

Bills Committee on Minimum Wage Bill
Issues raised by members at the Bills Committee meeting on 29 April 2010

– Submission from the Equal Opportunities Commission –

Introduction

1. This paper provides the Equal Opportunities Commission's response to the issues raised by Members of the Bills Committee at its meeting held on 29 April 2010 when examining the Minimum Wage Bill (the Bill).

2. The questions raised by members at the Bills Committee meeting are as follows:

1. *Whether the dismissal of a PWD on account of the outcome of an assessment made under Schedule 2 to the Bill is inconsistent with the Disability Discrimination Ordinance ("the DDO");*
2. *Whether DDO would have the effect of exempting an employer dismissing a PWD on account of the outcome of the assessment, even if the exemption is not provided in clause 23 of the Bill;*
3. *Whether there is any issue in the following:-*
 - (a) *a mechanism established for appeal against the results of an assessment;*
 - (b) *an opportunity provided for the review of an assessment or re-assessment in the event of:-*
 - (i) *dispute about the assessment results;*
 - (ii) *deteriorated health of the PWD; or*
 - (iii) *improved productivity of the PWD as he became familiarized with this work.*

Scope of Protection offered by the DDO (Questions 1 & 2)

3. Whether the possible dismissal of a PWD on account of the outcome of an assessment made under Schedule 2 to the Bill is

inconsistent with the DDO has to take into account, in any specific case, the inherent requirements of the particular employment (S.12(2) of the DDO). In general terms, if an employee is dismissed because he/she is found, after assessment, to be no longer able to meet the inherent requirements of the particular employment, even with reasonable accommodation, the act of dismissal in itself may not be inconsistent with the present DDO.

4. However, should the failure to satisfy inherent requirements not be a factor at all in the act of dismissal on account of the outcome of assessment, and should the proposed exemption (from the DDO) under Clause 23 of the Minimum Wage Bill be excluded, any employee so dismissed may continue to seek redress under the DDO. In such circumstances, it would be for the court to judge whether a particular dismissal constitutes an infringement of the DDO on the basis of the evidence to be presented by the litigating parties.

An Appeal/Review Mechanism (Question 3)

5. Dispute over the results of an assessment is a matter of the accuracy of assessment, which in itself does not constitute a discrimination issue. Hence, the establishment of an appeal mechanism for the assessment issue is not a DDO issue. As long as they are fair, done in good faith, and in accordance with the current DDO, we see no issues with such mechanism or services. The same principle applies to the availability of opportunities for review.

Equal Opportunities Commission
May 2010