHE Cambridge was widely reported to have made elderly residents waited nakedly for showers without regards for their privacy and

¹ Labour and Welfare Bureau-Replies to LegCo Questions: Improving service quality of private residential care homes for the elderly and for persons with disabilities: https://www.lwb.gov.hk/eng/legco/11012017 3.htm

² The paper of 7th meeting of Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (20 July 2018):

https://www.swd.gov.hk/storage/asset/section/2970/en/2018_7_20_paper.pdf

dignity. The Director of Social Welfare (DSW) later refused its license renewal application. The RCHE was reopened later under a new name with the licensee registered under an offshore company. The media reported that the principals of this offshore company were the ones involved in the scandal.³

- 6. In United Kingdom, it requires only "fit and proper persons" can become directors of RCHEs in section 5 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which sets out the requirements including the individual is of good character, be able to properly perform tasks that are intrinsic to their role and have the necessary qualifications, competence, skills and experience. In addition, there are grounds of unfitness specified to the individual licensee.⁴
- 7. In Hong Kong, liquor licensee must be a natural person. The draft Bill makes references to the municipal services appeals board in section 17 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B). A liquor license is only issue to an applicant who "is a fit and proper person" to hold the license, which is only granted to a natural person. This provided for a clear individual liability and legal responsibility of the licensee in managing the licensed premises.
- 8. The Education Ordinance (Cap. 279) in Hong Kong also requires schools to appoint or elect "Managers" (校董) and "Supervisor" (校監) as part of the management authority and that the managers and supervisors are "a person". It is also specified in the law that school managers and supervisors should be "fit and proper" persons.
- 9. Thus, the draft Bill seeks to enhance measures of the granting RCHE licenses in order to provide better quality control and protection to residents that are frail, vulnerable, and unable to protect themselves. In addition to requiring the applicant to be a natural person, specific requirements relating to the applicant are listed for the DSW's consideration in the application for and issue of certificates of exemption or licenses. In addition, the DSW must consider the conviction records of the proposed employees (home manager or health workers) in the issue of certificates of exemption or licenses.

³「曾涉虐老劍橋護老院疑改名翻生業界促增設跨專業支援服務隊」<蘋果日報>2017年5月26日

⁴ The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4

10. The draft bill should be enforced simultaneously with the Residential Care Homes (Persons with disabilities) (Amendment) Bill 2018.

Nov 6, 2018

<u>Explanatory Notes</u> <u>Residential Care Homes (Persons with disabilities) (Amendment) Bill</u> <u>2018</u>

- As at end of June 2018, there were 311 licensed Residential Care Homes for the Disabled (RCHDs). There are 303 RCHDs Body Corporate licensees¹, representing 97.4% of all such care homes. The remaining types of licensees are partnership (0.32%) and solo proprietorships (2.25%).
- 2. The vast majority of RCHDs are licensed and operated by body corporate. As in the situation of RCHEs, licensee can evade individual responsibilities and punishments even when it violates the law. The principals can also continue their business easily as soon as they apply another license under and new body corporate. If they choose to, they can also hide their identity by using an offshore body corporate as the licensee. This situation is well demonstrated in the private RCHEs.
- 3. It should be noted that the current Ordinances for RCHEs and RCHDs allow licensee under either Ordinance can operate either a RCHE or a RCHD. In other words, the license for one kind of care home allows the operator to run both kinds of care home. This is why the current draft bill has to reflect all amendments made to the RCHEs.
- 4. Thus the draft bill should be enforced simultaneously with the Residential Care Homes (Elderly Persons) (Amendment) Bill 2018.

Nov 6, 2018

¹ The paper of 7th meeting of Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (20 July 2018): https://www.swd.gov.hk/storage/asset/section/2970/en/2018 7 20 paper.pdf

<u>Explanatory Notes</u> Offences against the Person (Amendment) Bill 2018

- 1. The current draft bill seeks to amend the Offences against the Person Ordinance (Cap. 212) (Ordinance) to criminalize the ill-treatment or neglect of a person with disabilities or an elderly person and to impose a penalty on the offender.
- 2. There is inadequate legal protection for persons with disabilities and elderly persons from abuses in Hong Kong. Although the Procedural Guidelines for Handling Elder Abuse Cases (Revised August 2006), which was issued by Social Welfare Department (SWD), included the act of neglect as one kind of elder abuse, the Offences Against the Person Ordinance (Cap. 212) does not include neglect as an offence. The Ordinance has included offences such as physical abuse, including wounding or inflicting grievous bodily harm (section 19), assault occasioning actual bodily harm (section 39) and common assault (section 40). In addition, SWD has also issued the Procedural Guidelines for Handling Abuses of Mentally Disabled/Mentally III Case Work (in Chinese only《處理虐待智障/精神病患成人個案工作指引》 and the concepts of ill-treatment and neglect are included in it. However, the Ordinance has yet to incorporate such offenses against persons with disabilities in it. Therefore, when incidents that involved neglect can be classified as elder abuse or abuse of persons with disabilities according to the SWD Guidelines, they are handled without a legal basis.
- 3. Children and juveniles are at present protected under a dedicated legislation of the Offences against the Person Ordinance (Cap. 212) (27) Ill-treatment or neglect by those in charge of child or young person, which makes it an offence "if any person over the age of 16 years who has the custody, charge or care of any child or young person under that age willfully assaults, ill-treats, neglects, abandons, or exposes such child or young person or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement) such person shall be guilty of an offence and shall be liable—(a) on conviction on indictment to imprisonment for 10 years; or (b) on summary conviction to imprisonment for 3 years..."
- 4. The current draft bill seeks to extend such protections of children and juveniles to persons with disabilities and elderly persons.

Ming Pao Daily News | 2018-04-08 Newspaper | A01 | 要聞 | Image No.: 1/1

現無虐老法例六成個案涉身體虐待

有別於虐兒,本港現時並無針對虐老的相關法例,如長者遭受虐待,只可引用現有如普通襲擊等法例處理,但涉及 精神虐待、疏忽照顧及遺棄長者的個案,根據社署的數字則無指定法例處理。去年首9 個月, 共有421 宗虐待長者 個案,當中63.7%為身體虐待,其次為侵吞財產, 共有17.6%。有立法會議員認為,可參考外國強制呈報機制,加強 服務支援,處理虐老問題。「虐待長者個案中央資料系統」的數字顯示(詳見表),421 宗個案的施虐者,最多為 配偶,共有53.4%,其次為子女,共佔14.3%。

社署現有指引無法律效力

防止虐待長者協會副總幹事余嘉龍表示,隨着人口老化,虐老問題年年增加,包括媳婦、外傭、子女及配偶等,都 有可能虐待長者。有別於虐兒,不同形式的虐老沒有專門法例處理,即使社署設有「處理虐老個案程序指引」,但 並無法律效力,長者自能「自求多福」。

立法會議員張超雄指,事件反映社會對虐老的意識不足,長者為保護後輩而選擇啞忍,鄰舍又視之為「家事」,不 敢協助。他表示,部分歐美國家除清晰定義虐老外,亦有法例強制專業人士,如社工、醫生等呈報發現的虐老個案 。他明白,即使強制呈報,長者如拒絕幫助亦難以跟進,因為除了法例外,以服務支援處理長者面對被虐時的擔心 十分重要,例如長者擔心與子女分居後的日常照顧情况、分戶的等待時間等,都需專業介入。

張超雄促強制呈報虐老

基督教家庭服務中心服務總監(長者照顧)唐彩瑩表示,長者與子女生活習慣不同,同住時生活細節需協調及磨合,或會產生爭拗;如有長者經常被子女責罵,她會勸長者避開一下,盡可能不反駁,「有時講多兩講就收聲」,以 免爭吵時出現暴力。至於虐老問題,她認為極難察覺,因長者普遍會「家醜不外揚」,傷勢亦較難發覺,即使發現 長者被虐,很多時長者為免子女被拘捕而會啞忍,因此社工較難介入,只能循循善誘,直至長者願意正視問題,才 報警求助。

現無虐老法例 六成個案涉身體虐待

有别於虐兒,本港現時並無 針對虐老的相關法例,如長者 遭受虐待,只可引用現有如普 通襲擊等法例處理,但涉及精 神虐待、疏忽照顧及遺棄長者 的個案,根據社署的數字則無 指定法例處理。去年首9個 月,共有421宗虐待長者個 案,當中63.7%為身體虐待, 其次爲侵吞財産,共有 17.6%。有立法會議員認為, 可參考外國强制呈報機制,加 强服務支援,處理虐老問題。 「虐待長者個案中央資料系 統」的數字顯示(詳見表), 421 宗個案的施虐者,最多爲 配偶,共有53.4%,其次爲子 長者爲保護後輩而選擇啞忍, 女,共佔14.3%。 鄰舍又視之爲「家事」,不敢

社署現有指引無法律效力

防止虐待長者協會副總幹事 余嘉龍表示,隨着人口老化, 虐老問題年年增加,包括媳 婦、外傭、子女及配偶等,都 有可能虐待長者。有别於虐 兒,不同形式的虐老没有專門 法例處理,即使社署設有「處 理虐老個案程序指引」,但並 無法律效力,長者自能「自求 多福」。

立法會議員張超雄指,事件 反映社會對虐老的意識不足, 長者爲保護後輩而選擇啞忍, 鄰舍又視之爲「家事」,不敢 協助。他表示,部分歐美國家 除清晰定義虐老外,亦有法例 强制專業人士,如社工、醫生 等呈報發現的虐老個案。他明 白,即使强制呈報,長者如拒 絶幫助亦難以跟進,因爲除了 法例外,以服務支援處理長者 面對被虐時的擔心十分重要, 例如長者擔心與子女分居後的 日常照顧情况、分户的等待時 間等,都需專業介入。

張超雄促強制呈報虐老 基督教家庭服務中心服務總

監(長者照顧) 唐彩瑩表示, 長者與子女生活習慣不同,同 住時生活細節需協調及磨合, 或會產生爭拗;如有長者經常 被子女責罵,她會勸長者避開 一下,盡可能不反駁,「有時 講多兩講就收聲」,以免爭吵 時出現暴力。至於虐老問題, 她認爲極難察覺,因長者普遍 會「家醜不外揚」,傷勢亦較 難發覺,即使發現長者被虐, 很多時長者爲免子女被拘捕而 會啞忍,因此社工較難介入, 只能循循善誘,直至長者願意 正視問題,才報警求助。

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劍橋護老院 改名森林翻生 創辦人兩姊妹掌管理大權

【本報訊】曾涉嫌虐老、將長者「剝光豬」在露天輪候沖涼的大埔運頭塘街劍橋護老院,前年5月被社署「釘牌」後,去年有新投資者接手,改名「森林護老院」營運。但本報發現,該院經營不足一年,即易手予一間離岸公司,劍橋創辦人陸艾齡及陸艾思姊妹更出任該院董事,掌控管理大權。涉事劍橋被釘牌後兩年,變相「翻生」。記者:王家文

位於大埔運頭塘街廣安大廈1至3樓的森林護老院,屬高度照顧院舍,最多可容納265人。記者日前以顧客身份到該院 查詢,職員指現有百多人入院,宿位由8,000元至1.3萬元不等,雜費另計。她指院舍重新裝修,「呢度開咗好耐」 ,記者遇見一名疑是職員在掃地,身穿黃色上衣則綉上「劍橋護老院」字樣。

記者離開時遇上一名院友外出回院,他表示從同區另一間劍橋院舍搬至,「都係同一間之嘛,一樣嘅」。森林護老院前身是劍橋護老院,原持有兩個牌照,前年5月爆出長者被剝光衣服在露天平台輪候沖涼,2、3樓牌照不獲社署續牌後,當時劍橋創辦人陸艾齡向本報承認兩樓層已出租,強調「唔係我哋集團」。1樓的分院牌則獲續期至去年6月30日屆滿。

森林曾收社署警告信

公司註冊處資料顯示,森林護老院(大埔)於2015年8月12日成立,即涉事的劍橋護老院被釘牌後兩個多月,由單一 股東吳浩雲持有及出任董事,並於去年7月接手涉事的劍橋院舍,易名「森林護老院」營運。當時陸艾齡曾向傳媒稱 ,不認識新經營者,又指自己退休,不再沾手,否認是幕後老闆。

但公司註冊處資料顯示,森林開業不足一年,今年5月,吳浩雲將全數股份轉予一間離岸公司「Diamond Classic Limited」,外界無法得知背後股東身份。吳再於8月31日辭任董事,同日改由陸艾齡及胞妹陸艾思接任。陸艾齡回應查詢時承認出任森林董事,「唉,好複雜,未買晒嘅,企圖啫……未曾交易住,未曾搞得掂,做咗董事先」。

被問到是否借森林令劍橋「翻生」,她指兩者沒關係,「社署冇話唔畀我開」,不擔心受釘牌事件影響,「儍啦,香港邊有人做得比我哋更好,邊有我哋嘅水平」。她指該院未必由她管理,又否認早已認識吳浩雲。然而,公司 註冊處資料顯示,去年7月11日,即吳浩雲接手森林護老院一個多星期後,劍橋九龍灣及新蒲崗分院改名為康璟護老院,差不多同一時間,吳接替陸艾齡及陸艾思出任兩院董事。直至今年3月,陸氏姊妹再度出任兩院董事,兩個月後,輪到吳辭任。除安老業外,三人今年1月又共同成立宏滙教育,由陸氏持股,吳則任董事。

社署指,去年7月1日向大埔森林護老院發出牌照,署方沒收到申請轉換持牌人,但曾就該院衞生、保存記錄及人手 方面發出勸喻信及警告信。 劍橋護老院 改名森林翻生 創辦人兩姊妹掌管理大權



森林曾收社署警告信

公司註冊處資料顯示,森林護老院(大埔) 於2015年8月12日成立·即涉事的劍橋護老 院被釘牌後兩個多月,由單一股東吳浩雲持有 及出任董事·並於去年7月接手涉事的劍橋院 舍·易名「森林護老院」營運。當時陸艾齡曾 向傳媒稱·不認識新經營者·又指自己退休· 不再沾手·否認是幕後老闆。

但公司註冊處資料顯示·森林開業不足一 年,今年5月,吴浩雲將全數股份轉予一間離 岸公司「Diamond Classic Limited」,外界 無法得知背後股東身份。吳再於8月31日辭 任董事,同日改由陸艾齡及胞妹陸艾思接任。 陸艾齡回應查詢時承認出任森林董事·「唉· 好複雜,未買晒嘅,企圖啫.....未曾交易住, 未曾搞得掂,做咗董事先」。

就該院衞生、保存記錄及人手方面發出勸喻信 及警告信。

大埔劍橋護老院翻生經過	
日期	事件
2015 年 5月26日	被揭發將長者「剝光豬」在露天 輪候沖涼
5月30日	2樓及3樓牌照不獲社署續牌
8月12日	森林護老院(大埔)有限公司成立
2016年 7月1日	森林護老院股東兼董事吳浩雲接 手經營涉事護老院,並獲社署發 牌
今年 5月15日	吳浩雲將森林護老院股份全數轉 讓離岸公司「Diamond Classic Limited」
8月31日	吳浩雲辭任森林護老院董事,劍 橋創辦人陸艾齡及陸艾思同日出 任森林董事
AS STATES	資料來源:《蘋果》資料室

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Apple Daily | 2017-10-27 Newspaper | A06 | 要聞 |

至少10劍橋院舍易名營運

【本報訊】劍橋護老院創辦人陸艾齡有「護老院女王」之稱,全盛時期劍橋有近30間院舍。資料顯示,現時劍橋護 老院名義上只剩6間,但本報發現,自前年5月大埔運頭塘街院舍被「釘牌」後,至少10間劍橋護老院分別改名「富 璟」、「慶楠」或「康璟」營運,但依舊由陸艾齡任董事。

職員:格局冇乜點變

「以前叫劍橋,但陸續有啲(院舍)都改緊名。」護老院職員說。位於上水新財街的劍橋護老院,前年5月被揭發涉 違反牌照條件,將電梯大堂劏成店舖,現時已改名富璟。記者日前以顧客身份到該院查詢,可見2樓掛上的主席訓詞 ,上款是富璟護老集團,但「富璟」二字是用電腦新打印,下款是主席陸艾齡。職員說,之前大埔院舍「有單嘢」 ,因屬同一集團,多少也受影響,故於今年6月1日改名,「格局上有乜點變」。

本報翻查資料,前年5月起,有6間劍橋護老院先後易名富璟,分屬上水、粉嶺、積存街、第一城、花園城三期及金 安大廈。有兩間劍橋則易名慶楠,分別位於深水埗及第一城。這8間護老院都由陸艾齡和陸艾思任董事,除粉嶺院舍 外,其餘7間都由離岸公司持有。

社署資料顯示,現有6間劍橋護老院分處鰂魚涌、沙田、大埔舊墟、廣福道、荃灣及元朗,其中沙田分院的公司註冊 名稱,去年底已改為富璟(沙田)護老院;另一間荃灣分院於今年8月也易名慶楠護老院(荃灣富麗),但社署牌 照紀錄仍顯示為劍橋。連同位於九龍灣及新蒲崗、原名劍橋的康璟護老院,前年5月至今,至少有10間劍橋護老院易 名營運。陸艾齡回應稱,數年前已開始「改組」,承認部份院舍易名富璟和康璟。她解釋因迷信關係,否認為「洗 底」改名。

■記者王家文

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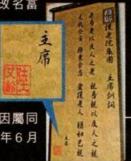
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> 及新蒲崗、原名劍橋的康璟護老院,前 年5月至今,至少有10間劍橋護老院 易名營運。陸艾齡回應稱,數年前已開 始「改組」,承認部份院舍易名富璟和康 璟。她解釋因迷信關係,否認為「洗底」 改名。 ■記者王家文

■富璟護老院內的訓詞,下款是主席 陸艾齡(小圖)。

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