

Elderly Commission
Minutes of the 99th Meeting

Room 1019, 10/F, West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong
10:00 a.m., 26 June 2019 (Wednesday)

Present:

Chairman

Dr LAM Ching-choi, BBS, JP

Members

Ms CHAN Yee-ching, Tammy

Mr CHUA Hoi-wai

Mr LAM Hoi-cheung, Victor, JP

Ms LI Fai, Grace

Ms LO Dak-wai, Alexandra, JP

Mrs SO CHAN Wai-hang, Susan, BBS

Mr WONG Kit-loong

Dr YEUNG Ka-ching

Ms Carol YIP, JP

Mr WONG Chung-yan, Johann, JP

Mr FUNG Pan-chung, Chris

Mr YEUNG Yiu-fai, Ricky

Dr LI Mun-pik, Teresa

Dr HA King-hang, Tony

Director of Social Welfare

Deputy Secretary for Labour and Welfare

Principal Assistant Secretary for Food and Health (Health)

Deputy Director of Housing (Estate Management) (Acting)

Assistant Director of Health (Elderly Health Service)

Chief Manager (Primary and Community Services), Hospital Authority

In attendance:

Mr TAN Tick-yee

Assistant Director of Social Welfare (Elderly)

Ms LEE Ngan-chau, Martina

Chief Executive Officer, Labour and Welfare Bureau

Miss LEUNG Pui-yin, Sam

Executive Officer, Labour and Welfare Bureau

Agenda item 3

Ms Amanda WHITFORT

Chairperson, Causing or Allowing the

Ms NG Yeuk Sze, Louisa

Death of a Child or Vulnerable Adult
Sub-committee of the Law Reform
Commission

Secretary, Causing or Allowing the
Death of a Child or Vulnerable Adult
Sub-committee of the Law Reform
Commission

Ms Michelle AINSWORTH

Consultant Counsel, Causing or
Allowing the Death of a Child or
Vulnerable Adult Sub-committee of the
Law Reform Commission

Agenda item 4

Miss TAI Shuk-yiu, Leonia, JP

Deputy Secretary for Labour and
Welfare

Mr FONG Siu-wai, Daniel

Principal Assistant Secretary for Labour
and Welfare

Mr LEE Yiu-kwong, Eric

Principal Economist, Office of the
Government Economist of the Financial
Secretary's Office

Mr NG Chi-chung, Jonathan

Senior Statistician (Household and
Income Statistics), Census and Statistics
Department

Agenda item 5

Miss TAI Shuk-yiu, Leonia, JP

Deputy Secretary for Labour and
Welfare

Ms LAW Sui-fong, Catherine

Assistant Commissioner for Labour
(Employment Services) (Acting)

Mr NG Kwok-keung, Byron, BBS

Executive Director, Employees
Retraining Board

Absent with apologies:

Ms CHAN Mei-kit, Maggie, MH

Mr CHEUNG Leong

Ms CHUNG Wai-ye, Diana

Prof LEE Tze-fan, Diana, JP

Dr LOU Wei-qun, Vivian

Dr PANG Fei-chau

Dr TSE Man-wah, Doris

Mr WONG Tai-lun, Kenneth

Secretary

Mr CHONG Kwok-wing, Gordon

Principal Assistant Secretary for Labour
and Welfare

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Dr LAM Ching-choi, the Chairman, welcomed Members to the meeting.

2. The Chairman reminded Members to make a declaration when there was a potential conflict between their own interests and the matters to be discussed.

Agenda item 1: Confirmation of the minutes of the 98th meeting

3. As Members had not proposed any amendments to the Chinese and English versions of the draft minutes issued by the Secretariat on 30 May 2019 and 18 June 2019 respectively, the minutes were confirmed.

Agenda item 2: Matters arising

4. There were no matters arising from the minutes of the 98th meeting.

Agenda item 3: Consultation Paper - Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult

5. Ms Amanda WHITFORT, Chairman of the Causing or Allowing the Death of a Child or Vulnerable Adult Sub-committee (Sub-committee) of the Law Reform Commission, briefed Members through a PowerPoint presentation on the consultation paper titled “Causing or Allowing the Death or Serious Harm of a Child or Vulnerable Adult”. Ms WHITFORT said that the Sub-committee had released on 16 May 2019 the consultation paper which made preliminary recommendations for reform of the law relating to the criminal liability of parents, carers and others when children or vulnerable adults died or were seriously harmed as a result of abuse or neglect while in their care. The Sub-committee recommended the introduction of a new offence of “failure to protect a child or vulnerable person where the child’s or vulnerable person’s death or serious harm results from an unlawful act or neglect”. Criminal liability would be imposed on any person committing such an offence by failing to take steps to protect a child (under 16 years of age) or a vulnerable person (over 16 years of age) from death or serious harm in circumstances where:

- the defendant owed a duty of care to the victim, or was a member of the victim’s household and had frequent contact with the victim;

- the defendant was, or ought to have been, aware of the risk of serious harm to the victim;
- the defendant’s failure to take steps to protect the victim from harm was, in the circumstances, so serious that a criminal penalty was warranted.

6. The offence would cover both fatal and non-fatal cases, as well as both child and vulnerable adult victims. The Sub-committee recommended that the scope of the offence would be wide enough to cover both domestic and institutional care situations. The maximum penalties for the proposed offence would be 20 years and 15 years of imprisonment for fatal and non-fatal cases respectively. The Sub-committee also recommended that the Government should undertake a review of the current maximum penalty applicable under section 27 of the Offences against the Person Ordinance (Cap. 212) with a view to increasing the penalty level as appropriate. Some general observations on matters concerning the protection of children and vulnerable adults, including further information on the reporting of abuse, were also set out in the consultation paper. Ms WHITFORT said that the consultation would end on 16 August this year, and invited Members to give views, comments and suggestions on any issues discussed in the consultation paper.

7. Regarding the statistics of elder abuse cases in Hong Kong cited in the consultation paper, Mr TAN Tick-yee, Assistant Director of Social Welfare (Elderly), remarked that “the commission or omission of any act that endangers the welfare or safety of an elder” was adopted as the definition of elder abuse in compiling the statistics of cases under the Central Information System on Elder Abuse Cases of the Social Welfare Department (SWD). The current statistics showed that more than 50% of the victims were aged between 60 and 69 and the abusers did not necessarily owe a duty of care to the victims. As the definition of elder abuse cases adopted for the system and the scope of the offence of “failure to protect” were not exactly the same, the data collected under the system could not be used directly as a basis for inferring the number of suspected offences of “failure to protect”.

8. The Chairman and Members raised the following recommendations and questions on the issues discussed in the consultation paper:

- (a) Since elderly persons receiving long-term care services (including community care services and residential care services) were mostly “vulnerable persons”, front-line staff responsible for taking care of them and other professionals, such as social workers and nurses, were concerned about the liabilities that would be imposed on them upon the enactment of the offence of “failure to protect” and

its impact on their daily work.

- (b) A Member wished to know the purpose of enacting the offence of “failure to protect”.
- (c) To address the concerns of carers and employees of the elderly care sector, it was suggested that the Sub-committee should step up its efforts in explaining to the public the intention of the proposed offence of “failure to protect” and its scope of application, and elaborating on what reasonable precautions could be taken to avoid such liabilities.
- (d) A Member was concerned about whether the new offence would increase the incidence of incriminating innocent persons.
- (e) How “serious harm” was defined in the new offence?

9. In response to the suggestions and questions raised by Members, Ms WHITFORT and Ms Michelle AINSWORTH, Consultant Counsel to the Sub-committee, replied as follows:

- (a) The intention of the proposed offence of “failure to protect” is not to meddle in the relationship between a care recipient and a carer, but to provide a strong incentive for those living with and/or caring for children and vulnerable adults to take steps that they could reasonably be expected to have taken in the circumstances to protect potential victims from harm.
- (b) This new offence would target cases in which a person who had a duty of care for a child or vulnerable person, or was a member of the same household as the victim and had frequent contact with the victim, and was aware, or should have been aware that the person in his/her care was at risk of serious harm, and could reasonably be expected to have taken steps to protect the victim from harm (for example, by leaving the scene with the victim or reporting the case to the authorities), but that person failed to do so and the failure was so serious that a criminal penalty was warranted. In the circumstances, that person committed the proposed new offence.
- (c) As the liability for the proposed offence was based on the defendant’s failure to take reasonable steps to protect the victim, the key feature of this offence would be that the prosecution did not have to prove in a particular case whether the

defendant was the person who had caused harm to the victim or was a bystander who should be held liable. However, the Sub-committee considered that the offence recommended in the consultation paper was comprised of several elements, each of which should be proved beyond reasonable doubt before a person could be held liable. This represented a high evidentiary threshold for prosecution.

- (d) The Sub-committee was satisfied that the reform model recommended in the consultation paper would provide adequate protection for the accused and would not breach fundamental tenets of the criminal justice system. The core issue of this study had been the dilemma of how a proper balance could be achieved between protecting the fundamental human rights of vulnerable victims on the one hand, and protecting the right to a fair trial of those allegedly involved in the deaths or serious harm of the victims on the other. The Sub-committee trusted that the offence they proposed had achieved that balance by imposing penalties on an offender who had failed to offer sufficient protection to the victim without resting on the fiction that because two carers were present at the scene and it was unclear who had committed an offence (e.g. murder or manslaughter), both of the carers were guilty of it.
- (e) In considering whether a statutory definition of “serious harm” should be included in the provision, the Sub-committee had taken account of the separate, express reference to “sexual assault” under the New Zealand model and had considered whether a similar express reference to harm of this nature should be included in the terms used for the offence in Hong Kong. It had also given thought to the extent to which psychological or psychiatric harm should be considered as falling within the scope of “serious harm”. After due deliberation on the advantages and disadvantages of having a statutory definition (i.e. providing a pre-defined scope for the concept of “serious harm” on the one hand, while allowing flexibility for the development of this concept under the common law on the other), the Sub-committee had concluded that an express definition of serious harm should not be included in the new offence (especially given the difficulties that such a definition had caused under the original South Australian offence model (discussed in Chapter 4 of the Consultation Paper)). It was proposed for the Hong Kong offence that the issue of what constituted “serious harm” should be left to the judge and jury to determine in any particular case.

10. The Chairman concluded that it was a sound law reform recommendation conducive to educating the public to stay vigilant and report suspected cases of abuse in a timely manner, so that children or vulnerable persons could be protected from harm. He thanked the Sub-

committee for their great efforts and contributions over the past decade or so in examining relevant laws and putting forward reform recommendations.

Agenda item 4: Key Findings of Manpower Projection to 2027

11. Miss Leonia TAI Shuk-yiu, Deputy Secretary for Labour and Welfare, briefed Members on the key findings of the Manpower Projection to 2027 (MP2027) with the aid of a PowerPoint presentation. Miss TAI remarked that the Government had been conducting periodic Manpower Projection exercises to assess at the macro level the broad trends of Hong Kong's future manpower supply and requirements in the medium term. Adopting 2017 as the base year and covering a 10-year projection period, the MP2027 projected the manpower situation up to 2027 on the basis of the latest manpower statistics available. The local manpower supply (equivalent to the labour force excluding foreign domestic helpers) was projected to increase from 3.64 million in 2017 to reach a plateau of 3.67 million to 3.68 million during the period from 2019 to 2022, and then decrease to 3.57 million in 2027. The average annual decreasing rate of the local manpower supply would be 0.2% during the period from 2017 to 2027. In particular, the local workforce would be greying along with the ageing of our population. It was projected that the local supply of manpower aged 55 or above would constitute about 24.4% of the overall local supply in 2027, as against 21.3% in 2017. Along with the rapid ageing of our population, the overall labour force participation rate was expected to fall from 59.1% in 2017 to 54.9% in 2027, whereas the general education profile of our workforce was anticipated to improve further. On manpower requirement projection, the local manpower required for the overall economy during the projection period was projected to increase from 3.61 million in 2017 to 3.74 million in 2027, corresponding to an average annual growth rate of 0.3%. Among the six economic sectors with faster growth rates in terms of manpower requirements, social and personal services was related to elderly services. The manpower requirements of its sub-sectors "human health activities" and "nursing homes, residential care activities and social work activities without accommodation for the elderly and persons with disabilities" are expected to grow at average annual rates of over 2%. The projected changes in the occupation pattern and education level of manpower requirements were in line with Hong Kong's continued transformation into a knowledge-based and high value-added economy with focuses on innovation, professionalism and adoption of automation and technology in business processes.

12. Miss TAI continued that by comparing the findings of manpower supply projection with those of manpower requirement projection, a projected overall manpower shortfall of

169 700 by 2027 was derived. The shortfall would generally occur across all education levels, with the largest projected shortfall of 76 500 by 2027 at the lower secondary and below level. At the other end, there would be an aggregated manpower shortfall of 34 600 at the first degree and postgraduate levels. The Government had conducted a broad-brush scenario study taking into account the impact of economic conditions and estimated that the projected overall manpower shortfalls would be 254 200 and 86 800 for the high-case and low-case scenarios respectively. In parallel, the Census and Statistics Department (C&SD) had conducted two manpower projection-related statistical surveys to understand the training needs of the economically active persons and the desire to work of the economically inactive persons. Miss TAI pointed out that given the macro nature of the MP2017, projections on the manpower supply of specific sectors and occupations were not available. Relevant bureaux/departments and stakeholders might conduct further sector-specific manpower planning or studies if necessary. The Government planned to upload the full report on the MP2027 to the website of the LWB by the end of 2019.

13. After the briefing, the Chairman and Members put forward the following views and questions:

- (a) Had the Government conducted any statistical analysis to understand what effect might have on Hong Kong's overall manpower projection if the 150 daily quota for Permits for Proceeding to Hong Kong and Macao (commonly known as "one-way permits") was abolished?
- (b) Had the effect of the development of the Guangdong-Hong Kong-Macao Greater Bay Area on future manpower requirements been covered by the MP2027?
- (c) Regarding the statistical survey conducted by the C&SD on the desire of economically inactive persons to take up jobs, a Member wished to know more about the survey findings on housewives, including their intention to take up full-time or part-time jobs, reasons for not willing to take up jobs, and their main considerations in taking up jobs.
- (d) In view of the long-term manpower shortage in the elderly care sector, the Government should continue to take multi-pronged measures to create an employment-friendly environment for women, provide incentives and diversified employment support services, and explore the importation of labour in a timely manner under the premise of ensuring priority in employment for local workers.
- (e) It was noted that persons who did not engage in jobs due to homemaking were

counted as “economically inactive persons” in the statistical survey. There were views that while female homemakers were not salaried, they had been doing house chores and taking care of their families at home tirelessly. The community might need to reflect on whether the effort made by these homemakers should be regarded as part of economic activities so that a real picture of their potential implications on manpower supply could be obtained.

- (f) The introduction of more measures facilitating the elderly’s taking up of residence on the Mainland might help relieve the manpower shortage in the local elderly care sector.
- (g) In view of the acute shortage of manpower with qualifications of upper secondary education and below in the future, the Commission recognised the need to promote the professional development of the elderly care sector at all levels (front-line staff in particular) in order to attract persons with higher academic qualifications to join the sector.

14. In response to the views and questions raised by Members, Ms TAI, Ms Carol YIP, Director of Social Welfare, and Mr Jonathan NG Chi-chung, Senior Statistician (Household and Income Statistics) of the C&SD, replied as follows:

- (a) The C&SD did not conduct any separate statistical analysis of the impact of one-way permit arrivals on Hong Kong’s manpower projection. By making a crude estimate of the impact on the basis of our population growth situation, as the current numbers of births and deaths per year were largely comparable, one-way permit arrivals were considered important sources of our annual population growth. A very crude estimation showed that the abolition of the one-way permit quota might lower the expected population growth in Hong Kong by about 40 000 to 50 000 each year, or by almost 500 000 in a decade. That said, the actual impact on the manpower supply and requirements would still depend on the actual number and demographic characteristics of one-way permit arrivals, but it was expected that the overall manpower shortage would be further exacerbated if the one-way permit quota was abolished.
- (b) In conducting the manpower requirement projection up to 2027, the Government had conducted an extensive consultation exercise to gather views from over 100 businesses, trade associations and public organisations on the outlook for future manpower requirements in various industries; and a Manpower Projection-related Establishment Survey covering 5 900 establishments of various economic sectors to collect employers’ views on their current and future manpower needs.

A list of social and economic factors that might affect the outlook for future manpower needs, such as population ageing, the use of automation and artificial intelligence, and the new business opportunities arising from the Belt and Road Initiative and the development of the Guangdong-Hong Kong-Macao Greater Bay Area, had been set out in the survey questionnaire and consultation documents to facilitate respondents' feedbacks on their envisaged future manpower requirements.

- (c) According to the survey findings, about 50 100 female homemakers aged 30 to 59 (corresponding to 10% of the population subgroup) indicated that they would be willing to work if they were offered "suitable" employment meeting their specific needs. The main considerations commonly mentioned were "flexible/convenient working hours" and "work place near home". Besides, most of them preferred part-time jobs, with less than 10% preferring full-time jobs. For those women who had not taken any jobs, the main reason was the need to look after their families.
- (d) To resolve the problems of manpower shortage and recruitment difficulties in the elderly care sector, employers might consider, having regard to the C&SD's survey findings, making complementary arrangements in terms of work type and working hours with a view to exploiting two potential sources of labour supply, i.e. female homemakers and early retirees.
- (e) On promoting professionalism in residential care services, the SWD had all along been collaborating with relevant organisations, including the Qualifications Framework Secretariat and the Hong Kong Council for Accreditation of Academic and Vocational Qualifications, and consulting the sector through the Elderly Care Service Industry Training Advisory Committee, to formulate recognised training programmes for different types of staff under the Qualifications Framework to enhance the skills and service quality of residential care home staff in caring for elderly persons and persons with disabilities. To keep enhancing the service quality of residential care homes, the SWD had launched a five-year scheme in phases in 2019 to provide full subsidies for home managers, health workers and care workers to enrol on training courses under the Qualifications Framework. The SWD also planned to provide training subsidies for residential care homes so that proper manpower arrangements could be made to maintain operation while the health workers and care workers were taking the courses. On-site training support and workplace assessment would also be provided for trainees.

Agenda item 5: Employment Services and Training Support for Elderly Job Seekers

15. Ms Catherine LAW Sui-fong, Assistant Commissioner for Labour (Employment Services) (Acting), briefed Members on the employment services provided by the Labour Department (LD) for elderly job seekers with the aid of a PowerPoint presentation. Ms LAW said that, apart from providing general employment and recruitment services, the LD implemented various measures to support the employment of elderly job seekers, e.g. staging large-scale job fairs for the elderly and middle-aged and district-based job fairs on part-time employment, organising experience sharing sessions on employment of the elderly for employers, setting up special counters at its job centres and offering personalised employment advisory service, organising employment briefings and establishing a dedicated webpage under the Interactive Employment Service website, etc., to facilitate their access to the latest employment information and search for suitable vacancies. To encourage employers to hire job seekers aged 60 or above and provide them with on-the-job training, the LD introduced enhancement measures in September 2018. Employers engaging job seekers aged 60 or above who were unemployed or had left the workforce were offered a monthly on-the-job training allowance up to \$4,000 per employee for a period of 6 to 12 months under the Employment Programme for the Elderly and Middle-aged (EPEM). Elderly job seekers could also join the Work Trial Scheme, under which job seekers would undergo one-month work trials offered by participating organisations with a view to enhancing their employability. On completion of the full-time work trial, the participant would receive a maximum work trial allowance of \$8,300.

16. Mr Byron NG Kwok-keung, Executive Director of the Employees Retraining Board (ERB), continued to brief Members through a PowerPoint presentation on the training support provided by the ERB for elderly job seekers, including organisation and development of different types of training courses that meet their employment needs, provision of various support services including follow-up placement, support and promotional activities in the districts, as well as a pilot part-time job referral platform of “Smart Starter” for trainees aged 50 or above, etc. Mr NG revealed that the ERB would launch various key activities supporting persons aged 50 or above in 2019-20, including the “Post-50 Branding Campaign”, “Post-50 Internship Programme” and “Post-50 Love Upgrading Scheme”, which present the outstanding qualities of “Post-50” to the community and encourage them to upgrade themselves through training to re-enter the employment market.

17. After the briefing made by the LD and the ERB, the Chairman and Members put forward the following views and questions:

- (a) A Member was concerned about whether employers would encounter difficulties in taking out employees' compensation insurance (ECI) policies for elderly employees.
- (b) What were the respective numbers of placement cases and cases approved under the EPEM? How many job seekers were aged 60 or above in these cases? Why did some eligible employers choose not to participate in the programme?
- (c) The LD should strengthen its publicity efforts for the EPEM so as to enhance its effectiveness by enhancing employers' awareness and encouraging them to hire elderly and middle-aged persons through the programme.
- (d) Age-discrimination in the workplace was also one of the factors hindering mature persons from securing employment. It was hoped that the Government would step up its publicity and education work to create a work environment free from age discrimination.
- (e) A Member praised the great success of the ERB's "Smart Living" Scheme – a one-stop referral platform for domestic services. Residential care homes for the elderly (RCHes) might consider recruiting helpers through the platform to tackle the problem of short-term manpower shortage.

18. In response to the views and questions put forward by Members, Ms LAW and Mr NG replied as follows:

- (a) According to the insurance sector, the key factors generally considered by insurance companies when underwriting or determining ECI premium included business nature of employers, job responsibilities of employees, number of employees, earnings of employees, claims history of employers as well as employers' risks and risk prevention measures taken by employers, etc. The age of employees was not a major consideration. As explained in the publicity leaflet titled "Know More about Taking out Employees' Compensation Insurance", which was jointly published by the LD and the Insurance Authority, the age of employees was not a major determining factor of ECI premium. An updated version of the leaflet had been widely distributed since October 2018. Besides, to allay employers' concerns over ECI procurement for elderly employees, the insurance sector offered assistance in disseminating accurate information in this regard. For example, representatives from the Hong Kong Federation of Insurers were arranged to brief employers on matters relating to the taking out of ECI for elderly employees at the experience sharing sessions

organised by the LD's job centres.

- (b) Since the enhancement measures were introduced, the EPEM had recorded 2 230 placement cases eligible for joining the programme during the period between September 2018 and May 2019, of which 389 cases involved job-seekers aged 60 or above. The figures represented year-on-year increases of 25.5% and 118.5% respectively. During the said period, the LD had issued a total of 564 approvals-in-principle for the applications for on-the-job training allowance, of which 155 cases involved job-seekers aged 60 or above. The figures represented year-on-year increases of 60% and 210% respectively.
- (c) The LD had actively invited employers of each placement case eligible for joining the EPEM to apply for the on-the-job training allowance. Some employers had not applied for the allowance due to various reasons, such as choosing to use their own resources to cover the training costs. As these employers had actually hired the elderly and middle-aged job-seekers, the application for the on-the-job training allowance was not a matter of primary concern.
- (d) The Government was committed to encouraging employers to “Count on Talent, Not Age in Employment” and assess the abilities of job seekers or employees according to consistent selection criteria when recruiting staff. The Government had also implemented various measures to promote equal employment and enhance public awareness and appreciation of the importance of eliminating age discrimination in employment.
- (e) The “Smart Living” Scheme could refer domestic, care and healthcare massage services for employers. All helpers referred had completed relevant ERB training courses, which assured their quality. ERB welcomed RCHEs to recruit suitable helpers as temporary replacement through the “Smart Living” platform and Smart Living – Regional Service Centres across the territory.

Agenda Item 6: Progress Reports by Working Groups and Committee

- 19. There were no reports on this occasion.

Agenda Item 7: Any other business

20. Dr Tony HA King-hang, Chief Manager (Primary and Community Services) of the Hospital Authority (HA), relayed that at a recent regular meeting involving the Geriatrics Sub-committee under the HA and relevant stakeholders (including relevant government departments and community partners), some members of the meeting expressed concerns about the needs of elderly persons with dementia and their carers for care and support services in the community. These members also reflected that day care and day respite services for these elderly persons could facilitate ageing in place and relieve the stress of their carers, and hoped that the issue could be explored in due course.

Time of adjournment

21. The meeting was adjourned at 12:45 p.m.

Date of next meeting

22. The next meeting was tentatively scheduled for 21 August 2019.

August 2019