

LEGISLATIVE COUNCIL BRIEF

APPOINTMENT OF A COMMISSION OF INQUIRY INTO EXCESS LEAD FOUND IN DRINKING WATER

INTRODUCTION

At the special meeting of the Executive Council on 13 August 2015, the Executive Council ADVISED and the Chief Executive ORDERED that –

- (a) a Commission of Inquiry (the Commission) under the Commissions of Inquiry Ordinance (Cap. 86) be set up to –
 - (i) ascertain the causes of excess lead found in drinking water in public rental housing developments;
 - (ii) review and evaluate the adequacy of the present regulatory and monitoring system in respect of drinking water in Hong Kong; and
 - (iii) make recommendations with regard to the safety of drinking water in Hong Kong;
- (b) the Honourable Mr. Justice Andrew CHAN Hing-wai, Judge of the Court of First Instance of the High Court, be appointed as the Chairman and Commissioner, and Mr. Alan LAI Nin be appointed as Commissioner; and
- (c) the Commission be appointed through the instruments at Annex and have the Terms of Reference contained therein.

EXCESS LEAD FOUND IN DRINKING WATER

2. On 9 to 11 July 2015, the Government announced that the lead content of seven water samples from Kai Ching Estate exceeded the provisional guideline value contained in the World Health Organization (WHO)'s "Guidelines for Drinking-water Quality" (Value)¹, and that lead was found in two samples of solder used on water pipe joints. Water

¹ The WHO's "Guidelines for Drinking-water Quality" (fourth edition) has set a provisional guideline value of not more than 10 micrograms per litre for lead.

samples were then taken from four other public rental housing (PRH) estates where the fresh water plumbing systems were installed by the same Licensed Plumber. Among the four estates, lead content in five samples from Kwai Luen Estate Phase 2 exceeded the Value contained in WHO's guideline, and lead was found in samples of solder. In order to address residents' concerns, the Housing Authority (HA) announced on 15 July 2015 that water samples would be taken from all PRH estates completed since 2013, as well as Kwai Luen Estate Phase 1 (which was completed in 2011), for lead testing. Among these estates, lead content in one sample from Wing Cheong Estate exceeded the Value contained in WHO's guideline, and lead was found in samples of solder. On 20 July 2015, the scope of water sampling was further extended to all 12 PRH estates completed in 2011 and 2012. Among these estates, 36 samples from five of these estates² were found to have exceeded the Value contained in WHO's guideline and lead was found in samples of solder in these estates. Systematic sampling will now be extended to those estates completed between 2005 and 2010. Thereafter, consideration will be given as to how sampling work will be conducted for those PRH estates completed before 2005.

3. For those estates where water samples were found to have exceeded the Value contained in WHO's guideline, various interim measures have been implemented to assist affected tenants. Housing Department (HD) and Water Supplies Department (WSD) have arranged for temporary water supply, including the supply of bottled water and the installation of temporary water tanks and pipes outside each block, to facilitate access to drinking water in each affected estate. HD has also asked the main contractors concerned to take all necessary actions to remedy the situation. Pending the putting in place of permanent remedy, temporary measures currently planned to be undertaken by the main contractors include extending connection pipes from the roof-top water tanks to each floor of the building, and installing lead-reducing water filters for affected tenants. The arrangements will be continually reviewed.

4. As at 10 August 2015, the blood lead levels of 108 residents (including 77 children under six years old, 27 lactating mothers and three pregnant women³) are found to exceed the reference value⁴, indicating that there are potential health risks. Suitable follow-up actions have been taken for these residents.

² Six samples from Lower Ngau Tau Kok Estate Phase 1, 16 samples from Hung Hom Estate Phase 2, four samples from Tung Wui Estate, five samples from Shek Kip Mei Estate Phase 2 and five samples from Yan On Estate were found to have exceeded the Value contained in WHO's guideline.

³ One 15 years old resident of a household with water sample containing lead content exceeding the Value contained in WHO's guideline was found with blood lead level exceeded the reference value.

⁴ The reference value of blood lead level for the more easily affected groups, namely pediatric subjects, pregnant women and lactating mothers, is 5 microgram/dL and for adults is 10 microgram/dL.

CONSIDERATIONS

5. Up to 10 August 2015, the Government has conducted water sampling tests for a total of 33 PRH developments involving 25 estates. 49 water samples taken from eight PRH estates are found to contain lead content that exceeded the Value contained in WHO's guideline. In addition, the blood lead levels of 108 residents are found to exceed the reference value. Residents of the affected estates as well as the general public have considerable concern about the quality of drinking water in Hong Kong. The community expects an investigation by independent authorities to find out the causes of excess lead found in drinking water in PRH developments and make recommendation with regard to the safety of drinking water in Hong Kong. While the relevant government departments/public bodies have undertaken to investigate the incidents⁵, there is still a need for an independent, objective and apolitical inquiry.

6. Having considered the above and the experience concerning Commissions of Inquiry set up previously in respect of matters of great public importance, the Chief Executive announced on 17 July 2015 that he intended to set up a Commission of Inquiry under the Commissions of Inquiry Ordinance (Cap. 86) to conduct an independent and comprehensive investigation into the matter.

7. The Commission may summon, among others, representatives of government bureau or departments, contractors, licensed plumbers, and other relevant parties as witnesses. Besides, the inquiry conducted by the Commission may proceed in parallel to the non-statutory investigations being carried out by relevant government departments/public bodies.

8. While a commission of inquiry may be set up on an administrative basis as in the case of the Lan Kwai Fong tragedy in 1993, we consider a statutory commission under the Commissions of Inquiry Ordinance (Cap. 86) more appropriate for the present case. The key reasons include:

- (a) a Commission has the statutory power to compel persons to give evidence and disclose documents and witnesses can be examined on oath. On the other hand, a non-statutory committee does not

⁵ Development Bureau has established a Task Force to ascertain the causes of the recent incidents leading to presence of lead in water drawn by households and to recommend measures to prevent recurrence of similar incidents in future. The Task Force will also follow up on a recent case of Legionnaires' disease in Kai Ching Estate. In addition, the Housing Authority has formed a Review Committee to review the quality assurance issues relating to fresh water supply of PRH estates.

have similar power to summon witnesses, order the production of documents or take evidence on oath, and any cross-examination and disclosure may only be done by consent of the witnesses in question / interested parties; and

- (b) there may be dispute on facts relating to the causes of and circumstances leading to excess lead in drinking water, so the power of the Commission to examine witnesses on oath and to cross-examine them will be essential to resolving such disputes of fact. We expect that the evidence would normally (subject to any consideration of confidentiality or prejudice to possible criminal proceedings) be taken in public and in the presence of other interested parties who would then have the opportunity to cross-examine witnesses and to make such submissions as may be appropriate.

9. It is true that a statutory commission has its disadvantages. Its procedures tend to be more elaborate and would normally require more resources. Further, the persons who are to appear before a statutory commission may find it necessary to have legal representation (though they are not required to do so). Nevertheless, in the circumstances of this case and for the reasons outlined above, we consider that the merits of a statutory commission outweigh its disadvantages.

10. Subject to the formal appointment of the Commission, the Commission will start operation as soon as practicable and will report to the Chief Executive within nine months from the date of appointment or such time as the Chief Executive in Council may allow. As per normal practice, the Commission would appoint counsel and solicitors to assist in its work. An Administrative Officer Staff Grade B will serve as the Secretary to the Commission.

11. Both the Hon Mr. Justice CHAN and Mr. LAI are recommended for appointment in view of their standing in the community and their distinguished record of public service. The Hon Mr. Justice CHAN joined the Judiciary as Magistrate in 1998. He was appointed as District Judge in 2007 and Judge of the Court of First Instance of the High Court in 2012. Mr. Alan LAI has a career of nearly 40 years in the civil service and the public service in Hong Kong. He was the Commissioner of ICAC from 1999 to 2002 and the Permanent Secretary for the Treasury from 2002 to 2007. He was appointed as the Ombudsman from 2009 to 2014. Mr Lai is currently a Professor of Practice in the Faculty of Social Sciences of the University of Hong Kong.

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic, competition, environmental, sustainability, gender or family implications. The proposal has financial and civil service implications as set out below.

FINANCIAL IMPLICATIONS

13. Since the financial resource requirements will depend on the approach to the inquiry that the Commission will adopt and the number of witnesses and hearings that it will conduct, it is not possible to give a precise estimate of the financial implications of the proposal at this stage. A rough estimate based on the expenditure of the most recent Commission of Inquiry is that the total cost would be in the region of \$47 to \$56 million, representing mainly the staff cost and other operating expenses of the Secretariat of the Commission, the cost for engaging counsel and solicitors for the Commission, the cost of engaging experts, together with the professional fees, cost for supporting services such as audio recording, transcripts, etc.. Section 14 of Cap. 86 provides for the cost of such an inquiry to be a charge on the general revenue. For the cost of legal representation (and if appropriate, engagement of experts) for relevant government departments and public officers (assuming that separate representation is not required for individual officers), no estimate can be provided at this stage. We will first arrange for the funding required to be met from existing provision and provide supplementary provision as needed.

CIVIL SERVICE IMPLICATIONS

14. We expect that the Secretariat of the Commission will be staffed by civil servants redeployed to fill the time-limited posts. The head of the Secretariat will be an Administrative Officer Staff Grade B, to be supported by a small team of four officers together with supporting staff from the General Grades.

PUBLICITY

15. The appointment of the Commission will be published in the Gazette. A press release will be issued and a spokesman will be available for answering public enquiries.

BACKGROUND

16. The Commissions of Inquiry Ordinance (Cap. 86) empowers the Chief Executive in Council to appoint one or more Commissioners to “inquire into the conduct or management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.” (section 2(1) of Cap. 86).

17. Cap. 86 also provides that when appointing a Commission, the Chief Executive in Council may “nominate a Chairman if 2 or more Commissioners are appointed, and confer on such Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings”. The Chief Executive in Council may also appoint a secretary, assistant secretaries and other staff, and a legal advisor to the Commission (section 2(2) of Cap. 86).

18. Every inquiry held under the Ordinance shall be deemed to be a judicial proceeding (section 11 of Cap. 86). The Commission may, among other powers conferred on it under section 4 of Cap. 86, receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible as evidence in civil or criminal proceedings; determine the manner in which such material shall be received; summon any person to attend to give evidence or to produce any article or document; issue warrants of arrest to compel attendance; prohibit the publication to or disclosure by any person attending before the Commission of all or part of the material received by the Commission; enter and inspect any premises; issue warrants for the searching of premises and the seizure therein of any article or document, etc. (section 4 of Cap. 86).

ENQUIRIES

19. For enquiries about this brief, please contact Mrs Sharon YIP, Secretary, Commission of Inquiry, at 3401 1277.

Administration Wing
Chief Secretary for Administration's Office
13 August 2015

The Honourable Mr Justice Chan

Dear Mr Justice Chan,

Commissions of Inquiry Ordinance (Cap. 86)

According to the test results announced by the Government as at 10 August 2015, 49 samples taken from eight public rental housing developments contained lead that exceeded the provisional guideline value contained in the World Health Organization's guideline. In addition, the blood lead levels of 108 residents are found to exceed the relevant reference value. Since quality of drinking water may have a significant impact on public health, residents of the affected public rental housing estates as well as the general public have considerable concern about the safety of drinking water in Hong Kong. The Government finds it necessary to ascertain the causes of excess lead found in drinking water in public rental housing developments and consider what action should be taken with regard to the safety of drinking water in Hong Kong.

The Chief Executive in Council has in the circumstances appointed you as Commissioner and the Chairman of a commission of inquiry under section 2 of the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission are as follows –

- (a) Ascertain the causes of excess lead found in drinking water in public rental housing developments;
- (b) Review and evaluate the adequacy of the present regulatory and monitoring system in respect of drinking water in Hong Kong; and
- (c) Make recommendations with regard to the safety of drinking water in Hong Kong.

The Commission shall report to the Chief Executive within nine months from the date of this appointment or such time as the Chief Executive in Council may allow.

The Chief Executive in Council has –

- (a) conferred on you as Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) directed that when hearing evidence the two Commissioners shall sit together; but as Chairman, you may sit alone to consider procedural matters and to give such directions as you may think fit for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other form of assistance on any matters covered by the inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any party (whether individual or legal entity) shall be outside the terms of reference of the Commission.

The Commission may submit such interim reports on any aspects of the inquiry as it may see fit.

Mrs Sharon Yip has been appointed as Secretary to the Commission to provide you with the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed Mr Lai Nin, Alan as the other Commissioner of the Commission.

I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

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Chief Executive

Mr Lai Nin, Alan

Dear Mr Lai,

Commissions of Inquiry Ordinance (Cap. 86)

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The Chief Executive in Council has in the circumstances appointed you as Commissioner of a commission of inquiry under section 2 of the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the matters set out in the Terms of Reference below, being matters which are of public importance.

The Terms of Reference of the Commission are as follows –

- (a) Ascertain the causes of excess lead found in drinking water in public rental housing developments;
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The Chief Executive in Council has –

- (a) conferred on the Chairman a second or casting vote for use where the Commission shall, in any case, be equally divided on any question arising during the proceedings;
- (b) directed that when hearing evidence the two Commissioners shall sit together; but the Chairman may sit alone to consider procedural matters and to give such directions for the efficient conduct of the inquiry;
- (c) directed that the Commission may appoint experts to provide reports or other form of assistance on any matters covered by the inquiry;
- (d) directed that the Commission shall have and exercise the powers conferred by section 9 of the Commissions of Inquiry Ordinance to punish all or any of the contempts specified in section 8; and
- (e) directed that the determination of any criminal or civil liability of any party (whether individual or legal entity) shall be outside the terms of reference of the Commission.

The Commission may submit such interim reports on any aspects of the inquiry as it may see fit.

Mrs Sharon Yip has been appointed as Secretary to the Commission to provide you with the necessary administrative support for the inquiry. The Commission will also be provided with other support staff.

The Chief Executive in Council has appointed the Hon Mr Justice Andrew Chan Hing-wai as the Chairman of the Commission.

I am most grateful to you for your agreement to take on this important task.

Yours sincerely,

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Chief Executive