

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 12 March 2003**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

DR THE HONOURABLE LAW CHI-KWONG, J.P.

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

**MEMBERS ABSENT:**

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, S.B.S., J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S., J.P.

THE HONOURABLE MA FUNG-KWOK, J.P.

## **PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE DONALD TSANG YAM-KUEN, G.B.M., J.P.  
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, G.B.M., J.P.  
THE SECRETARY FOR JUSTICE

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR HOUSING, PLANNING AND LANDS

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

DR THE HONOURABLE YEOH ENG-KIONG, J.P.  
SECRETARY FOR HEALTH, WELFARE AND FOOD

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.  
SECRETARY FOR THE CIVIL SERVICE

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.  
SECRETARY FOR SECURITY

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.  
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG  
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

**CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

The following papers were laid on the table pursuant to Rule 21(2) of the Rules of Procedure:

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Public Revenue Protection (Revenue) Order 2003 .....	59/2003
Schedule of Routes (Citybus Limited) Order 2003 .....	60/2003
Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2003 .....	61/2003
Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2003.....	62/2003
Schedule of Routes (Long Win Bus Company Limited) Order 2003 .....	63/2003
Schedule of Routes (New Lantau Bus Company (1973) Limited) Order 2003.....	64/2003
Schedule of Routes (New World First Bus Services Limited) Order 2003 .....	65/2003
Immigration (Anchorages and Landing Places) (Amendment) Order 2003 .....	66/2003
Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2003 .....	67/2003

## Other Papers

No. 69 — Hong Kong Tourism Board  
2001/2002 Annual Report

Report of the Bills Committee on Juvenile Offenders (Amendment) Bill  
2001

Report of the Bills Committee on Fire Services (Amendment) Bill 2001

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. First question.

### Contingency Plan for Emergencies of Railway Companies

1. **MR JASPER TSANG** (in Cantonese): *Madam President, a man with a history of mental illness was suspected of setting fire to a subway train car in Taegu, South Korea on 18 February this year, in which hundreds of people were killed, injured or missing. As the Mass Transit Railway (MTR) and the Kowloon-Canton Railway (KCR) are the major means of public transport used by millions of commuters in Hong Kong every day in crowded train cars, will the Government inform this Council whether it knows:*

- (a) *the safety facilities currently installed in the cars and on the platforms of the MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC) for minimizing the risk of fire, and for ensuring public safety in case of fire;*
- (b) *whether a set of contingency plan for emergencies has been formulated by the two railway companies and the police; if so, of the details of the plan; and*
- (c) *as railway systems are often the target of terrorist attacks, whether the Administration has strengthened the precautionary measures of the two railway systems in the light of the tense atmosphere*

*worldwide; if so, of the details of the measures; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, protection of passenger safety is the most important aspect in railway operation. At present, the designs and fire services equipment of the station concourses and platforms of both the MTR and the KCR are set to achieve this primary objective. All concourses and platforms are fitted with fire alarms, as well as fire detection and fire fighting systems. For those concourses and platforms located in enclosed structures, adequate mechanical ventilation and smoke extraction facilities are provided.

The train cars of the two railway corporations are constructed with fire resisting materials to international fire safety standards. Fire extinguishers and two-way communication facilities are installed in each train compartment to enable communication between train operators and passengers. Each compartment is also fitted with hopper windows which can be opened for ventilation in case of emergency. Clear instructions to passengers on how to open the windows are provided in the compartments.

Standby battery power is available for both MTR and KCR trains to provide power for emergency lighting, communication, broadcasting, door control, ventilation, and so on, when the primary source of power is cut off. All train doors and the screen doors of the two railway corporations can also be opened manually. In addition, trains are equipped with devices to facilitate swift detrainment in case of emergency.

In order to minimize fire risks, the MTRCL and KCRC By-laws prohibit passengers from carrying dangerous goods into or smoking in station concourses and train compartments. Both corporations also launch passenger education programmes and publicity campaigns to enhance safety awareness among passengers.

The police have in place a set of comprehensive contingency measures to respond to major emergencies. There are also specific and detailed guidelines for the handling of possible railway incidents. Both railway corporations have also formulated a set of detailed contingency procedures for taking prompt emergency measures.



Passengers should stay calm in case of emergency. The Operations Control Centres of the two railway corporations will immediately notify the relevant departments, including the police and the Fire Services Department (FSD), to handle the incident jointly. If a fire breaks out inside a concourse, the alarm signal will be transmitted automatically to the FSD for their immediate turnout. The police will be responsible for cordoning the scene and making arrangements to facilitate access of emergency vehicles and smooth rescue operation. The police will also assist in evacuating passengers and other people on the scene and maintain close liaison with the railway corporation and government departments concerned to ensure proper rescue co-ordination.

Both corporations will review their contingency procedures and risk assessments on a regular basis. They are now gathering information on the arson case in South Korea for studying whether any amendment to the current procedures is required to further enhance public safety. In addition, the police will review their contingency measures from time to time and try out the contingency actions regularly to ensure their efficient implementation. Emergency drills are conducted jointly by the police, the FSD and the two railway corporations every year. The two corporations also provide in-service training on handling emergencies including outbreak of fire to all their front-line staff.

The threat of Hong Kong coming under terrorist attacks remains relatively low. The police also do not have any concrete intelligence suggesting that Hong Kong might become a target of such attacks. Nevertheless, our police have been keeping close watch on major railway incidents, including terrorist attacks, in various parts of the world. Front-line police officers are frequently reminded to be on the alert against such incidents. The police will step up their intelligence gathering and maintain close liaison with law enforcement agencies overseas and maintain sharp vigilance to ensure public safety.

**MR JASPER TSANG** (in Cantonese): *Madam President, it is stated in the Secretary's main reply that all the designs, materials used and safety facilities of the train cars of the two railway corporations in Hong Kong are up to the international standard on fire safety. However, I can hardly believe that Taegu of South Korea, the place where the incident occurred, has not given due attention to such international safety standards. Will the Secretary inform us of the ways or channels the two railway corporations will use to obtain accurate*

*information on the incident in South Korea? Will such information be analysed to ensure that the designs and fixtures of the two railways in Hong Kong are different from that of South Korea, so that the grievous incident in South Korea will not happen in Hong Kong?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, we are now gathering detailed information on the Taegu incident via the two railway corporations. We wish to know each and every detail of the incident in order to gain a comprehensive understanding. As we know at the moment, the facilities of the Taegu railway have been used for a long time. It is shown in the initial study that the train compartments of the two railway systems in Hong Kong are constructed with fire retardant materials. However, all the seats, ceilings and floorings of the Taegu train cars are built with combustible artificial materials that are not fire resistant. In addition, all the materials used by the two railway corporations will not generate poisonous gas in combustion, but those used by the Taegu railway are substances like polyurethane. According to the preliminary information available, we know that poisonous gas was released in combustion in that incident, but this has yet to be confirmed. The release poisonous gas in combustion is not acceptable by the new standard of this era. Even if the concentration of poisonous gas is very low, people inhaling the gas may faint and fail to react swiftly to escape. Thus, the two railway corporations have paid much attention to the total amount of combustible materials in their train cars to ensure that fire occurred inside train cars can be contained. However, as far as we know, this is not a consideration in the Taegu case. We will provide further information to Mr TSANG in writing after we have received the reports from the two railway corporations. (Appendix)

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, human reflex action during calamities is a crucial issue. In case an accident happens in the MTR, passengers may easily become nervous and irrational. Chaos may easily arise during an escape, and crowded train cars and busy stations are particularly dangerous. This was the case of the Taegu incident. I know the authorities concerned will carry out emergency drills in collaboration with the two railway corporations. Will the Government teach the public how they should react in*

*case of incidents? Does it have any plan to provide guidance to the public regularly, for example, shooting a publicity trailer for show on television?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the two corporations have organized regular activities on safety publicity and education. These include the distribution of leaflets, putting up posters and making use of public promotion systems in train cars and at station concourses. The two railway corporations also distribute the publicity materials to the media. The MTRCL has assigned November as the safety month of each year; more publicity and educational messages on safety will be introduced during the month. It has also installed a lot of intercommunication panels on station concourses and will inform passengers of their usage. The two railway corporations will step up their publicity efforts in stages, though we may not have noticed this, they will continue doubling their effort in this regard.

**PRESIDENT** (in Cantonese): Mr WONG Yung-kan, has your supplementary question not been answered?

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the Secretary said that publicity would be stepped up, but to what extent? Will the Secretary inform us of the timetable, will publicity activities be carried out once every month or .....*

**PRESIDENT** (in Cantonese): Mr WONG, it appears your supplementary question did not cover this point. You are now raising another supplementary question. *(Laughter)* Perhaps the Secretary may explain the question to you on other occasions in future.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the Taegu incident may also happen in Hong Kong. Although facilities inside our train cars are constructed with fire resistant materials, fire may be caused by foreign objects, that is, some inflammable substances may be thrown into the train cars.*

*In Hong Kong, each MTR train consists of eight train cars. Does the Secretary know that the eight train cars use the open gangway design? Unlike the KCR, the eight train cars of the MTR are not separated by doors. What the Secretary said just now was quite right, the victims killed in the accident .....*

**PRESIDENT** (in Cantonese): Mr LAU, please come to your supplementary question direct.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the victims were not burned to death but suffocated by heavy smoke. Since the eight train cars are of the open gangway design and are not separated by doors, smoke generated in one car will rapidly spread to others while the MTR train is in motion. I understand it is for security considerations that train cars are not separated by doors .....*

**PRESIDENT** (in Cantonese): Mr LAU, please state your supplementary question direct. You do not have to give all this explanation.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, may I ask the Government if it will consider requiring smoke doors of a design similar to that of KCR trains be installed in MTR train cars?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I understand Mr LAU's question, as I have answered similar questions at a panel meeting before. Mr LAU has pointed out that passages between train cars allow a more even distribution of passengers among different train cars. Free circulation of passengers is very important. Take a fire caused by a petrol bomb thrown into a train car as an example. Since there is little combustible material inside the train car (unless a lot of petrol bombs are thrown into it), and train cars are not separated by doors, passengers may quickly evacuate to other train cars. Emergency escape is made easier in this way. The exhaust fans installed in MTR will also help to extract the smoke. Certainly, the KCRC does have their own reasons in separating their train cars

with doors, and Mr LAU has already mentioned this. That is to say, considerations of the two railway corporations are based on different reasons. The two railway corporations have conducted risk assessment on the pros and cons of the separation of train cars, and have come to the conclusion that maintaining circulation is more important.

**MR ALBERT CHAN** (in Cantonese): *Madam President, in the last paragraph of the main reply, the Secretary point out that the threat of Hong Kong coming under terrorist attacks remains relatively low. But I worry that a small accident will become a great disaster if our alertness to the risk of crisis remains low. Hong Kong's risk of coming under terrorist attacks has recently been raised one rank. Grievances are growing in society, and they have intensified after the announcement of the Budget .....*

**PRESIDENT** (in Cantonese): Mr CHAN, please come to your supplementary question direct.

**MR ALBERT CHAN** (in Cantonese): *Madam President, the level of risk of terrorist attack is related to public grievances. In some cities of the Mainland, planned attacks and bomb attacks have been made by activists of the Xinjiang Independence Movement. Therefore, the risk of Hong Kong in certain aspects, including the threat of coming under terrorist attack, has been raised one rank. In addition, with the growing grievances in society, as well as some cities of the Mainland coming under the kind of attack similar to that initiated by the Xinjiang Independence Movement .....*

**PRESIDENT** (in Cantonese): Mr CHAN, direct to your supplementary question.

**MR ALBERT CHAN** (in Cantonese): *Madam President, will the Government consider conducting more drills, so that the public may have the chance to undergo drills at stations with a higher passenger flow? This may help prevent chaos like people trampling on others and killing one another in case of accidents.*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I have to thank Mr CHAN for reminding us to be on alert to crises. In fact, we always keep this in mind. Regarding the ranking of the risk of Hong Kong coming under terrorist attack, this is under the purview of the Security Bureau. The Security Bureau will pay special attention in this respect; the Bureau has put in place detailed plans to guard against any action by terrorists.

Regarding the conduct of drills, at present, drills are carried out by the two railway corporations in collaboration with the FSD and the police, without any public participation. Mr CHAN's suggestion does have merits, such as allowing the public to familiarize themselves with the means of escape. However, we cannot rule out the possibility that such drills may give rise to a lot of problems. I have come across similar fire drills in my previous job. The drill actually involved the evacuation of the people in one building only, however, because participants did not know if there was really a fire, they became panic and trampled on each other. Therefore, in organizing this type of drills, we have to consider the panic that may be caused. We are not ruling out the suggestion, but we have to consider public safety. We must first educate the public before conducting any drills. Otherwise, Mr CHAN will not let me off in future. I must be responsible for any incidents causing public panic.

**PRESIDENT** (in Cantonese): This Council has spent more than 18 minutes on this question. We shall now proceed to the second question.

**Quality of Prospective Teachers**

2. **MR ABRAHAM SHEK:** *Madam President, it has been reported that according to a survey, 20% of the respondents among the matriculation students chose "education" as one of the first three major subjects to study in university, and as high as 60% of the responding students who had poorer results in the Hong Kong Certificate of Education Examination (HKCEE) made this choice. Regarding the quality of prospective teachers, will the Government inform this Council:*

- (a) *how the freshmen in universities majoring in education compared to those majoring in other subjects in terms of their HKCEE results, in each of the past five years;*
- (b) *if the comparison results indicate that the freshmen majoring in education have poorer HKCEE results, whether it has assessed the impact of this phenomenon on the quality of future teachers; if it has, of the results; if not, the reasons for that; and*
- (c) *whether it has considered relaxing the present requirement that all newly inducted teachers must hold a degree, diploma or certificate in education so that non-education major graduates who have achieved excellent academic results in university can enter into the teaching profession directly; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION AND MANPOWER:** Madam President,

- (a) As local universities generally make reference to the Hong Kong Advanced Level Examination (HKALE) rather than the HKCEE results in their enrolment exercises, it is more relevant to examine the HKALE results for the present purpose. On the basis that 5 marks will be awarded to a subject scoring A, 4 marks to a subject scoring B, and so on, education majors on average, over the past five years, scored 2.1, compared with an average score of 2.4 by other subject majors. Detailed average scores in each of the last five years are at Annex.
- (b) It takes much more than academic attainment to make a good teacher. Those who are academically strong may not necessarily be good teachers. The education faculty of respective institutions will consider a host of factors in selecting their students. Academic achievements aside, they will consider the candidate's aptitude, personality, commitment, interpersonal skills, sense of mission in education and so on before offering him or her a place.

In addition to a sound and broad knowledge base, prospective teachers must have a passion for students, the capacity to look after the all-round development of students, and interpersonal skills that would help them get along with students, parents and colleagues to transform schools into learning communities. Through teacher education programmes and continuing professional development, they still need to engage in continuous learning both in subject matter and in pedagogy so as to cope with the diverse learning needs of students.

Thus, academic results of the education majors in the HKCEE or the HKALE alone could not adequately reflect the quality of the teaching profession. The Education and Manpower Bureau will work closely with the University Grants Committee (UGC) to ensure that teacher education institutions will produce graduates with strong professional knowledge and ethics.

- (c) To capture the best talents, the teaching profession must not be a closed system. Under the current legislation, university graduates without teacher training can enter the teaching force as permitted teachers. They should then pursue in-service teacher education to acquire their professional training.

A salary bar will be imposed on these untrained teachers should they fail to complete their professional training within the first five years of their service.

To attract the best people into teaching, we must improve the image and social status of teachers. We should introduce enhancement measures to develop teachers into a professional force with dedication and sound knowledge in raising the quality of our students and in ensuring parent satisfaction. The Advisory Committee on Teacher Education and Qualifications (ACTEQ) is currently conducting a holistic review of teacher education and development with a view to advancing the professionalism of teachers. The ACTEQ will present its recommendations to the Administration later in the year.



## Annex

Average HKALE Scores\* of Full-time First Year Students  
of UGC-funded Institutions  
1998-99 to 2002-03

<i>Institutions</i>		<i>Academic Years</i>				
		<i>1998-99</i>	<i>1999-2000</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>
CUHK	Education majors	2.17	2.83	2.64	2.76	2.79
	Other subject majors	2.89	2.98	3.01	3.03	3.04
HKIEd #	Education majors	1.80	1.93	1.91	1.87	2.01
PolyU	Education majors	Education programmes not offered			2.04	2.31
	Other subject majors	2.22	2.24	2.17	2.18	2.17
HKUST	Education majors	Education programmes not offered			2.21	2.17
	Other subject majors	2.33	2.34	2.40	2.49	2.52
HKU	Education majors	2.59	2.87	2.69	2.97	2.94
	Other subject majors	2.99	3.07	3.07	3.07	3.12
All UGC-funded institutions		<i>Academic Year</i>				
		<i>1998-99</i>	<i>1999-2000</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>
Education majors		2.05	2.21	2.09	2.05	2.13
Other subject majors		2.43	2.47	2.50	2.51	2.54
Overall		2.42	2.46	2.49	2.49	2.52

\* Average scores taken from best two subjects, plus Chinese Language and Culture and Use of English.

# The Hong Kong Institute of Education does not offer subjects other than education.

Note: The Hong Kong Baptist University has no first year intake for its education programmes.

CUHK - The Chinese University of Hong Kong.

HKIEd - The Hong Kong Institute of Education.

PolyU - The Hong Kong Polytechnic University.

HKUST - The Hong Kong University of Science and Technology.

HKU - The University of Hong Kong.

**MR ABRAHAM SHEK:** *Madam President, I refer to part (b) of the Secretary's main reply. I totally agree with the Secretary that apart from academic ability, aptitude and attitude of students must also be considered prior to their admission to the education faculty. Indeed, this is a right approach. But the fact is that in the last few years, the quality of our students has been deteriorating. This deterioration is a direct or indirect reflection on the poor teaching quality in schools. How does the Secretary explain this? These new teachers might have the right attitude, but they might lack the appropriate academic aptitude.*

**SECRETARY FOR EDUCATION AND MANPOWER:** Madam President, if I may refer to the Annex of the main reply, for the past five years, we have not noticed that, purely on the academic side, the quality of students majoring in education has been deteriorating. In fact, they have improved in terms of academic matriculation results. Thus, I do not think I could accept that students now going into the teaching profession are worse off than before.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary said in part (a) of the main reply that on the basis that five marks will be awarded to a subject scoring A, four marks to a subject scoring B, and so on, education majors on average scored 2.1, compared with an average score of 2.4 by other subject majors. As such, I wonder whether the score of education majors could be regarded as a pass and this is rather shocking. Referring to the Annex again, the average HKALE scores of HKIEd students was only between 1 to 2, and only reached 2.01 in 2002-03. Can the Secretary tell us, how he views students with a score of 1 or 2? And compared to a score of 5, is this score a great deal lower than a grade of A? Furthermore, should expeditious actions be taken to stop students with poor academic results from being admitted to the HKIEd and allow those with better results be trained as teachers?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, each institution has its own admission criteria. If students do not possess the necessary qualifications or meet the criteria, they will not be admitted. From the relevant statistics, we can see that all students satisfy the requirement of the relevant institution in this respect. As regards the scores of 5, 4, 3, 2, 1, we refer to average scores. To achieve a score of 5, a student must obtain A grades in all subjects. If comparisons are made on the basis of

the student's scores in English, Chinese and two other subjects with the highest scores, then the student in question must obtain A grades in each of those subjects. Thus, he could become a so-called "champion", but it is impossible to require all students to become "champions". However, in terms of the average score, each student is already qualified, otherwise those students would not be admitted to the institutions.

**MS EMILY LAU** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. My question was: Should the standard be expeditiously upgraded, to stop students with an average grade of D from being trained as teachers?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, it is always necessary to upgrade the standard of our students. Even if they obtain C grades in all subjects, we would hope that they could obtain B grades in all subjects; and if they obtain B grades, we would still hope that they could obtain A grades in all subjects. As regards how to recruit the best talents to join the teaching profession, we have already done some work, for example, the ACTEQ mentioned earlier is currently conducting a holistic review on how students with good academic results can be absorbed by the teaching profession.

**MR TOMMY CHEUNG** (in Cantonese): *Madam President, from the Annex of the Secretary's reply, it is evident that over the years, from 1998 to 2002, the academic results of education majors were far lower than that of other subject majors; in particular the academic results of students of the HKIEd were even lower than that of students of other institutions. I agree with the Secretary that good students may not necessarily make good teachers, but it does not follow that students with poor academic results will become good teachers. In view of the low academic achievements of HKIEd students as compared to those of students in other institutions, may I ask the Secretary if he will actually look into the situation of education majors to see whether they have chosen to major in education with lower entry requirements because they cannot get into other disciplines? If so, how can their mentality be changed? If they are not intent on joining the teaching profession in the first place, but have only done so because they were not admitted to other faculties, then on completion of the*

*education course, how can the relevant authority change their attitude, so that they would make teaching a lifelong profession?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as regards whether the academic requirements of the institutions are high or low, there are different views. In this respect, I believe the HKIEd also understands that it is necessary to recruit students with excellent academic attainments, therefore, in the last couple of years, it has offered collaborative courses in co-operation with the Hong Kong University of Science and Technology (HKUST) and The Hong Kong Polytechnic University (PolyU). From the Annex, it can be noted that the academic results of education majors of the PolyU were better than that of students of other institutions and the results of HKUST students were not bad too. In this regard, I hope students of other subject majors will also have the opportunity to take the courses at the HKIEd.

**MR JASPER TSANG:** *Madam President, the Secretary says in his main reply that academic results of education majors in public examinations alone could not adequately reflect the quality of the teaching profession. I agree that those who are academically strong may not necessarily be good teachers, but those who are academically poor can definitely not become good teachers. Does the Secretary agree that we need people who can perform above the average standard to become good teachers, otherwise the teachers will pass on their mistakes to the students? If so, does the Secretary think that we need to set a minimum standard for students majoring education in the tertiary institutions?*

**SECRETARY FOR EDUCATION AND MANPOWER:** Madam President, each institution that has a faculty of education has set its own benchmark for student admission, so that all the students that are admitted have already met the minimum requirements of the particular respective institution. Thus, a benchmark has already been set. In regard to the actual differences between the average and the non-average scores, obviously we want to raise the standard of the students going into education. This is why I have mentioned that the HKIEd has collaborative courses with the HKUST and also with the PolyU. The purpose is to open the scope for the university students who may not be majoring in education, but who are also given the opportunity, should they so wish, to switch over and become teachers.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary pointed out in part (c) of the main reply that a salary bar will be imposed on university graduates who become teachers without receiving formal teachers' training. Given the current economic downturn, many students may not be able to join the profession of their own discipline, but the imposition of such a restriction may curb the interest of certain people who may make good teachers in joining the teaching profession. Will the Government consider relaxing its policy in this area, in particular, now that many university graduates cannot find jobs? Will the authorities offer them more opportunities by lifting the salary bar?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, if university graduates wish to become teachers, they can do so, but the authorities expect them to complete their professional training within five years. Since they can complete their professional training in five years' time, we think it is very reasonable. The authorities hope that our teachers will receive professional training other than their degrees. Our target is that all teachers should have a degree and have received professional training. Our policy in this area will continue. Therefore, even if university graduates have not received professional training, they can still teach in schools but they are required to complete their professional training within five years. If they fail to obtain a professional qualification within five years, then a salary bar will be imposed and their promotion prospects will also be affected.*

**PRESIDENT** (in Cantonese): Third question.

### **Damage Caused by Serious Earthquakes**

3. **MR LAU PING-CHEUNG** (in Cantonese): *Madam President, since 1979, a total of eight felt earthquakes have occurred with epicentres within 100 km of Hong Kong. It is reported that the Government has commissioned a consultancy study to comprehensively look into the effects of earthquakes on the structural safety of buildings in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *whether the study will assess the extent of the damage caused to Hong Kong by earthquakes measuring seven on the Richter scale*

*within a distance of 300 km from Hong Kong; if so, of the details; if not, whether the authorities will assess the extent of the damage caused by earthquakes of this magnitude to new reclamation areas and man-made slopes in the territory; and*

- (b) *of the details of the contingency plans to deal with natural disasters including earthquakes?*

**SECRETARY FOR SECURITY** (in Cantonese): Madam President,

- (a) The Government commissioned a consultancy study in August 2002 to assess the possibility of earthquakes of various magnitudes occurring within a distance of 500 km from Hong Kong; and to examine the relationship between this finding and Hong Kong's building design standards. The study is ongoing and is expected to be completed by early 2004.

In 1996, the Government has carried out study to examine the earthquake hazards in Hong Kong and the effects of seismic loading on man-made slopes, retaining walls and reclamations. The study indicated that the likelihood of having an earthquake similar to the 1918 earthquake in Shantou of Intensity VII occurring in Hong Kong is low. The results of the study also indicated that even had such earthquake occurred, the seismic loading would generally be not critical for man-made slopes and retaining walls that are designed to current geotechnical safety standards. The Government's study also compared the risk of failure of man-made slopes induced by earthquakes to those induced by rainfall. The results showed that the risk of failure of man-made slopes due to earthquakes is much smaller than that due to heavy rainfall. As for reclamations, because the soil has been compacted to a certain density, the study indicated that the likelihood of earthquake-induced liquefaction of the subsoil in reclamation area is low.

- (b) In the most unlikely event that an earthquake occurs causing severe and widespread consequences in Hong Kong, the Security Bureau will immediately implement the "Emergency Response System" and the "Contingency Plan for Natural Disasters". The Emergency

Monitoring and Support Centre (EMSC) will be activated and will establish links with the Command and Co-ordination Centres of the emergency services and support agencies to monitor and support the discharging of the three principal phases of emergency response, that is, the Rescue, Recovery and Restoration Phases.

**MR LAU PING-CHEUNG** (in Cantonese): *Madam President, the Secretary mentioned in part (b) of her main reply the three principal phases of emergency response, that is, the Rescue, Recovery and Restoration Phases. May I ask the Secretary, with special reference to rescue efforts, which department is responsible for their co-ordination? Are regular rescue exercises conducted? As the population density is high in Hong Kong, in the event of the collapse of a high-rise building, do we have the kind of equipment and facilities for rescue actions?*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to take this question? Secretary for Security.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, perhaps I would first answer the first part of the supplementary question, that is, which department will co-ordinate rescue efforts. The Security Bureau is responsible for monitoring and support work. When the need arises, we will activate the EMSC. All relevant government departments have respective sets of contingency measures. We will also implement the "Emergency Response System" and the "Contingency Plan for Natural Disasters" and discharge the three phases of emergency response, that is, rescue, recovery and restoration. All relevant departments are aware of these contingency plans and certainly the Police Force, the Fire Service Department, the Geotechnical Engineering Office, the Home Affairs Department and other departments tasked with rescue duties. As for other departments, maybe I should defer to my colleagues.

**PRESIDENT** (in Cantonese): Does any of the two Bureau Directors have anything to add? Secretary for Housing, Planning and Lands.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese):

Madam President, presently we are making a study on the effects of seismic loading on buildings in Hong Kong and no conclusions can be drawn at this stage before findings are made. However, according to our estimates, the possibility of an earthquake is very low in Hong Kong. Notwithstanding this, we need to be prepared and assess the possibility of the occurrence of an earthquake, for example, estimating the intervals in terms of years which earthquakes of various magnitudes may occur in Hong Kong. These will be the contents of the report. Therefore, depending on the findings of the report, we will take follow-up action as and where necessary.

**PRESIDENT** (in Cantonese): Mr LAU Ping-cheung, has your supplementary question not been answered?

**MR LAU PING-CHEUNG** (in Cantonese): *No, Madam President. Another part of my supplementary question is on whether the Secretary for Security could inform us as to whether or not we have any regular exercises or drills and whether or not we have the necessary equipment or facilities.*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to reply? Secretary for Security.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Government has various contingency plans for various disasters. We have contingency plans for the Daya Bay nuclear plant in case of leakage. We have contingency plans for natural disasters of a large scale like landslides and typhoons. For aviation disasters, we have contingency plans for plane crashes; and we also have some other contingency plans for terrorist attacks. All the relevant departments are well aware of the details of these plans and they also conduct regular exercises and drills. Definitely, we do have such exercises and drills on a regular basis.



**MR HOWARD YOUNG** (in Cantonese): *Madam President, this question is about earthquakes, but the Government's reply is on buildings and slopes. May I ask the Government whether the ongoing study also includes such other areas as the airport. Despite the fact that the airport will not collapse in the event of an earthquake, but often cracks will appear and this may have an impact on the airport. Does the report contain anything on the ability of the runways to provide against and sustain the impact of an earthquake?*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to take this question? Secretary for Housing, Planning and Lands.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I would like to try. This study on earthquakes is undertaken by the Buildings Department and, as I have explained earlier, the main objective of this study is to assess the possibility of earthquakes of various magnitudes occurring within a distance of 500 km from Hong Kong. The scope of the study includes an assessment of the potential earthquake hazards in Hong Kong and how the crustal position of Hong Kong may cause earthquakes. After obtaining information on the above areas, we will assess the impact of earthquakes on buildings in Hong Kong, and of course, buildings in the airport will also be included. However, as buildings in the airport are short compared to other buildings in the territory, I believe our focus would be on an assessment of earthquake risks in the airport. I would expect such risks to be low in comparison.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, a study was carried out by the Government in 1996 and in 2002 another study was made. May I ask what reasons there are which have prompted the Government to undertake two studies within a span of time as short as six years, and what sort of special information did the Government want to get?*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to take this question? Secretary for the Environment, Transport and Works.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the 1995 study was carried out to assess the possibility of the crustal structure of Hong Kong causing an earthquake. I hope Honourable Members can rest assured, for we are situated more than 600 km away from the Eurasian Plate and all seismic information shows that the farther away from this plate, that is, more than 200 km away from it, the less likely will be the occurrence of an earthquake of a severe magnitude.

Despite the occurrence of an earthquake in Shantou in 1918 measuring seven on the Richter scale, the actual possibility of an earthquake of similar magnitude occurring in Hong Kong is very low indeed. An earthquake of Intensity VII would only occur once every 350 to 400 years; while an earthquake of Intensity VIII would only occur once every 2 500 years. In other words, the possibility of earthquakes of such magnitude occurring in Hong Kong is very low. As to how low the possibility is, according to a previous study made by the Geotechnical Engineering Office, it is less than 10 or almost less than 1. The Secretary for Security has said earlier that as compared to other natural disasters such as heavy rainfall, the possibility of an earthquake occurring in Hong Kong is very low and there is no cause for worry on the effects of seismic loading on the land, slopes, and so on. And we have done quite a lot of work on these as well. I think Dr TANG was asking about the impact on buildings while the reply given by Secretary Michael SUEN was on another area. As our buildings are constructed taller and taller, there may be a need for another study.

**DR TANG SIU-TONG** (in Cantonese): *Madam President, we made a study in 1996, and then another in 2002. What sort of new information was sought and why a number of studies were made within such a short span of time?*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to take this question? Secretary for Housing, Planning and Lands.

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese):

Madam President, we have talked about this in the main reply. The study undertaken in 1996 was to examine the effects of seismic loading on slopes and reclamations. The study to which I referred being made this year is mainly on

the effects of seismic loading on buildings erected on land and the different safety requirements, and they were not included in the previous study.

**MR MICHAEL MAK** (in Cantonese): *Madam President, part (a) of the main reply tells us that the study is expected to be completed by early 2004, and as it is now 2003, an interim report should be available. May I ask whether or not an interim report or a preliminary report would be available and what kinds of risks, if any, are involved in the structural safety of buildings erected on man-made slopes? For pre-war buildings or old buildings in particular, does the Government have any knowledge of whether or not they have such problems?*

**PRESIDENT** (in Cantonese): Which Bureau Director would like to take this question?

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, although it is the Buildings Department which has requested that such a study be made, there is no requirement that a preliminary report or an interim report be submitted. So for the time being, I do not have any information on that. When the study is completed, we shall make the findings public.

**MR MICHAEL MAK** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I think to a certain extent the risk, if any, should have been known. Will the public be informed if such risk exists? For buildings constructed on dangerous slopes, we are worried that the study will show that there are problems with some of these buildings.*

**PRESIDENT** (in Cantonese): Mr Michael MAK, I think the Secretary has answered your supplementary question already.

**DR RAYMOND HO** (in Cantonese): *Madam President, the Secretary says in part (a) of the main reply that results of the study undertaken by the Government show that "the risk or failure of man-made slopes due to earthquakes is much*

*smaller than that due to heavy rainfall". This statement is hardly convincing to a person with geotechnical engineering experience, unless the consideration is not the direct impact of an earthquake on slopes but the possibility of the occurrence of an earthquake. However, on the question of possibility, the fact that no earthquake has happened over a period of 100 or 200 years does not mean that no earthquake will occur now, in the future and forever. The severe earthquake in Tongshan did happen despite a clean record of the place from severe earthquakes. May I ask the Secretary of her point in making that comment in the reply?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the report at that time was on the damage that would be caused in the event of heavy rainfall and earthquakes. Another issue covered in the report was risk. The issue we are studying is actually on risk and that is precisely what Dr HO has talked about earlier, that is, on frequency and consequence. The two when added together are called risk. It is our assessment that when these two are put together, the effects of earthquakes on man-made slopes are less than those caused by heavy rainfall on man-made slopes.

**PRESIDENT** (in Cantonese): Fourth question.

**Measures in Tackling Hospital Authority's Budget Deficit**

4. **DR YEUNG SUM** (in Cantonese): *Madam President, the Administration indicated at the end of 2000 that, according to calculations based on population growth and ageing, the recurrent expenditure of the Hospital Authority (HA) for the next three years should increase in the region of 2.3% per annum. However, in August last year, the Financial Secretary demanded all Policy Bureaux to cut their operating expenditure by a cumulative 4.8% over the next four years, and the Chief Executive also indicated in his policy address delivered in this January that the Government would cut its spending in the operating accounts by \$20 billion in the next three years. In this connection, will the Government inform this Council:*

- (a) *of the respective amounts of the HA's budget deficit for the current and the next fiscal years, whether the HA will have sufficient*

*reserves to cope with the deficit, and the measures the Government and the HA will take in tackling the HA's budget deficit;*

- (b) whether, according to the Administration's assessment, the numbers of beds and health care staff in public hospitals will be reduced in the next three years due to resource constraints; if so, of the numbers and percentages of hospital beds and staff to be reduced; and*
- (c) whether the HA is allowed to retain, or required to deliver to the government coffers, the additional income derived from the accident and emergency (A&E) service charges introduced at the end of November last year as well as the new charges to be introduced in April this year ?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese):

Madam President,

- (a) The cuts in the budget of the HA for the three years beyond 2003-04 have yet to be fixed. The Government will work closely with the HA to ensure that adequate public hospital services will be provided to meet the health care needs of the community within the reduced budget.

After implementing measures to enhance productivity and generate savings, the HA has been able to reduce its budgeted deficit in 2002-03 from the original projection of \$582 million to about \$220 million. The HA is finalizing its budget for 2003-04. There will be pressure on the budget. This is because the HA has to incur additional staff costs for the annual salary increment for about 40% of its existing staff. The HA has to continue to recruit 300 doctors, 250 nurses and 57 allied health professionals to cope with population growth and service demands. Advance in medical technology has resulted in the introduction of new and expensive drugs that can enhance the effectiveness of treatment or for treatment of conditions hitherto not amenable to medication, thus increasing the operating cost. The HA will use its general revenue reserve (amounting to \$815 million at present) to cover projected deficit.

To meet the efficiency savings target to be achieved over the next four years, the HA plans to commence implementation of the following cost-effective measures in 2003-04:

- Develop effective ambulatory and community-oriented care models to reduce reliance on in-patient care
- Rationalize services within hospital clusters to reduce duplications
- Implement the HA Voluntary Early Retirement Programme
- Exercise stringent control on replacement of vacant posts
- Devise a new pay package for new recruits
- Re-engineer business support services, such as catering, laundry, procurement and supplies management

- (b) The international trend has been to focus on the development of ambulatory and community care programmes and to replace, where appropriate, in-patient treatment by ambulatory and out-patient services. The HA has in recent years stepped up its developments on day surgery, day care, out-patient services, community nursing and outreach programmes. In response to this shift to day community care, the HA plans to adjust in-patient general beds in order to rationalize its service provision. In 2003-04, the HA plans a net reduction of 1 200 general beds which amount to 4% of the total number of existing beds (29 288 as at March 2003). In this connection, some patients who were previously treated as in-patients can be more appropriately treated as day-patients. The HA will step up its day-patient service in 2003-04 by increasing the number of day patients handled by 2.8%. To cope with population growth and service demands, the HA will continue to recruit health care professionals in 2003-04. The overall number of clinical staff will be maintained at the current level, while managerial and supporting staff will be further reduced. The HA is working on its strategy in the provision of beds and manpower requirements for the years beyond 2003-04.

- (c) The Government's current arrangement is that the HA is allowed to keep 50% of the income from new fees, that is, the introduction of A&E charge, and drug charge. Regarding increase for existing fees and charges, the HA can keep 100% of the additional income arising from the fee increases for the years 2003-04 and 2004-05.

**DR YEUNG SUM** (in Cantonese): *Madam President, the Secretary mentioned in part (a) of the main reply that various measures would be adopted to save resources. May I ask the Secretary if the Government has considered encouraging the public to take out private medical insurance by offering them tax concessions, so as to reduce the HA's burden?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, concerning long-term health care financing, we have deliberated on the adoption of different approaches and examined how the existing system can develop in a sustainable way. We have proposed that members of the public should be encouraged to take out private medical insurance, but this will not be the major means of financing.

**MR WONG SING-CHI** (in Cantonese): *Madam President, the funds allocated to the HA have been reduced by more than \$200 million this year. The HA will also take over more than 50 clinics operated by the Department of Health as well as providing Chinese medicine out-patient service next year. Since the HA has to take over services from the Department of Health and provide a new service, may I know how the HA will redeploy its resources to cope with these new services? Will this lead to a decline in the quality of the new services? If not, does this mean that the entire organization of the HA is at present rather bloated, in particular, that there are too many chief executives? Will the authorities consider reducing these posts to maintain the service standard?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, the calculation of the resource allocation to the HA is based on existing services. If the HA introduces a new service, additional resources will be allocated. Therefore, the HA will be allocated additional resources to

provide the proposed Chinese medicine out-patient service. Furthermore, when the HA takes over the out-patient service in future, it will also be given additional resources. Therefore, the HA's new services will not be affected.

Mr WONG mentioned the reduction of administrative posts. In fact, the HA has been cutting such posts gradually in recent years. Members all know that at present, each chief executive is responsible for the administration of several hospitals. This shows that the number of administrative staff is on the decrease. As I have explained, the direction of HA is to retain professionals as far as possible and continue to reduce administrative personnel.

**MR CHAN KWOK-KEUNG** (in Cantonese): *Madam President, the Secretary said in the main reply that business support services, such as catering, laundry, procurement and supplies management, would be re-engineered. Does this mean that all of these types of work will be outsourced? If so, how many staff members are involved? What is the HA going to do with all these staff members?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, it is not always necessary to outsource work in order to re-engineer services, however, the HA will consider the approach of outsourcing. If the services are indeed outsourced, some of the staff members will perhaps be dealt with under the existing Voluntary Early Retirement Scheme. The response to the present Voluntary Early Retirement Scheme has been quite satisfactory and about 2 200 staff members have applied for early retirement. Of course, should the HA outsource its services, it will first make arrangements to transfer staff members to other posts or consider dealing with the excess staff members in other ways. Although the HA has discussed the issue of service outsourcing, it has not yet put into effect any plan.

**DR LO WING-LOK** (in Cantonese): *Madam President, the Secretary said in part (c) of the main reply that the HA is allowed to keep 50% of the income from new fees and 100% of the additional income arising from fee increases in this financial year and in the next one. May I ask the Government what criteria and considerations were adopted in allowing the HA to retain the income?*



**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, our criteria are that firstly, when the HA was established, the Government entered into a preliminary agreement with the HA which provided that the HA's income from new fees would be shared with the Government in future. The Government executed such an agreement with the HA at that time, but it did not specify the percentage of resource allocation. The HA is allowed to retain half of the income from new fees according to this preliminary agreement executed between the HA and the Government at that time. Secondly, when the Government allocates funds to the HA, it will take into account the HA's need for resources in providing health care services and consider the HA's ability in implementing cost-effective measures. We allow the HA to retain all the additional income from fee increases in the next two years because we want to give the HA time to implement cost-effective measures. The income will go to the government coffers after that period.

**DR LAW CHI-KWONG** (in Cantonese): *Madam President, the Secretary mentioned in part (b) of the main reply that the HA plans to reduce 1 200 general beds, which account for 4% of the existing beds, but the number of day patients handled will only increase by 2.8%. This means that the number of beds to be reduced is far greater than the increase in ambulatory service, that is, the decrease is quite substantial and the expanded service cannot make up for the reduction in beds. May I know if the waiting time for patients will become longer in the coming years? If not, can the Secretary give an undertaking that the waiting time for patients will not increase?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I believe the problem of waiting time has exerted enormous pressure on the public health care system. In recent years, we have been increasing the number of beds, but patients still have to wait. Of course, the HA has taken a number of measures to appropriately shorten the waiting time for patients, for example, by adopting the triage system and formulating clinical guidelines so that patients who are unfit to wait do not have to wait for too long. For example, the present waiting time for cancer patients is very short and the waiting time for electrotherapy is usually just one or two weeks. This of course depends on the condition of a patient. For non-urgent operations, the patients

often have to wait for a certain period of time. The HA will screen patients according to their clinical conditions, with consideration for whether the effectiveness of their future treatment will be compromised and then make arrangements for them to wait.

Concerning the reduction in the number of beds and the increase in ambulatory service, the two matters are not directly comparable, since patients hospitalized for treatment have to stay for many days but patients using ambulatory service have to attend follow-up consultation perhaps just once rather than in terms of duration of hospitalization. In fact, in recent years the HA has transformed part of the in-patient service to ambulatory service over time.

**DR LAW CHI-KWONG** (in Cantonese): *Madam President, when answering the first part of my supplementary, the Secretary seemed to be saying that the waiting time for some patients would be shortened while that for some others would be lengthened. Will the overall waiting time for patients actually decrease or increase? Or has the Secretary actually not given any reply by merely saying that the waiting time for some patients will be lengthened? I think the Secretary's reply is not very clear.*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, perhaps I can reply in this way: The waiting time for patients will not be lengthened as a result of the adjustment in the number of beds.

**MS CYD HO** (in Cantonese): *Madam President, originally I wanted to ask the Secretary about part (a) of the main reply, that is, how the Government has worked closely with the HA to cope with the need for services and the reduction in resources, but he has already given a reply, saying that .....*

**PRESIDENT** (in Cantonese): Ms HO, please come to your supplementary direct.  
(Laughter)

**MS CYD HO** (in Cantonese): *The Secretary has replied that the additional income from fee increases will be retained by the HA for the time being but it will go to the government coffers in the future. In the context of the close co-operation between the Government and the HA, when the Financial Secretary makes decisions on the provision of public health care services, will he give consideration only to the overall bookkeeping and how the expenditure can be reduced by \$20 billion, or will he also give consideration to members of the public suffering from illnesses and to their well-being, and will he discuss with the HA and the Secretary at what level public health care services should be maintained?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, in our discussions on the budget, of course the Government wants to continue to provide quality health care services to meet the health care needs of the public. In principle, the Government agrees with this notion. However, several factors have to be taken into account in considering the allocation of funds. Firstly, we will calculate the increase in resource allocation to the HA according to the increase in population and the demographic structure. On the other hand, since the Government faces a fiscal deficit, all government departments and subvented organizations have to cut resources, but no final decision has been made on this. Therefore, we do not know the amount of resources that will have to be reduced in various service areas, but the amount to be reduced will be quite significant rather than small, however, no final decision has been made yet.

As regards working closely with the HA, policy-wise I am very concerned that the quality of service will be affected if inadequate resources are given to the HA and the cost-effective measures introduced by the HA cannot make much headway. No one wishes to see this. Therefore, I will definitely work closely with the HA to see what methods or measures can be adopted to cut resources while maintaining the provision of quality health care services.

As I have also said, the HA has introduced the Voluntary Early Retirement Scheme and over 2 000 staff members have submitted applications. If the resulting vacancies are not filled, a lot of resources can certainly be saved. However, it is impossible to leave all these vacancies unfilled. As I have said in the main reply, we will maintain a certain number of staff members as far as

possible. However, as I have explained, many measures, such as ambulatory service and community-based care, are not only appropriate measures but also cost-effective. According to the international trend and experience, many types of operations do not necessitate in-patient treatment afterwards and the result is even better if ambulatory service is provided instead. It is beneficial to the patient, and the cost incurred by hospitals can be reduced. Therefore, I will continue to discuss with the HA on the further implementation of appropriate measures. Meanwhile, the HA will also consider implementing other measures, such as adjusting the fringe benefits of staff.

**MS CYD HO** (in Cantonese): *Madam President, in fact part of my supplementary was intended for the Financial Secretary. When he makes calculations on the budget, does he merely consider the figures, or does he take into account the well-being of members of the public suffering from illnesses?*

**PRESIDENT** (in Cantonese): Does any Secretary wish to add anything? Financial Secretary.

**FINANCIAL SECRETARY** (in Cantonese): Madam President, the allocation of resources will definitely be discussed together with the Bureau Directors and the Chief Executive. Apart from considering the Government's financial resources, the requests raised by each Bureau Director will also be considered, for example, the level, quantity and quality of service that they wish to attain in their areas of service. We will give consideration to various aspects.

**PRESIDENT** (in Cantonese): Fifth question.

### **Civil Service Overseas Education Allowance**

5. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, under existing policy, eligible civil servants on local terms may claim Overseas Education Allowance (OEA) for their children's schooling in the United Kingdom only. In this connection, will the Government inform this Council:*

- (a) *of the number of civil servants eligible for OEA;*
- (b) *of the respective numbers of civil servants claiming OEA and the amounts of public money involved in the previous financial year and the current financial year to date; and*
- (c) *whether, on the principle of fairness, it will consider extending the OEA scheme to cover other countries?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, before I reply to the specific questions raised by Miss CHOY So-yuk, I would like to explain that the OEA is an allowance for which officers who were offered appointment before 1 August 1996 may claim as a condition of service under their terms of appointment. Officers appointed on or after that date are not eligible for this allowance.

As part of our ongoing efforts to modernize civil service management and to contain the Government's personnel-related expenditure, we review civil service allowances from time to time. For example, we have recently reviewed and adjusted downwards the duty mileage allowance. We are currently reviewing various job-related allowances and aim to complete the exercise in the middle of the year.

Given the Administration's commitment to achieving significant economy in the Government's operating expenditure in the next few years, I intend to undertake a review of all the existing civil service allowances, including local and overseas education allowances. The purpose is to examine all possible options of reducing expenditure, having regard to the legal considerations governing those allowances which form part of the conditions of service of civil servants. We will consult civil servants fully in the process, and adopt the principle of lawfulness, reasonableness and fairness in taking forward the matter. We will also discuss any specific items and report progress at the Public Service Panel meetings. Our objective is to achieve substantive savings in government expenditure on civil service allowances in the next few years.

On the specific questions raised by Miss CHOY So-yuk:

- (a) At present, there are about 133 000 civil servants eligible for OEA. Officers offered appointment on or after 1 August 1996 are not eligible for the allowance.
- (b) The number of civil servants claiming OEA in 2001-02 was 4 310 and the expenditure on OEA was \$392.28 million. For the current financial year, up to 4 March 2003, the number of civil servants claiming OEA are 4 840 and the expenditure on OEA is \$434.58 million.
- (c) Following a review in 1996, the Government decided to cease provision of OEA for officers offered appointment on or after 1 August 1996. We will not extend the OEA scheme to cover the schooling of children of eligible civil servants on local terms in countries other than the United Kingdom, as this would drive up demand and result in additional government expenditure. Instead, as I have said earlier, we will review all existing civil service allowances with a view to reducing government expenditure in these areas in the next few years.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the Secretary mentioned in the main reply that the Government would review civil service allowances with a view to achieving savings in government expenditure. I believe in the past, as the United Kingdom was the sovereign state of Hong Kong, the Government provided OEA to civil servants to cover schooling of their children in the United Kingdom. Will the Government consider allowing civil servants to claim OEA for their children's schooling in the sovereign state (that is, China) only and disallowing such in other countries? I consider that a manifestation of the original intent of the OEA scheme.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): *Madam President, just as Miss CHOY So-yuk said, the purpose of the OEA scheme was to take care of expatriate civil servants working in Hong Kong, so that their children could go to school in their place of origin, such as the United Kingdom. This allowance is actually out of date. As the quality of education in Hong Kong has greatly improved in the past decade or two, now the Government really wishes to review the OEA scheme on a full scale. Certainly, since OEA is one of*

conditions of civil service, we would take into account the legal implications and would absolutely not consider expanding or relaxing the scheme. The purpose of our review is to ensure allowances of the Civil Service are keeping abreast with the times on the one hand, and to find ways to reduce as much government expenditure as possible in that respect on the other.

**MS EMILY LAU** (in Cantonese): *Madam President, just now the Secretary explained that the quality of education in Hong Kong had greatly improved in the past decade or so, perhaps he did not hear the reply of Prof Arthur LI earlier. However, that does not matter still. Madam President, the Secretary said in the main reply that about 133 000 civil servants were eligible for OEA. Although only 4 000-odd civil servants are claiming OEA at present, the expenditure is approximately \$400 million. Every one of us could perceive that it is a heavy burden, albeit a kind of undertaking. The Secretary said that the Government would consult civil servants on the principle of lawfulness, reasonableness and fairness. Will the Secretary inform this Council whether the consent of the civil servants is necessary before any changes can be made to this allowance scheme; otherwise, no changes could be made at all?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, as the review has just begun, I do not wish to make any speculation on the outcome. However, I can say that we would give the legal implications full consideration in the process. Furthermore, the review can be conducted in different manners and we can assess different alternatives, such as the result of cancelling or modifying the allowance scheme or adjusting the arrangement, with a view to making the best use of public money. It is possible that different options require different considerations in terms of law. For that reason, I can only say that we will adopt the principle of lawfulness, reasonableness and fairness in taking forward the matter. Besides, I can tell Honourable Members that the authorities believe that there is certainly room for us to lessen the heavy burden on the increasingly heavy government expenditure just as Ms Emily LAU said.

**MS EMILY LAU** (in Cantonese): *Madam President, my follow-up is very simple. There is indeed room for retrenchment, but should the Government obtain the consent of civil servants before any changes can be made?*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I have actually given the reply. Just as I said, it really depends on what we are going to change. If we have to make certain changes, we should first seek legal advice, such as whether we must obtain the consent of civil servants before such changes can be made, or whether there is greater for other changes. Just as I replied earlier, we would examine all possible options in the process, and we would seek legal advice apart from consulting civil servants.

**MR JASPER TSANG** (in Cantonese): *Madam President, as the Secretary mentioned in the main reply that officers who were offered appointment before 1 August 1996 might claim OEA as a condition of service under their terms of appointment, will the Secretary inform this Council of this provision in detail? Furthermore, can the Secretary elucidate the extent to which a review is possible under such provision?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I do not have the specific provision at hand. In fact, we are prepared to submit a paper to the Public Service Panel later, so I would explain it in detail then. Actually, I have sought legal advice from the Government Counsel before replying to this question. It was confirmed that it would depend on the specific proposal, yet there would still be room for us to make certain changes.

**MR MICHAEL MAK** (in Cantonese): *Madam President, I wish to gain a better understanding. The Secretary mentioned in part (b) of the main reply that the number of civil servants claiming OEA in 2001-02 was 4 310, but for the current financial year, up to 4 March 2003, the number of civil servants claiming OEA was 4 840. It shows that the relevant figure is rising. Can the Secretary explain the rise in figure? Despite the Secretary saying that Hong Kong has a comprehensive education system, does the rising figure have any relationship to the local education system that does not bear any evidence to such a claim?*



**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I received education in Hong Kong, of course I consider that the local education system is the best. Civil servants need not furnish any reason for their OEA applications. They may apply for OEA as long as they are eligible, and as long as their children are aged between nine and 19 and they are pursuing studies in the United Kingdom. From part (a) of the main reply, Members should note that there are 100 000-odd civil servants who are eligible for OEA. For that reason, I do not consider it unusual for several thousand civil servants applying for that allowance. In fact, in consideration of the preliminary information of 2003-04, the number of OEA applicants is increasing. Just as I explained in the main reply, we are concerned about the expenditure in this respect, therefore we consider it necessary to review the allowances under the conditions of service having regard to the legal factors, and examine if savings can be achieved in this expenditure.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, the Secretary reiterated that a review would be conducted. I believe it would be fine to carry out the review. But before the review is conducted, can the Government be more impartial as far as the OEA scheme is concerned? Why civil servants are not allowed to claim OEA for their children's schooling in the Mainland? I consider that the Secretary is not giving a good reason at all. On the contrary, if civil servants may claim allowance to cover the schooling of their children in the Mainland, the Government may save up more public money.*

**PRESIDENT** (in Cantonese): Miss CHOY, you are not allowed to express personal views when you raise a supplementary. Please come to your supplementary direct.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, will the Secretary consider allowing civil servants to claim allowance for their children's schooling in the Mainland before conducting the review?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, I have already answered that supplementary. If we were to start it all over again, I believe I would not consider providing OEA. For that reason, we will not consider expanding the scope of OEA in the review.

**MS EMILY LAU** (in Cantonese): *Madam President, I wish to raise a follow-up. The Secretary has stated time and again that there would be room for changes to be made to the conditions of service as long as they are permitted under the law. In this connection, can the Secretary inform this Council which allowance has room for changes and which has no room for such? Will that include introduction of legislative amendments to abolish certain civil service benefits?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): Madam President, civil service allowances are divided in two major categories. The first category has nothing to do with the conditions of service, such as the job-related allowances mentioned in the main reply, which are currently under review. The second category is related to the conditions of service, such as education and housing allowances. Of course, there is greater flexibility for us to abolish or adjust any allowance which is not a condition of service. As to allowance which is a condition of service, we have to examine it carefully and ensure the change is lawful, since it is a condition of service under the terms of appointment.

Ms Emily LAU asked whether there was room for changes, certainly we found that there is room for changes, subsequent to consultations with Government Counsel, that we decided to conduct the review. For example, we adjusted upwards certain allowances under the conditions of service after 1 July 1997, can we adjust downwards the amount of allowances to a level not lower than the cash value on 1 July 1997? This is the extent we may consider. Another question is the arrangement itself. If we exclude those civil servants who are currently claiming the allowances, can we make certain changes as far as the specific arrangement is concerned? I think we should study these thoroughly in the future. I admit that it is not a simple task, instead, it is quite complex, therefore we should deal with it carefully. However, the Government is facing a critical situation and expenditure in this respect would probably continue to increase, therefore we consider that we should review this allowance in a more proactive way.

**PRESIDENT** (in Cantonese): Last oral question.

### **Fare Structure of East Rail**

6. **MR LAU KONG-WAH** (in Cantonese): *Madam President, it has been reported that the Chairman of the Kowloon-Canton Railway Corporation (KCRC) has indicated that the KCRC is examining the possibility of adjusting the passenger fare structure of its East Rail, with the intention of raising gradually in the next few years fares for journeys between Sheung Shui and Hung Hom whilst lowering those for journeys to and from Lo Wu Station, thus reducing the level of subsidy from passengers travelling to and from Lo Wu Station to other passengers. In this connection, will the Government inform this Council whether it knows:*

- (a) the rationale behind the KCRC's adopting the existing passenger fare structure of its East Rail;*
- (b) the respective profits derived by the KCRC from the cross-border and non cross-border patronage of its East Rail in each of the past five years; and*
- (c) the KCRC's forecast of the effect of its profits from property developments on the passenger fares of its East Rail, in each of the next five years?*

### **SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, in determining and reviewing its fares, the KCRC would consider relevant factors including the economic condition of Hong Kong, public affordability, competition with other transport modes and the corporate financial position. The KCRC would also regularly review the operating costs and fares of services provided by it with a view to achieving a reasonable return with cost-effectiveness.

According to the KCRC's profit and loss figures, East Rail domestic service incurred a loss in the past five years with the exception of 2001 when a profit of \$2 million was recorded. The relevant figures have been set out in the information sheet distributed to Members (see Annex).

According to an agreement between the Government and the KCRC, net profits from property developments along West Rail will accrue to the Government. For property developments along East Rail and East Rail Extensions, the KCRC does not expect any profit before 2007. Moreover, the KCRC considers that non-recurrent profits arising from property development should be used to help finance new railway projects and not to subsidize recurrent costs of operating existing services.

The KCRC has indicated that it will examine possible adjustments to the fare structure of East Rail, but how this should be done is still in a conceptual stage. The KCRC has not decided on whether and when fares should be adjusted. The Government has not received any fare adjustment proposal from the KCRC.

The current East Rail fare structure entails a certain degree of complexity. On the one hand, the domestic fares must be competitive, but over the years East Rail domestic service has been incurring a loss and has to be subsidized by income from cross-boundary service. Yet some passengers consider that cross-boundary rail fares are relatively high and should have room for downward adjustment. On the other hand, fares of West Rail, which is soon to open, has become a topical issue in the community. The KCRC therefore wishes to review the overall fare structure with a view to considering whether the fares could be rationalized. We believe the KCRC will conduct the relevant studies carefully and take full account of the public views.

Annex

Profit and loss of East Rail in the last five years (1998 to 2002)

	1998	1999	2000	2001	2002
			HK\$ million		
Domestic	(22)	(83)	(17)	2	(58)
Cross-boundary	1,238	1,431	1,623	1,657	1,724

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the cross-boundary rail fares of the KCRC are the highest in Hong Kong, but its cross-boundary services generate the highest profits, and the fares will reach a very unreasonable level after the imposition of the Boundary Facilities Improvement*

*Tax. The Secretary has been saying said that she wishes to see a reduction of such fares but she has never succeeded in doing so. Will the Secretary pinpoint the very unreasonable cross-boundary fares and try to reduce such fares by all means to show the public an example of success?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, in respect of cross-boundary rail fares, as I have just said, the current East Rail fare structure entails a certain degree of complexity because residents in the New Territories use the Sha Tin to Sheung Shui section every day while the cross-boundary section especially serves cross-boundary passengers. To a certain extent, the cross-boundary line has less impact on the daily life of the people. We must consider the overall competitiveness and if the fares for the New Territories section of East Rail are increased, other transport modes will also be affected, therefore, we have to strike a balance in this respect. Since there is only one cross-boundary line, making changes to this line will have less impact. Before making a decision, we certainly have to take into account the fare level affordable by the public at large who travel to work every day and find out where less impact will be made after weighing the pros and cons.

I do not agree with Mr LAU Kong-wah that the KCRC has never reduced its fares. For example, the KCRC has introduced a "Ride 8 Get 1 Free" arrangement and it has recently enhanced the concessionary fare arrangement and made it more convenient than before. People have benefited from these concessionary fare arrangements. With the existing economic hardships, the Government will strike a balance between the interests of various parties. I believe most people hope that the lower fares of the domestic line of East Rail, that is, the section before Lo Wu, can be maintained.

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, has your supplementary not been answered?

**MR LAU KONG-WAH** (in Cantonese): *Madam President, the Secretary has not answered my supplementary question. I have not asked a question about the domestic line, but the cross-boundary line. Will the Secretary take the lead to induce a reduction in the cross-boundary rail fares?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I think that the answer to a question about the cross-boundary rail fares cannot be detached from the operation of the whole East Rail, therefore, I have also touched upon the fares of the domestic line of East Rail. I have to consider the cross-boundary rail fares under the whole fare mechanism and I cannot make any pledge now.

**PRESIDENT** (in Cantonese): Members, as there are still 11 Members waiting to ask supplementary questions, so please make your questions as concise as possible.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, Mr LAU Kong-wah has just asked a question about the cross-boundary line, but I wish to ask a question about the non-cross-boundary lines. Can the fares for non-cross-boundary lines be reduced? The Secretary has stated in her main reply that public affordability would be considered, but the affordability of the public has become weaker and weaker in the past few years, wages have been reduced and many people have become unemployed. I believe the Secretary also agrees that public affordability is increasingly weak. The Secretary has said that she will strike a balance between the interests of various parties, but has she considered too little about public affordability but too much about the reasonable return of the KCRC (the KCRC currently has profits of over \$2 billion)? How can the Secretary account to the public that a balance has been struck? Can the Secretary inform this Council whether the KCRC will reduce its fares?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, it seems that it is very easy for me to answer "yes" or "no" when asked whether reductions in fares would be considered. I will not be biased towards any party when I consider the issue in a holistic manner because the fare mechanism is really quite complex. Let us take a look at the existing fares of East Rail and we will find that members of the public have many choices. When we reviewed the fare mechanism, we asked the KCRC to provide concessionary fares. The KCRC has now implemented the second phase of a concessionary fare scheme and I hope that it will provide the public with temporary relief. In considering the fare mechanism, I will analyse in detail the operating costs of the KCRC *vis-a-vis* the financial conditions of the

public. Apart from consulting transport operators, we will also consult Members. The process takes time, therefore, I cannot answer the supplementary question raised by Mr LEE Cheuk-yan today.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, the crux of my supplementary question is whether the Secretary has considered more about profits and returns than public affordability, if so, it will be out of balance.*

**PRESIDENT** (in Cantonese): Secretary, do you have anything to add?

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I have nothing to add.

**MS MIRIAM LAU** (in Cantonese): *Madam President, can the Government inform this Council, if the KCRC does not distinguish between domestic service and cross-boundary service, and calculates fares only on the basis of cost, journey length and reasonable return, how much will the fares for stations between Hung Hom and Sheung Shui increase and how much will the fares for stations between Hung Hom and Lo Wu decrease? If the Government has not calculated the relevant figures, does it know whether the KCRC has calculated the relevant figures? If the KCRC has not calculated the relevant figures, will the Government ask the KCRC to calculate the relevant figures and brief this Council on them?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we are now considering how fares should be determined because fares are determined not only on the basis of journey length under the existing transport system. There is a special premium for both cross-harbour and cross-boundary lines and the principle has all along been adopted. Ms Miriam LAU has just asked if we have calculated the relevant figures, we have certainly calculated such figures. However, it is controversial whether the determination of the fares for a section of a route on the basis of journey length is reasonable transport management. As I have just said, the Government must consider the aspect that is more important to the public. I

definitely will not say in a biased manner that the KCRC needs to make more money and people have to suffer more. If so, we do not have to make so much effort. I hope Members will be tolerant and we will take these issues into account when we consider the fare mechanism.

**MR NG LEUNG-SING** (in Cantonese): *Madam President, the Government mentioned competition with other transport modes in the first paragraph of the main reply. Which transport operators are the major competitors of the KCRC? Will there be new competitors against the KCRC in the future?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, the major competitors of the KCRC are franchised buses, but its competitors also include residents' coaches, green minibuses and other minibuses. For instance, for a journey from Hung Hom to Sha Tin, East Rail fare is \$5.1, non-air-conditioned bus fare is \$5.3 and air-conditioned bus fare is \$7.5, therefore, the East Rail is more competitive. For a journey from Mong Kok to Tai Po, East Rail fare is \$7.3, non-air-conditioned bus fare is \$6.7 and air-conditioned bus fare is \$9.1. There are quite a number of competitors offering options to the public. Some non-air-conditioned bus fares and air-conditioned bus fares are higher or lower than East Rail fares. Thus, this issue is quite complex. I would like to say in passing that the carrying capacity of East Rail is not saturated and there is unused capacity, so, the cost-effectiveness of its operation has not yet reached a satisfactory level and there is still a certain distance from it.

**MR ANDREW CHENG** (in Cantonese): *Madam President, Mr Michael TIEN, Chairman of the KCRC, has said that even though it made profits of \$2.4 billion last year, the return was inadequate, thus, there would be corresponding increases in East Rail fares even if the KCRC reduces cross-boundary rail fares in future. Does the Secretary, as the government representative on the Board of Directors of the KCRC wholly-owned by the Government, think that the return of over \$2 billion made by the KCRC each year is the so-called reasonable return with cost effectiveness as stated in her main reply? If so, and if the Secretary successfully induces the KCRC to reduce cross-boundary rail fares in future, will she oppose the increase in the fares of East Rail on the Board?*



**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, we have to look at the issue of profits and returns from several aspects because the KCRC uses its profits not only for operation but also for investments in new railways, otherwise, it will not have capital for making investments in new projects. Of course, the Government still has to subsidize its investments in new projects, and the question of whether the returns are reasonable depends on the whole economic environment and structure. For instance, can we further discuss the existing rate of depreciation in respect of an investment in an infrastructural project? The duration of the relevant term will affect the reasonable returns. Besides, in the loan market, whether the operation of the KCRC can reap reasonable returns will affect the creditworthiness of the MTR Corporation Limited (MTRCL) or the KCRC when it borrows loans for the construction of new railways in the future, and the interest rates will also be determined on such a basis. Therefore, returns have enormous implications on railway operation and I cannot simply answer whether the rate of returns is reasonable because I cannot consider its operation only.

**MR ANDREW CHENG** (in Cantonese): *Madam President, the Secretary has only analysed how she deal with and calculate the so-called reasonable returns. In regard to such factors as the economic environment, structure and loan as suggested by the Secretary, is it reasonable for the KCRC to have made profits of over \$2 billion in the last couple of years under the existing economic and financing circumstances? The Secretary only needs to answer "yes" or "no" and she needs not be evasive because her answering "yes" or "no" is very important to whether or not she will oppose the fare increase by East Rail on the Board.*

**PRESIDENT** (in Cantonese): Mr CHENG, several Members are still waiting to ask supplementary questions, please do not drag out and you just need to put the question that you want the Secretary to answer. *(Laughter)*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I think I already answered this supplementary question just now, that is, it is very important to analyse the economic condition when I consider whether the returns are reasonable. It would be irresponsible

of me to just answer "yes" or "no". I hope Mr CHENG will agree with my reply after he has read our report.

**MR WONG SING-CHI** (in Cantonese): *Madam President, when the Secretary first assumed office, she gave people an impression that she was very concerned about the high transport fares faced by them because she said that the transport fares were very high. Will the Secretary insist on her view when she first assumed office, exhaust all means to make the fares of East Rail affordable to the people, and cause the KCRC not to increase fares or even to reduce them?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Cantonese): Madam President, I admit that I think that the public transport fares in Hong Kong are on the high side, in particular, people find the fares of long distance transport that require interchanges especially unreasonable. I believe Members have heard the examples cited in respect of East Rail. The passengers make very long journeys on East Rail and the fares are actually relatively low. If passengers can travel direct to their destinations on East Rail, the relevant fares can be considered as very reasonable, of course, passengers who have to make a few interchanges will not think so. I hope Members will understand that, when making a reform of the fare mechanism, we must examine the issue carefully because we hope to work out a very good mechanism that can look after the group of people who are most in need after we have made so much effort. I think that there is room for a reduction in public transport fares, but we have to find the most suitable way to reduce fares.

**PRESIDENT** (in Cantonese): This Council has spent more than 18 minutes on this question. Although several Members are still waiting for their turns to raise questions, I can only allow a Member to raise one last supplementary question.

**MR WONG YUNG-KAN** (in Cantonese): *Madam President, the KCRC has profits of over \$2 billion while the MTRCL has profits of over \$4 billion, if the two corporations are merged in the future, will the Government consider*

*adjusting the fares of the two railways together, or will it make individual adjustments?*

**PRESIDENT** (in Cantonese): I am sorry, Mr WONG, I think the scope of your supplementary question is even larger than that of the main question. The main question only concerns the KCRC but you have asked a question about the merger of the KCRC and the MTRCL.

**MR WONG YUNG-KAN** (in Cantonese): *So, I will only ask a question about the KCRC. Will the KCRC consider ..... after the merger .....*

**PRESIDENT** (in Cantonese): I am sorry, Mr WONG, please be seated first. I cannot allow you to raise this supplementary question because you are now asking the Secretary to make a speculation, but the merger of the two corporations is not a fact yet.

Oral question time ends here.

## WRITTEN ANSWERS TO QUESTIONS

### Outsourcing of Work of Architectural Services Department

7. **MR WONG SING-CHI** (in Chinese): *Madam President, the Architectural Services Department (ASD) planned last year to contract out its activities progressively with a view to outsourcing 90% of its new projects and 80% or even all of its maintenance jobs within seven years. In this connection, will the Government inform this Council:*

- (a) *of the percentages of new projects and maintenance works undertaken by the ASD and private contractors respectively in the past year, and the respective values and time spans of individual outsourced projects;*
- (b) *of the details of the projects to be outsourced by the ASD in the coming year; and*

- (c) *whether the ASD has considered, in outsourcing new projects for the planning of old urban areas and urban renewal, organizing a competition on planning concepts, with a view to selecting private contractors whose project designs can integrate different planning concepts and give full play to the local characteristics of the districts; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President, in 2001, the Government conducted a business review of the ASD. The review reaffirmed the professional competency and achievements of the ASD over the years. The Government also decided that the ASD should focus on the following strategic roles:

- (i) strengthening its professional role as the Government's corporate adviser on policies and technical issues related to public buildings, and as building authority for government buildings;
- (ii) working with the industry to improve the design and maintenance of buildings and in promoting higher standards in construction, site management and safety; and
- (iii) concentrating on the project management and supervisory functions in delivering and maintaining public building projects.

In order to enable the ASD to take up new strategic roles, the Government decided that as a long-term objective, the Department should outsource 90% of new projects and 80% or even all of its maintenance works. The outsourcing programme is being progressively implemented.

- (a) In the past 12 months, the ASD has outsourced 54% by value of the design work of building projects to consultants. The total value of the outsourced building projects is about \$38.5 billion and the average construction period of the projects is about two to three years.

For maintenance works, the ASD has further outsourced a range of activities including the employment of consultants for design and supervision of some minor works, co-ordination and reporting of

minor maintenance, and account checking of maintenance works. The percentage of activities and values of works outsourced are as follows:

<i>Activities</i>	<i>Approximate % of Activities Outsourced</i>	<i>Approximate Value of Works Outsourced (\$M)</i>
(i) design and supervision of lump sum minor works	50%	304
(ii) co-ordination and reporting of minor maintenance	20%	16
(iii) account checking of maintenance works	20%	246

- (b) Details of the projects to be outsourced by the ASD in the coming year are currently under planning. The ASD will continue to outsource new projects and maintenance works as appropriate.
- (c) In revitalizing old urban districts, the Government will consider, where appropriate, to conduct conceptual design competition to invite different planning ideas and themes so as to make the relevant revitalization works more vibrant and add colours to the local characteristics.

As a statutory body tasked with the responsibility of planning and implementing urban renewal programme, the Urban Renewal Authority (URA) attaches much importance to the participation of the public in the planning process of its projects. For example, in January this year, the URA launched an idea competition for the revitalization of the historic Western Market and its neighbourhood in the Sheung Wan area. The ideas and creative designs drawn from the competition will be carefully considered for integration with the upcoming urban revitalization works that may be carried out by the URA, the Government and the concerned parties. The

URA will continue to apply the same approach to other projects wherever feasible.

When selecting consultants for building projects, the ASD will consider their knowledge on the local characteristics of the districts and design ability for the building projects. The ASD will select the most suitable consultant from many contestants to take up the design of the project.

### **Young Mothers and Single Parents**

8. **MS CYD HO** (in Chinese): *Madam President, with regard to young mothers under the age of 18 and single parents under the age of 21, will the Government inform this Council of the following, for each of the past three years:*

- (a) *a breakdown by age of young mothers under the age of 18 and, among them, the respective numbers of those who have received counselling by social workers upon childbirth and those who are students; whether these students have resumed their studies after childbirth; if so, of the details;*
- (b) *the number of divorce cases involving young parents under the age of 21 and, among them, the number of those who have received counselling by social workers; and*
- (c) *these single parents' accommodation situation (for example, whether they have their own nuclear families, live with their own parents or live with their former spouses) and employment situation?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
Madam President,

- (a) Statistics on the number of young mothers are only available in the public sector. According to the Hospital Authority, the number of young mothers under the age of 18 (in each of the past three years), is as follows:

<i>Year</i>	<i>Age</i>					<i>Total</i>
	<i>13</i>	<i>14</i>	<i>15</i>	<i>16</i>	<i>17</i>	
2000	2	13	24	69	150	258
2001	2	13	19	62	142	238
2002	1	8	20	47	122	198

Of these, 170, 160 and 140 were referred to medical social workers for counselling in 2000, 2001 and 2002 respectively. In addition, some of the other mothers may have approached the Social Welfare Department (SWD) and non-governmental organizations direct for counselling service. For example, amongst the active cases handled by the SWD at the end of February 2003, 82 young mothers under the age of 18, received counselling service and other forms of practical assistance.

In this regard, there is an extensive network of 66 Family Service Centres/Integrated Family Service Centres throughout the territory providing services to those with welfare needs, including young mothers. On referral by hospitals, maternal and child health centres, the Immigration Department, schools, other government departments or related parties or on application by the mothers themselves, social workers ascertain their needs and formulate appropriate care plans. Counselling is provided to enhance the young parents' awareness of their parental responsibilities to assist them in better performing their parenting role and to enhance their child-rearing skills.

For those young mothers who are unable to provide their children with adequate care, care by relatives or foster care service can be arranged. In addition, social workers may refer them to receive a variety of support services including child care, financial assistance, housing assistance, family aide or other community support services.

In addition to the services provided by Family Services Centre and medical social work teams, there are five Single Parent Centres set up to provide dedicated support services to enhance the self-reliance and resilience of single parents. The services include supportive

counselling, family life education/parent education programmes, group work/networking programmes, employment-related training, volunteer service, information on resources and referral services, and so on. An outreach service is also available to identify those single-parent families in need of early intervention. In 2001-02, the five centres served nearly 3 000 single parent families.

We do not routinely collect statistics on the number of these mothers who were students at the time of giving birth and whether they subsequently resumed their studies.

School-age young mothers who have left school and who wish to resume schooling can approach the Regional Education Offices of the Education and Manpower Bureau for assistance. On resumption of their studies, young mothers are given specific guidance and remedial programmes, when in need.

- (b) According to the Judiciary, the number of divorce cases filed with the Family Court Registry over the past three years were:

<i>Year</i>	<i>No. of divorce cases</i>
2000	14 063
2001	15 380
2002	16 839

However, the number of divorce cases involving young parents under the age of 21 and the number of those who received counselling by social workers are not readily available.

Amongst the active cases handled by the SWD at the end of February 2003, counselling service and other forms of practical assistance were provided to 53 divorced single parents under the age of 21. Young parents involved in divorce proceedings may also approach non-governmental organizations for service.

- (c) Comprehensive statistics on the accommodation and employment situation of divorced single young parents under the age of 21 would require extensive study and are not routinely collected. Out of the



53 young single parents referred to paragraph (b), 42 were unemployed and 11 were employed. As regards their accommodation situation, 44 were living only with their children. The others were either living alone, living with their ex-spouse/cohabitant or living with their parents/siblings.

The Housing Department is committed to providing housing assistance to youth mothers and single parents with accommodation needs arising from their single parenthood. For instance, the Housing Department may, in consultation with the SWD, assist them through immediate allocation of public rental flats, permitting their temporary stay or formal addition to their parents' public rental flats, arranging special transfer from one public rental flat to another, to facilitate better care for them and their children.

On the other hand, young parents undergoing divorce proceedings may seek a conditional tenancy in public rental housing if they are in need of separate accommodation from their spouse. The conditional tenancy may be turned into a permanent tenancy upon the Court's confirmation of the award of custody of the children.

### **Services and Manpower in Public Hospitals**

9. **DR LAW CHI-KWONG** (in Chinese): *Madam President, regarding the provision of services and the manpower in public hospitals, will the Government inform this Council:*

- (a) *of the forecast of the following figures at the end of this and each of the coming three fiscal years: the number of staff members in each rank of the medical, nursing and allied health grades, the number of beds, the ratio of beds to population and the ratio of beds to manpower of health care personnel;*
- (b) *how the above figures compare to the actual figures concerned in each of the past three fiscal years; and*
- (c) *whether it has assessed if the standard of health care services provided by public hospitals will be compromised due to a reduction*

*in health care personnel in the coming three fiscal years; if it has, of the details?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):  
Madam President,

(a) and (b)

The international trend has been to focus on the development of ambulatory and community care programmes and to replace, where appropriate, in-patient treatment by ambulatory and out-patient services. Such development has been made possible following the advances in medical technology. The Hospital Authority (HA) has in recent years stepped up its developments on day surgery, day care, out-patient services, community nursing and outreach programmes. In response to this shift to day community care, the HA plans to adjust in-patient general beds in order to rationalize its service provision. The change in the service delivery model has also resulted in different staffing levels as well as staff mix for the clinical staff workforce.

The requested manpower and bed statistics from 1999-2000 to 2003-04 are set out below:

	<i>1999-2000</i> <i>(Actual)</i>	<i>2000-01</i> <i>(Actual)</i>	<i>2001-02</i> <i>(Actual)</i>	<i>2002-03</i> <i>(Estimate)</i>	<i>2003-04*</i> <i>(Estimate)</i>
Doctors	3 674	3 895	4 105	4 279	4 587
Nurses	17 335	18 230	19 289	19 515	19 485
Allied Health Professionals	4 458	4 527	4 637	4 710	4 902
Beds as at end March	28 517	28 877	29 022	29 288	28 088
Beds per 1 000 population	4.25	4.24	4.22	4.23	4.01

	1999-2000 (Actual)	2000-01 (Actual)	2001-02 (Actual)	2002-03 (Estimate)	2003-04* (Estimate)
Staff per bed					
- Doctor	0.13	0.13	0.14	0.15	0.16
- Nurse	0.61	0.63	0.66	0.67	0.69
- Allied health professionals	0.16	0.16	0.16	0.16	0.17

- Notes:
- All staff members (permanent, contract and temporary terms) are included in the reported figures on full-time equivalent basis.
  - Doctors refer to consultants, senior medical officers/associate consultants/medical officers/residents.
  - Nurses refer to qualified nurses.
  - \* Staffing position includes staff to be transferred from the Department of Health to the HA upon the transfer of General Out-patient Clinics (GOPCs) scheduled for July 2003.

The HA has yet to work out its plan on the number of beds and manpower requirements for the years beyond 2003-04.

- (c) In 2003-04, the HA is able to maintain the clinical staff workforce through stringent saving measures in other areas, such as continued reduction of managerial and supporting staff, and re-engineering business support initiatives in procurement and supplies, catering, laundry, and so on. Through cluster-based and territory-wide service rationalization programmes, the HA will continue to re-engineer service provision to cater for the increasing needs of the population despite resource constraints. All these measures help to ensure that service quality will not be compromised.

## Aircraft Noise

10. **MR TAM YIU-CHUNG** (in Chinese): *Madam President, it is learnt that since the commissioning of the Hong Kong International Airport (HKIA) at Chek Lap Kok, the Civil Aviation Department (CAD) has adopted a series of measures to abate aircraft noise. However, residents in Tsing Yi District have been*

*lodging complaints about the excessive aircraft noise that affects their life. In this connection, will the Government inform this Council:*

- (a) of the number of complaints received over the past year about aircraft noise;*
- (b) of the number of times when aircraft noise level in Tsing Yi District exceeded the standard and the noise level concerned in each month of the past year;*
- (c) of the number of flights that took off in the northeasterly direction and deviated from the "Standard Instrument Departure" (SID) tracks between 11 pm and 7 am over the past year; the reasons for the deviation and whether the noise generated exceeded the standard level; and what follow-up actions have been taken; and*
- (d) as the present measures fail to fully abate the nuisances of aircraft noise to Tsing Yi residents, what further measures will be adopted to completely resolve the problem?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President,

- (a) In the past year from 1 March 2002 to 28 February 2003, the CAD received 322 complaints about aircraft noise. Of these complaints, 11 were about Tsing Yi.
- (b) Noise impact caused by aircraft take-off and landing in Hong Kong is assessed on the basis of the internationally accepted Noise Exposure Forecast (NEF) Contour. The contour is determined after taking into account factors including the decibel levels of aircraft noise, the tonal characteristics as well as the duration and frequency of overflying flights at different times of the day. As compared to measuring only the decibel levels, the NEF model can reflect more comprehensively and appropriately the noise impact caused by aircraft take-off and landing. Hong Kong currently adopts the NEF 25 Contour. This standard is comparable to, or

even more stringent than the standards adopted in many other countries.

According to the Hong Kong Planning Standards and Guidelines, all noise sensitive developments, including residential developments, are prohibited within the NEF 25 Contour. Tsing Yi is outside the NEF 25 Contour and the aircraft noise levels experienced there are in compliance with the current planning standards.

- (c) In the past year from 1 March 2002 to 28 February 2003, of all the aircraft taking off in the northeasterly direction between 11 pm and 7 am, only 0.56% or 66 flights deviated from the SID track designed to mitigate noise impact (that is, the flight path over the West Lamma Channel).

The main reason for the abovementioned deviation from the SID track was weather, including wind speed, wind direction or the need to avoid rain clouds. When an aircraft deviates from the SID track due to the effect of weather, air traffic controllers will immediately radar vector the aircraft away from populated areas as far as possible. If deviation of flights from the SID track was not weather related, the CAD will request the airline concerned to investigate and follow up with improvement measures.

As to whether the noise level of flights which had deviated from the SID track had exceeded the current standard, as explained in part (b) of my reply, Hong Kong adopts the internationally accepted "NEF Contour" to assess aircraft noise. The standard we currently adopt is the "NEF 25 Contour". This assessment model does not use the decibel level of one flight as the assessment criterion.

- (d) The CAD has adopted the following measures to minimize the impact of aircraft noise:
  - (i) arrange flights departing Hong Kong between 11 pm and 7 am in the northeasterly direction to use the south-bound flight path over the West Lamma Channel to avoid overflying the more densely populated areas in Kowloon and Hong Kong Island;

- (ii) arrange flights arriving in Hong Kong between midnight and 7 am to land from the southwest in order to reduce the number of aircraft overflying Sha Tin, Kwai Chung, Tsing Yi, Tsuen Wan and Sham Tseng at night;
- (iii) aircraft approaching from the northeast between 11 pm and 7 am have to adopt the Continuous Descent Approach when landing to reduce aircraft noise impact on areas such as Sai Kung, Tseung Kwan O and Ma On Shan;
- (iv) all aircraft taking-off towards the northeast are required to follow the noise abatement take-off procedures prescribed by the International Civil Aviation Organization to reach a higher altitude within a shorter distance, to minimize aircraft noise impact on areas near the airport; and
- (v) with effect from 1 July 2002, the CAD has banned all Chapter 2 wide-bodied subsonic jet aircraft which has a higher noise level, as defined in Volume I, Annex 16 of the Convention on International Civil Aviation, from landing and taking-off at the HKIA.

The CAD will continue to closely monitor aviation technology developments at the international level and study all possible noise mitigation measures.

### **Handling of Financial Matters by Staff for Hostel Residents**

11. **MR MICHAEL MAK** (in Chinese): *Madam President, regarding the handling of financial matters by the staff of care and attention homes, long stay care homes for mental patients and hostels for mentally handicapped persons on behalf of their residents, will the Government inform this Council:*

- (a) *whether it knows the current number of residents in each of the above institutions which are managed by the Hospital Authority (HA) or subsidized by the Social Welfare Department (SWD) and, among them, the numbers of those whose financial matters are handled by the staff of the institutions;*

- (b) *whether it knows the ranks and number of the staff who are authorized to handle financial matters on behalf of the residents, the type of financial matters being handled, and the average number of residents whose financial matters are handled as well as the average amount of money being dealt with each year by each of the staff;*
- (c) *of the total amount of reported cases or complaints received in the past five years regarding suspected stealing of money from the residents by the staff of these institutions, the number of prosecutions instituted against the staff concerned and the penalties imposed by the Court on those convicted; and*
- (d) *whether and how the institutions concerned imposed their own punishments on the staff who have been convicted by the Court?*

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Chinese):

Madam President, at present, the SWD provides residential services for people with disabilities and the elderly primarily through financial subventions to non-governmental organizations (NGOs). Amongst these residential services, long stay care homes are for mentally ill patients with long-term residual disabilities whilst Hostels for Mentally Handicapped Persons are for people with varying degrees of mental handicap. Residential services for elders suffering from poor health or physical/mental weaknesses are provided in care and attention homes (including those for the Aged Blind) and Nursing Homes. The number of these residential service units currently exceeds 300.

- (a) At present, there are 980 places in long stay care homes, 725 in care and attention homes for the Aged Blind and 5 223 in Hostels for Mentally Handicapped Persons. In addition, there are 17 177 subsidized places in care and attention homes and 1 484 subsidized places in Nursing Homes for the elderly. We do not maintain data on the number of these residents who require assistance from staff on personal financial matters.
- (b) All subvented residential service units are required by the SWD to implement a set of Service Quality Standards to ensure service quality in meeting the needs of residents. As a result, service units

are required to establish policies and procedures to ensure the protection of residents' private property. In respect of residential care homes for the elderly, they are also closely monitored under the Residential Care Homes (Elderly Persons) Ordinance and its subsidiary regulation which require homes to maintain records of all property held on behalf of their residents.

- (c) We do not keep centralized statistics on the number of cases or complaints regarding suspected stealing of money from residents by staff in these residential service units.
- (d) Persons involved in criminal offences are dealt with according to the law. Staff in these residential service units are no exception. Subvented agencies are required to have effective human resource management policies and procedures, including appropriate disciplinary procedures to guard against staff misconduct.

### **Computer Crimes**

12. **MR SIN CHUNG-KAI** (in Chinese) *Madam President, regarding computer crimes, will the Government inform this Council:*

- (a) *how the detection rates of computer crimes compare with those of other crimes in the past three years; if computer crimes had lower detection rates, of the reasons for that;*
- (b) *of the respective numbers of staff responsible for the investigation of computer crimes in law enforcement departments, and the changes in the numbers over the past three years;*
- (c) *of the criteria for selecting law enforcement officers for the investigation of computer crimes; whether pre-job training or relevant academic qualifications are included in the criteria; whether the authorities have assessed if these criteria can ensure the officers' capability in investigating crimes committed with computers and information technology; if they have, of the assessment results; and*



- (d) *whether it has plans to provide additional resources to ensure that the knowledge of computer forensic examiners can cope with computer crimes; if it has, of the details of the plans and the resources required?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President,

- (a) "Computer crimes" generally refer to the following types of crimes:
- (i) crimes directly targeting computers or computer systems (for example, illegal intrusions into computer systems, commonly known as hacking);
  - (ii) crimes committed through the use of computers (for example, copyright piracy on the Internet); and
  - (iii) crimes where computers may merely be incidental to the offences (for example, placing of advertisements on the Internet to attract customers to buy pornographic articles).

Computer crimes are mainly handled by the police and the Customs and Excise Department (C&ED). The detection rates of computer crimes and other crimes handled by the police in the past three years are tabulated as follows:

<i>Year</i>	<i>Total number of cases</i>	<i>Overall detection rate</i>	<i>Number of computer crime cases</i>	<i>Detection rate of computer crime cases</i>
2000	77 245	43.6%	368	23%
2001	73 008	44%	235	20.4%
2002	75 877	42.7%	272	21%

All the computer crimes handled by the C&ED involve copyright piracy on the Internet. The numbers of this type of cases in 2000, 2001 and 2002 were six, three and five respectively, and they were all detected by the C&ED.

As the circumstances involved in each type of crimes may affect to a varying degree the search for leads, gathering of evidence and the progress of investigation, the detection rates of individual types of crimes may be higher or lower than the overall crime detection rate. As far as computer crimes are concerned, the following circumstances may have a bearing on the difficulties in their detection:

- (i) Regarding the search for leads, the police need the co-operation of Internet service providers to provide relevant technical information. For example, in hacking cases, it is common for the perpetrators to make use of the victims' Internet accounts for dial-up Internet access. This makes it difficult for the police to follow up relevant leads.
  - (ii) Regarding the gathering of evidence, many victims are not aware of the necessity to preserve the evidence in their computers. They usually reset or update their computer immediately after their computers have been hacked into, destroying the evidence useful to investigation.
- (b) The Computer Crime Section of the police is responsible for the investigation of computer crimes and operates a computer forensic laboratory to provide technical support for forensic examination of electronic evidence. The number of officers in the Section has been increased from 17 in 2000 to 42 in 2002.

The Anti-Internet Piracy Team of the C&ED is responsible for investigating copyright piracy on the Internet. The Team had an establishment of seven members from 2000 to 2002. In November 2000, the C&ED set up a computer forensic laboratory staffed by three officers. They are responsible for providing computer forensic technical support for examining and verifying the electronic evidence contained in seized computer systems.

The Immigration Department set up a Computer Crime Unit in 2001 to handle immigration cases involving computer crimes. At that time, the number of officers in the Unit was six, and increased to eight in 2002.

The Computer Forensics and Research and Development Section of the Independent Commission Against Corruption is responsible for handling computer forensic matters and assisting in the investigation of crimes involving computers. There were seven officers in the Section from 2000 to 2002.

- (c) Selected law enforcement officers for computer crimes ought to be holders of diplomas in computer studies, or possess basic knowledge in computer operation. They would receive basic training in the investigation of computer crimes. In addition, law enforcement departments will arrange for these officers to take relevant computer courses in suitable local or overseas professional institutes so as to enhance their computing knowhow and investigation skills of computer crimes. Regular assessments are made on their performance, including their investigation skills, knowledge and awareness of technological development. The selection, training and assessment arrangements can ensure that law enforcement officers are competent in the investigation of computer crimes.
- (d) Law enforcement departments will reserve adequate resources every year for the purpose of training officers responsible for computer forensic work, so as to ensure that they have the knowledge to tackle computer crimes. The relevant training programmes include collaboration with overseas law enforcement agencies in designing professional training courses on the investigation of computer crimes, arranging for law enforcement officers to receive relevant overseas training, and enhancing the exchange of computer forensic knowledge and skills with local professional institutes and the industry.

### **Abuse of the Protection of Wages on Insolvency Fund**

13. **MS EMILY LAU** (in Chinese): *Madam President, it has been reported that, in the first 11 months in 2002, more than 21 000 applications were received from employees for ex gratia payment from the Protection of Wages on Insolvency Fund (PWIF), which was 30% higher than those for the same period in the previous year, and that some employers have dishonestly shifted to the PWIF their liability to pay wages, for example, by transferring away their*

*companies' property. In this connection, will the executive authorities inform this Council:*

- (a) of the measures in place to educate and encourage employees to report to the Labour Department (LD) early on default wages payment, so as to protect their own rights and interests;*
- (b) of the effectiveness of the new measures taken in recent months to guard against abuse of the PWIF; and*
- (c) whether they will consider amending the legislation to increase the penalty for abuse of the PWIF, in order to enhance the deterrent effect?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President,

- (a) The LD is very concerned about late payment and underpayment of wages by employers. Under the Employment Ordinance, an employer should pay wages to his employee not later than seven days after the end of the wage period or the day of termination of employment. Any employer defaulting on wage payment is liable to prosecution. The maximum penalty, upon conviction, is a fine of \$200,000 and imprisonment for one year. Furthermore, the employer is required to pay interest on the outstanding amount of wages to the employee.

To protect the rights of employees, the LD has strengthened its educational and promotional efforts to urge employees to seek assistance from the Department should their employer fail to pay them wages within seven days after the end of a wage period or the day of termination of employment. We always encourage employees to come forward as witnesses to help the LD prosecute their employers for breaching the labour laws. Our educational and promotional activities include the following:

- Distributing publicity leaflets and posters at offices of the LD, the Labour Tribunal and trade unions, reminding employees

to make early report of wage default cases and come forward as prosecution witnesses.

- Reminding employees, through the media including newspapers, television, radio as well as the LD's homepage and Telephone Enquiry Service, to promptly report wage default cases.
- Conveying the message to employees through workshops and briefings.
- Appealing to representatives of trade unions at meetings of the industry-based tripartite committees.
- Establishing a special reporting system with trade unions in the construction industry to facilitate them in referring complaints on wage default cases promptly to the LD for follow-up action.
- LD officers will, in the course of their inspections to workplaces, proactively ask employees whether there are incidents of default payment of wages.

At the same time, we have also made use of the following channels to remind employers that wages must be paid on time, and that non-payment of wages is a serious offence:

- the LD's regular newsletters to 100 000 employers; and
  - the nine industry-based tripartite committees and the 18 human resources managers clubs covering 18 different industries.
- (b) In 2002, the PWIF received 23 023 applications for *ex gratia* payment, an increase of 4 985 applications or 27.6% as compared with 18 038 applications in 2001. To prevent abuse, the Administration, together with the Protection of Wages on Insolvency Fund Board (Fund Board), has adopted the following new initiatives:

- A Task Force comprising representatives of the LD, the Official Receiver's Office (ORO), the Commercial Crime Bureau (CCB) of the Hong Kong Police Force and the Legal Aid Department has been formed to proactively investigate allegations of fraud, theft and conspiracy by employers.
- The LD has enhanced publicity on the importance of keeping wage and employment records, early reporting of wage default cases and fraudulent acts of employers in the course of the company's winding-up. We have also appealed to trade unions for their support in encouraging their members to come forward as prosecution witnesses.
- Apart from refusing unqualified applications and trimming inflated claims by applicants, the Wage Security Unit (WSU) of the LD will also step up enforcement and prosecution action by vigorously undertaking investigations into dubious cases.
- The WSU will take a more proactive role in attending to creditors' meetings in large insolvency cases with a view to assessing the chance of assets recovery and closely monitoring the liquidation process. It will also strengthen liaison with insolvency practitioners to prevent possible abuse of the PWIF.
- The Fund Board will monitor more closely applications received by the PWIF, in particular those involving huge payouts and a large number of applicants. If necessary, it will invite liquidators to brief members of the Fund Board on the progress of liquidation in respect of these cases.

Since the setting up of the inter-departmental task force in November last year, the LD has referred four cases involving suspected collusion between employers and employees to defraud the PWIF, to the CCB of the Hong Kong Police Force. Four cases of suspected breach of the Companies Ordinance have been referred

to the ORO. Furthermore, two cases of suspected breach of immigration legislation have been referred to the Immigration Department.

The CCB arrested two directors and 11 employees of a transportation company in January this year in connection with one of the cases referred by the LD. All other cases are still under investigation.

The Administration is concerned about possible abuse of the PWIF. We are confident that through close collaboration with, and rigorous enforcement by, concerned government departments, we should be able to prevent abuse of the PWIF.

- (c) Under sections 25 and 26 of the Protection of Wages on Insolvency Ordinance, any person who provides false information with an intent to deceive commits an offence and is liable to a fine of \$50,000 and imprisonment for three months. Moreover, where any payment is made to any person in respect of an application that is false, such payment shall be recoverable by the Fund Board from the recipient as a debt due to the Board.

Under section 168H of the Companies Ordinance, if any person whose conduct as a company director of an insolvent company, renders him unfit to be concerned in the management of a company, the Court can make a disqualification order against this person to act as a company director. The maximum period of disqualification is 15 years.

Under section 275 of the Companies Ordinance, in the course of a company's winding up, if a person is found to have an intent to defraud creditors when carrying on any business of the company, he will be personally responsible without any limitation of liability for all debts and liabilities of the company. The criminal liability under this section is a maximum penalty of unlimited fine and five years' imprisonment, if prosecuted on indictment, and a fine of \$150,000 and 12 months' imprisonment if prosecuted summarily.

Section 273 of the Companies Ordinance provides that any person who conceals or removes any of the company's property before the winding-up with intent to defraud creditors shall be guilty of an offence. The maximum penalty is a fine of \$150,000 and two years' imprisonment if prosecuted on indictment, and a maximum fine of \$50,000 and six months' imprisonment if prosecuted summarily.

If a more serious offence such as fraud or conspiracy to defraud is suspected to have been committed, the LD will refer the case, where appropriate, to the CCB or the ORO for investigation. Any person who is convicted of such offence is liable to imprisonment for up to 14 years.

We consider the levels of penalties provided under the existing laws adequate and we see no need to revise them at this stage.

### **Handling of Compressed Gas Cylinders**

14. **DR RAYMOND HO** (in Chinese): *Madam President, it was reported that a 200-odd-pound compressed gas cylinder containing compressed gases commonly known as refrigerants, and used for maintenance of central air-conditioning units, fell to the ground from a height in Stanley Street, Central. Some experienced air-conditioning mechanics suspected that the incident was caused by exposure of the cylinder to strong sunlight or mistakes in operating the cylinder, leading to the leakage of refrigerants from the cylinder and the consequential fall of the cylinder to the ground. In this connection, will the Government inform this Council:*

- (a) *of the number of incidents caused by compressed gas cylinders in each of the past three years;*
- (b) *of the connection of refrigerants with the above incident; and*
- (c) *whether, to prevent accidents, the authorities will strengthen their efforts to educate the relevant trade on the proper ways to handle compressed gas cylinders?*



**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President,

- (a) Compressed gas cylinders are generally used in industries to store compressed gases such as oxygen, nitrogen, acetylene, freon (commonly known as refrigerant), and so on.

The Labour Department keeps industrial accident statistics involving explosion or fire but does not have specific records of industrial accidents involving compressed gas cylinders. As regards fatal accidents, the records kept by the Labour Department indicated that in 2000, there were three workers killed in a gas explosion involving the use of acetylene cylinders in a gas welding workshop. In 2001 and 2002, there was no fatal accident involving compressed gas cylinders.

According to the Fire Services Department (FSD)'s records in the past three years, the number of incidents of gas leakage or fire involving compressed gas cylinders is as follows:

<i>Year</i>	<i>Number of incidents of gas leakage or fire involving compressed gas cylinders</i>
2000	118
2001	149
2002	93

Apart from the above records, the FSD does not have other records of accidents involving compressed gas cylinders.

- (b) According to investigation by the Labour Department, the incident occurred when a gas cylinder was being used to collect refrigerant from a chiller plant of the central air-conditioning system on the roof of a building. In doing so, the gas cylinder suddenly burst open at its bottom, causing it to ricochet off the roof and eventually plunge onto the street below. The accident was mainly due to the lack of proper maintenance of the gas cylinder involved. It failed to withstand the pressure of the refrigerant at the time of the incident.

- (c) The storage and conveyance of compressed gas cylinders are under the jurisdiction of the FSD in accordance with the Dangerous Goods (General) Regulations (Cap. 295). As regards publicity about the requirements for storage and conveyance of compressed gas cylinders, the FSD has maintained close liaison with the trade concerned and issued pamphlets for their reference.

The safe use and handling of compressed gas cylinders at the workplace are under the purview of the Labour Department. In accordance with the General Duties Provisions of the Factories and Industrial Undertakings Ordinance (Cap. 59), it is the duty of the proprietor to ensure that adequate information, instruction, training and supervision are provided for his employees on the proper use and handling of compressed gas cylinders. Proprietors have also been advised of their general duties and the safety precautions in respect of the use and handling of compressed gas cylinders by the Occupational Safety Officers of the Labour Department during routine inspections to their workplaces.

### **Cases of Wrong Prosecutions for Red-light or Speeding Offences**

15. **MR LAU KONG-WAH** (in Chinese): *Madam President, will the Government inform this Council of the respective numbers of cases, in the past three years, in which motorists put up a defence against prosecutions by the police for red-light or speeding offences and, among them, the respective numbers of proven cases of wrong prosecutions by the police, as well as the reasons for such wrong prosecutions?*

### **SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President, in the past three years, the police received 711, 600 and 608 objections in respect of prosecutions against drivers who disobeyed traffic signals or were involved in speeding activities, representing about 0.3% of the total number of prosecutions against the two offences. On average, about 80% of the objections received were found to be unsubstantiated after investigation. For the remaining cases which were substantiated, the police have terminated the proceedings related to the objections. Detailed breakdown of the objections received in 2000 to 2002 is set out at Annex.

The objection cases which were found to be substantiated and where the proceedings were subsequently terminated mainly involved cases with technical irregularities such as defective photos taken by the red light jumping cameras or the radars which showed an unclear image or more than one vehicle captured.

#### Annex

Objections in respect of prosecutions against drivers who disobeyed traffic signals or were involved in speeding activities

	2000		2001		2002	
(a) Disobeying traffic signals						
Unsubstantiated	178	(75.1%)	174	(85.7%)	240	(79.2%)
Substantiated	59	(24.9%)	29	(14.3%)	63	(20.8%)
Sub-total	237		203		303	
(b) Speeding						
Unsubstantiated	357	(75.3%)	334	(84.1%)	242	(79.3%)
Substantiated	117	(24.7%)	63	(15.9%)	63	(20.7%)
Sub-total	474		397		305	
(c) Disobeying traffic signals/Speeding (that is, (a) + (b))						
Unsubstantiated	535	(75.2%)	508	(84.7%)	482	(79.3%)
Substantiated	176	(24.8%)	92	(15.3%)	126	(20.7%)
Total	711		600		608	

#### Banned Movies

16. **MS CYD HO** (in Chinese): *Madam President, with regard to the movies banned from public screening in Hong Kong upon submission for the first time to*

*the Television and Entertainment Licensing Authority (TELA) for examination, will the Government inform this Council of the number of such movies between 1965 and the end of 1974, their titles, year of examination and place of production and the reasons for imposing the ban, as well as the number of those on which the ban was lifted upon excision, their titles and the year when the ban was lifted?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, according to the record of the TELA, a total of 357 films were banned from public screening upon first submission between 1965 and the end of 1974. Among them, 71 films were approved for public screening subsequently (46 of them were approved for screening upon excision, while the remaining 25 were subsequently approved for screening without excision). The reasons for banning these films from public screening are summarized as follows:

<i>Major reasons for banning the film from public screening</i>	<i>Number of films banned from public screening</i>	<i>Number of films approved for public screening upon excision</i>	<i>Number of films subsequently approved for public screening without excision</i>
A: Corrupt morals, cause deep shock or disgust, encourage crime, particularly crimes of violence	314	31	20
B: Provoke hatred between persons in Hong Kong of differing race, colour, class, nationality, creed or sectional interests	18	10	4
C: Damage good relations with other territories	16	2	-
D: Unwarrantably offend religious bodies	9	3	1
Total	357	46	25

Information on their titles, year of submission, place of production and the year in which they were subsequently approved for public screening is at the Annex.

## Annex

### Films banned from public screening between 1965 and 1974

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
1.	1965	CIRCLE OF LOVE	*	France	A	1966	
2.	1965	EMPTY CANVAS, THE	*	Italy	A		
3.	1965	GANG WAR	*	United States	A		
4.	1965	GLORIOUS FESTIVAL, A (NATIONAL DAY OF 1964)	光輝的節日	China	B	1965	
5.	1965	HILL, THE	*	United Kingdom	A		1965
6.	1965	KNACK AND HOW TO GET IT, THE	*	United Kingdom	A		1965
7.	1965	KU NO ICHI GESHO	*	Japan	A		
8.	1965	LAI FENG (LUI FENG)	雷鋒	China	B	1965	
9.	1965	LOVE AND GREED	*	Japan	A		
10.	1965	MURDERS IN THE NIGHT	黑夜殺人魔	Hong Kong	A		
11.	1965	NEW LIFE, A	*	Japan	A		
12.	1965	PAGEANT OF THE REVOLUTION	革命歷史歌曲表演唱	China	B		1965
13.	1965	PRELUDE TO THE EASTWARD MARCH	東進序曲	China	B		1977
14.	1965	PRIMITIVE LOVE	*	Italy	A	1965	
15.	1965	RED DETACHMENT OF WOMEN, THE	紅色娘子軍	China	B	1977	
16.	1965	SECRET OF BLOOD ISLAND, THE	*	United Kingdom	A		1965
17.	1965	SERFS	農奴	China	B	1977	
18.	1965	STRANGE VISITORS ON ICE MOUNTAIN	冰山上的來客	China	B	1965	
19.	1965	TRAITOR'S GATE	*	United Kingdom	A	1965	
20.	1965	VIET-CONG, TIGER OF THE MEKONG	*	The Philippines	C		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
21.	1965	WAVES ON THE SOUTHERN SHORE	南海潮	China	B	1998	
22.	1965	YELLOW TEDDY BEARS, THE	*	United Kingdom	A		
23.	1966	ATSUI YORU	*	Japan	A		
24.	1966	BLOOD AND BLACK LACE	*	Italy	A		1966
25.	1966	COMMON ENEMY OF THE PEOPLE THROUGHOUT THE WORLD, THE	世界人民公敵	China	C		
26.	1966	DANI	*	Japan	A		
27.	1966	DJANGO	*	Italy, Spain	A	1967	
28.	1966	EAST IS RED, THE	東方紅	China	B		1977
29.	1966	FOUR GIRLS EXPOSED	*	Japan	A		
30.	1966	GATE OF FLESH	*	Japan	A		1996
31.	1966	GODDESS OF THE NIGHT	*	Japan	A		
32.	1966	GREAT REVENGE, THE	*	Japan	A		
33.	1966	HOT LIFE, THE	*	Italy, France	A	1967	
34.	1966	HUNTER'S DIARY, THE	*	Japan	A		
35.	1966	I, A WOMAN	*	Denmark, Sweden	A		
36.	1966	JOTAI RAKUIN	*	Japan	A		
37.	1966	KAWAIKUTE SUGOI ONNA	*	Japan	A		
38.	1966	LET'S SPEAK ABOUT WOMEN	*	Italy	A		
39.	1966	LONG LIVE TO THE VICTORY OF THE PEOPLE'S WAR	人民戰爭勝利 萬歲	China	C		
40.	1966	LOST PARADISE, A	*	Japan	A		
41.	1966	MARRIED WOMAN, THE	*	France	A		
42.	1966	MINE GUERRILLA, A	節振國	China	A		
43.	1966	NIGHT HUNTER	*	Japan	A		
44.	1966	NYOHAN-HAKAI	*	Japan	D		
45.	1966	OSS 77 OPERATION FLOWERING LOTUS	*	Italy, France	A		
46.	1966	SEX PERILS OF PAULETTE, THE	*	United States	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
47.	1966	STRIKE THE AGGRESSORS	打擊侵略者	China	C		
48.	1966	UNHOLY DESIRE	*	Japan	A		
49.	1966	UNSATISFIED, THE	*	Spain	A		
50.	1966	WRATH IN THE COCONUT GROVES	椰林怒火	China	C		
51.	1966	WHO'S AFRAID OF VIRGINIA WOOLF?	*	United Kingdom	A		1967
52.	1966	WILD ANGELS, THE	*	United States	A		
53.	1966	YOUNG DILLINGER	*	United States	A		
54.	1967	BRUTE, THE	*	Japan	A		
55.	1967	CHAINED WOMEN	*	Japan	A		
56.	1967	CHINA - THE ROOTS OF MADNESS	*	United States	C		
57.	1967	ESCAPE FROM HELL	*	France	B	1969	
58.	1967	FRENCH WITHOUT DRESSING	*	France	A		
59.	1967	FROM VICTORY TO VICTORY	南征北戰	China	B	1967	
60.	1967	HELLS ANGELS ON WHEELS	*	United States	A		
61.	1967	KAMO	*	Japan	A		
62.	1967	KONJIKI NO HADA	*	Japan	A		
63.	1967	LIN TSE HSU (THE OPIUM WAR)	林則徐 [鴉片戰爭]	China	B		1983
64.	1967	LOOTERS, THE	*	France, Italy	A		
65.	1967	LORNA	*	United States	A		
66.	1967	LOVE STATUE, THE	*	United States	A		
67.	1967	PETTY GIRL, A	*	Japan	A		
68.	1967	PSYCHO A GO-GO	*	United States	A	1967	
69.	1967	RIOT ON SUNSET STRIP	*	United States	A		
70.	1967	SAND PEBBLES	*	United States	C		
71.	1967	SUICIDE SQUAD 8240	8240 敢死隊	South Korea	C		
72.	1967	SUMMER FIRES	*	United States	A		1967
73.	1967	TEN G-MEN	*	France, Italy	A		1968
74.	1967	TENTH VICTIM, THE	*	France, Italy	A		
75.	1967	THIS MAN DIED IN PASSION	*	Japan	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
76.	1967	TOPLESS STORY	*	Switzerland	A		
77.	1967	TUK CHUN TAI	特戰隊	South Korea	C		
78.	1967	TWO PISTOLEROS	*	Italy, West Germany	A	1967	
79.	1967	VICE DOCTOR, THE	*	Japan	A		
80.	1967	VIRGIN FOR THE PRINCE, A	*	Italy, France	D	1967	
81.	1967	YORU O NERAE	*	Japan	A	1967	
82.	1967	YOUNG WORLD, A	*	France, Italy	A		
83.	1968	17 (SEVENTEEN)	*	Denmark	A		
84.	1968	BATTLE BENEATH THE EARTH	*	United States	A		
85.	1968	BATTLE OF THE MODS, THE	*	Italy	A		
86.	1968	BRANDED TO KILLER	迷你煞星	Japan	A	1968	
87.	1968	CORRUPTION	*	United Kingdom	A		
88.	1968	FARANGEE	*	Pakistan	A		
89.	1968	GIRL ON A MOTORCYCLE, THE	*	United States	A		
90.	1968	GIRL WHO IS LOST, THE	*	Japan	A		
91.	1968	GREEN BERETS	越南戰火	United States	B	1968	
92.	1968	HISTORY OF JAPANESE TORTURE AND PUNISHMENT, THE	*	Japan	D		
93.	1968	JAAG UTHA INSAAN (JAGH UTHA INSON)	*	Pakistan	B		
94.	1968	JONE	情炎	Japan	A		
95.	1968	MONDO BIZARRO	*	United States	A		
96.	1968	MYSTERY AND THE PLEASURE, THE	*	United Kingdom	A	1968	
97.	1968	NAKED TEMPTATION	*	United Kingdom	A		
98.	1968	PENTHOUSE, THE	*	United Kingdom	A		
99.	1968	PLAY GIRLS	*	West Germany	A		
100.	1968	PLAYPEN	*	United States	A		
101.	1968	PRIMITIVE LONDON	*	United Kingdom	A		
102.	1968	RUINED BRUIN, THE	*	United States	A		



	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
103.	1968	SWEDEN, HEAVEN AND HELL	*	Italy	A		
104.	1968	SWEET RIDE, THE	*	United States	A		1968
105.	1968	THIS CRAZY, CRAZY WORLD	*	Italy	A	1968	
106.	1968	VOYAGE OF THE PHOENIX TO HAIPHONG	*	Canada	C		
107.	1968	WAR IN VIETNAM	*	South Korea	C	1968	
108.	1968	WOMAN FROM DENMARK, A	*	Denmark	A		
109.	1968	YORU NO AKUJO	東京應召女郎	Japan	A		1968
110.	1969	99 WOMEN	*	United States	A		
111.	1969	AFTER 2ND WORLD WAR VICTIM IN TOKYO	*	Japan	A		
112.	1969	ALL ABOUT WOMEN	*	France	A		
113.	1969	BIRDS IN PERU	*	United States	A		
114.	1969	BLACK ON WHITE (ATTRACTION)	*	Italy	A		
115.	1969	BLACK PEARL	黑珍珠	Hong Kong	A	1970	
116.	1969	BORN LOSERS	*	United States	A		
117.	1969	CONQUEROR WORM	*	United States	A		
118.	1969	CURSE OF THE BLOOD	*	Japan	A		
119.	1969	DELINQUENT YOUNGSTERS	飛男飛女	Hong Kong	A	1969	
120.	1969	DEVIL IN THE FLESH, THE	*	West Germany	A		
121.	1969	DEVIL'S DAUGHTER, THE	*	Japan	A		
122.	1969	DO IT WITH YOUR WIFE	*	Italy	A		
123.	1969	EASY RIDER	*	United States	A		1991
124.	1969	GLORY STOMPERS	*	United States	A		
125.	1969	HILDE & HANS	*	Italy	A		
126.	1969	HOOKED GENERATION, THE	*	United States	A		
127.	1969	HOUSE OF THE SLEEPING VIRGINS, THE	*	Japan	A		
128.	1969	I, A WOMAN NO. 2	*	Denmark	A		
129.	1969	IF	*	United Kingdom	A		
130.	1969	INOCHI KARETEMO	*	Japan	A		
131.	1969	INTIMATE REPORT	*	West Germany	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
132.	1969	JAPAN TEDDY GIRLS	*	Japan	A		
133.	1969	JUSTINE	*	Liechtenstein	A		
134.	1969	LADY HUNTER, THE	女狩	Japan	A		
135.	1969	LADY OF MONZA, THE	*	Italy	D	1975	
136.	1969	LOST SEX	*	Japan	A		
137.	1969	LOVE IN OUR TIME	*	United Kingdom	A		
138.	1969	MICHAEL AND HELGA	*	West Germany	A		
139.	1969	MOST DANGEROUS MAN IN THE WORLD, THE	*	United States	B		
140.	1969	NAKED TO HELL	*	West Germany	A		
141.	1969	PETER STUDIES FORM	*	United Kingdom	A		
142.	1969	PLEASURES OF THE BATH, THE	*	Switzerland	A	1969	
143.	1969	SACRIFICE, THE	犠牲	Japan	A		
144.	1969	SEATED AT HIS RIGHT	*	Italy	A		
145.	1969	SEX KILLERS INC.	*	West Germany	A		
146.	1969	SEX OF ANGELS	*	Italy	A		
147.	1969	SIN'S OTHER FACE	*	Italy	A		
148.	1969	WOLF GIRL	*	Japan	A		
149.	1969	WOMAN IN LOVE, A	*	United States	A		
150.	1969	WORSHIP OF THE FLESH, THE	*	Japan	A		
151.	1969	YOUNG ANIMALS, THE	*	United States	A		
152.	1970	ADVENTURERS, THE	*	United States	A		
153.	1970	ANDREA	*	West Germany	A		
154.	1970	BATTLE OF ALGIERS	*	Italy	A		1974
155.	1970	BEYOND THE VALLEY OF THE DOLLS	*	United States	A		
156.	1970	BOYS IN THE BAND, THE	*	United States	A		
157.	1970	DIARY OF A MAD HOUSEWIFE	*	United Kingdom	A		
158.	1970	EVA (EVA-THE FIRST STONE)	*	Sweden	A		
159.	1970	FEMALE ANIMAL	*	Spain	A		
160.	1970	FEUGO	*	United States	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
161.	1970	FOR MEN ONLY	*	United Kingdom	A		
162.	1970	FREEDOM TO LOVE (FREIHEIT FÜR DIE LIEBE)	*	West Germany	A		
163.	1970	GETTING STRAIGHT	*	United States	A	1970	
164.	1970	GUESS WHO'S COMING FOR BREAKFAST	*	West Germany	A		
165.	1970	JAPANESE SISTERS, THE	東瀛姊妹花	Japan	A		
166.	1970	KAMASUTRA (PERFECTION OF LOVE)	*	West Germany	A		
167.	1970	KASHMIRI RUN	*	United States	B		
168.	1970	KEGAREI	*	Japan	A		
169.	1970	KINMEN	金門	Taiwan	C		
170.	1970	LADY GODIVA RIDES	*	United States	A		
171.	1970	LADY OF VICE	*	Greece	A		
172.	1970	LAST GRENADE, THE	*	United Kingdom	B	1984	
173.	1970	LAST SUMMER	*	United States	A		
174.	1970	LESBOS, ISLAND OF DESIRE	*	Italy	A		
175.	1970	LOCK OF LOVE	慾鎖情枷	Hong Kong	A		
176.	1970	LOVE BY RAPE	*	West Germany	A		
177.	1970	LOVE CAMP 7	*	United States	A		
178.	1970	MAGIC GARDEN OF STANLEY SWEETHEART, THE	*	United States	A		
179.	1970	MARK OF THE DEVIL	*	West Germany	A		
180.	1970	MICHELLE	*	France	A		
181.	1970	MONIQUE	*	United Kingdom	A		
182.	1970	MY LOVER, MY SON	*	United Kingdom	A		
183.	1970	NATHALIE AFTER LOVE	*	Italy	A		
184.	1970	NO BLADE OF GRASS	*	United States	A		
185.	1970	NO MAN'S ISLAND	*	Italy	A		
186.	1970	PERFORMANCE	*	United Kingdom	A		
187.	1970	SCAVENGERS, THE	*	United States	A		
188.	1970	SECRET AFRICA	*	United States	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
189.	1970	SECRET SEX LIVES OF ROMEO AND JULIET, THE	*	United States	A		
190.	1970	SEDUCTION NINJA STYLE	*	Japan	A		
191.	1970	SEX AND LIFE	*	Japan	A		
192.	1970	SEX OBSESSED	*	Greece	A		
193.	1970	SEXLABYRINTH (IN THE LABYRINTH OF LOVE)	*	Italy	A		
194.	1970	SHADOWS IN THE DARK	*	West Germany	A		
195.	1970	SO INTIMATE	*	Greece	A		
196.	1970	SPECIAL FRIENDSHIPS	*	France	A		
197.	1970	THIS THAT AND THE OTHER	*	United Kingdom	A		
198.	1970	TIME FOR DYING, A	*	The Philippines	A		
199.	1970	TOKYO BATHS	*	Japan	A		
200.	1970	UKIYOE	浮世繪殘酷物語	Japan	A		
201.	1970	WAGES OF SIN, THE	*	Italy	A		
202.	1970	WILD GYPSIES	*	United States	A		
203.	1970	WILD PICKPOCKETS, THE	*	Japan	A		
204.	1971	ANATOMY OF ORGASM	*	West Germany	A		
205.	1971	ANIMAL, THE	*	United States	A		
206.	1971	AS THE NAKED WIND FROM THE SEA	*	Sweden	A		
207.	1971	AWAKENING, THE (L'AMOUR HUMAIN)	*	Canada	A		
208.	1971	BODY, THE	*	United Kingdom	A	1972	
209.	1971	CREATURES THE WORLD FORGOT	*	United States	A		1971
210.	1971	CURIOUS FEMALE, THE	*	United States	A		
211.	1971	DADDY DARLING	*	Italy	A		
212.	1971	DARING GIRLS	*	Japan	A		
213.	1971	DAUGHTER, THE (I, A WOMAN, PART III)	*	United States	A		
214.	1971	DEVIATION	*	Sweden	A		
215.	1971	DEVILS, THE	*	United Kingdom	D	1972	
216.	1971	EAGLES ATTACK AT DAWN	*	Israel	C		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
217.	1971	ENTERTAINING MR. SLOANE	*	United Kingdom	A		
218.	1971	FEMALE BUNCH, THE	*	United States	A		
219.	1971	FORBIDDEN LOVES	*	Japan	A		
220.	1971	GLASS HOUSES	*	United States	A		
221.	1971	GROUPIE GIRL	*	United Kingdom	A		
222.	1971	GUESS WHAT WE LEARNED IN SCHOOL TODAY	*	United States	A		
223.	1971	GUESS WHO IS SLEEPING IN MY BED	*	West Germany	A		
224.	1971	HAUNTED LIFE OF A DRAGON – TATTOOED LASS, THE	*	Japan	A		
225.	1971	HIGHWAY QUEEN	*	Israel	A		
226.	1971	HOT SPUR	*	United States	A		
227.	1971	INDEBTED FOR LIFE AND LOVE	還君明珠雙淚垂	Taiwan	C		
228.	1971	LEO THE LAST	*	United States	A		1971
229.	1971	LES LIAISONS PARTICULIERES	*	France	A		
230.	1971	LONELY VIOLENT BEACH, THE	*	Italy	A		
231.	1971	LOSERS, THE	*	United States	C		
232.	1971	LOVE AND MARRIAGE	*	United Kingdom	A		
233.	1971	LOVE BIRDS OR BACK IN THE SADDLE AGAIN (COME, MY LITTLE LOVEBIRDS)	*	West Germany	A		
234.	1971	LOVE ME LIKE I DO	*	United States	A		
235.	1971	LOVE VARIATIONS	*	United Kingdom	A		
236.	1971	LULLABY OF BARELAND, THE	*	United States	A		
237.	1971	MANTIS IN LACE (LILA)	*	United States	A		
238.	1971	MARRIED PRIEST, THE	*	Italy, France	D		
239.	1971	MONDO FREUDO	*	United States	A	1971	
240.	1971	MORE ABOUT LANGUAGE OF LOVE	*	Sweden	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
241.	1971	NAKED ANGELS	*	United States	A		
242.	1971	NUDE ONES, THE	*	Switzerland	A		
243.	1971	NUDIST PARADISE	*	United Kingdom	A		
244.	1971	OH CAROL	*	United Kingdom	A		
245.	1971	PERMISSIVE	*	United Kingdom	A		
246.	1971	PIECES OF DREAMS	*	United States	D		
247.	1971	PRIEST'S WIFE, THE	*	Italy, France	D		
248.	1971	PROSTITUTION TO-DAY	*	West Germany	A		
249.	1971	RELUCTANT NUDIST, THE	*	United Kingdom	A		
250.	1971	SECRET REPORT ON PROSTITUTION	*	France	A		
251.	1971	SHAFT	*	United States	A	1975	
252.	1971	SIXTYNINE	*	Finland	A		
253.	1971	SONG OF ROSES, THE	*	Japan	A		
254.	1971	SWEET MUSIC FILLS THE HEART	*	Sweden	A		
255.	1971	TAKE IT EASY	*	France	D		1972
256.	1971	TATTOOS OF HELL	*	Japan	A		
257.	1971	TENDER TRAP, THE	桃色陷阱	Hong Kong	A		
258.	1971	THAR SHE BLOWS	*	United States	A		
259.	1971	THREE BROTHERS THREE MACHINE GUNS	*	Italy	A		
260.	1971	TUMULT	*	Denmark	A		
261.	1971	WHAT DO YOU SAY TO A NAKED LADY	*	United States	A		
262.	1972	ABDUCTORS	*	United States	A		
263.	1972	ANY SPECIAL WAY	*	France, Holland	A	1972	
264.	1972	BACK STREET	血洒後街	Hong Kong	A	1972	
265.	1972	BRUTAL BOXER, THE	唐人客	Hong Kong	A	1972	
266.	1972	CALL-GIRLS	應召女郎	Hong Kong	A	1972	
267.	1972	CAMILLE 2000	*	France	A	1975	
268.	1972	CARNAL KNOWLEDGE	*	United States	A		1977

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
269.	1972	DAY OF THE WOLVES, THE	七大賊	United States	A		1972
270.	1972	DECAMERON, THE	*	Italy	A		1984
271.	1972	DIVORCEE, THE	*	United States	A		
272.	1972	EROS CENTER	*	West Germany	A		
273.	1972	EUGENIE	*	West Germany	A		
274.	1972	FAST KILL, THE	*	United Kingdom	A	1972	
275.	1972	FEMALE REVOLUTION	*	West Germany	A	1972	
276.	1972	FOUR DIMENSIONS OF GRETA, THE	*	West Germany	A		
277.	1972	GIRL IN 18 KARAT GOLD, THE (WITHOUT A STITCH)	*	Denmark	A		
278.	1972	GIRLS AT THE GYNAECOLOGIST	*	West Germany	A		
279.	1972	GOODBYE UNCLE TOM	*	Italy	A		
280.	1972	HUSBANDS REPORT, THE	*	West Germany	A		
281.	1972	INSPECTOR PERRAK	*	West Germany	A		
282.	1972	JOE	*	United States	A		
283.	1972	JOSEFINE MUTZENBACHER	*	West Germany	A		
284.	1972	LET IT ALL HANG OUT	*	Italy	A		
285.	1972	LOVE SWEDISH STYLE	*	United States	A		
286.	1972	LOVING AND LAUGHING	*	Canada	A		
287.	1972	MONDO CANE 2000	*	Italy	A		
288.	1972	NAKED COUNTESS, THE	*	West Germany	A		
289.	1972	NORMA	*	United States	A		
290.	1972	NUDEST SHOW ON EARTH, THE	*	Italy	A		
291.	1972	PINOCCHIO	*	United States	A		
292.	1972	PSYCHOMANIA	*	United Kingdom	A		
293.	1972	REDNECK	*	United Kingdom	A	1974	
294.	1972	SANDRA	*	United States	A		
295.	1972	SCHOOLGIRLS' REPORT	*	West Germany	A		
296.	1972	SEDUCTION OF INGA, THE	*	United Kingdom	A		
297.	1972	SEVEN TIMES A DAY	*	Canada	A	1972	

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
298.	1972	SEX URANAI	*	Japan	A		
299.	1972	SHATRANJ	*	India	B		
300.	1972	SLAUGHTER	*	United States	A		
301.	1972	STEPMOTHER, THE	*	United States	A		
302.	1972	SUGAR COOKIES	*	United States	A		
303.	1972	SUPER FLY	*	United States	A		
304.	1972	SURGING VIRGIN (NO.. SONO VERGINE)	*	Italy	A		
305.	1972	TAMING, THE	*	United States	A		
306.	1972	TIS PITY SHE'S A WHORE	*	Italy	A		
307.	1972	TRADER HORNEE	*	United States	A		
308.	1972	WITH THESE HANDS	*	United Kingdom	A	1972	
309.	1972	WOMEN, SEEK YOUR PLEASURE AT THE YELLOW HOUSE (THE YELLOW HOUSE AT PINNASBERG)	*	West Germany	A		1972
310.	1972	WORLD SEX REPORT (WELT-SEX-REPORT)	*	West Germany	A		
311.	1973	BED BUNNIES	*	West Germany	A		
312.	1973	CANNIBAL MAN, THE	*	West Germany	A		
313.	1973	CANTERBURY TALES, THE	*	Italy	A		1984
314.	1973	CHINESE DRAGON, THE	一條龍	Hong Kong	A		
315.	1973	CLASS OF '74, THE	*	United States	A		
316.	1973	DECAMERON SINNERS, THE (LOVE GAMES IN FLORENCE)	*	Italy	A		
317.	1973	FAREWELL BUDDY	過客	Hong Kong	A		
318.	1973	FURY OF THE YOUNG GODFATHER	*	Italy	A		
319.	1973	GAMES SCHOOLGIRLS PLAY, THE	*	West Germany	A		
320.	1973	GENTLY BEFORE SHE DIES (IRENE)	*	Italy	A		
321.	1973	HUNCHBACK OF THE MORGUE, THE	*	Spain	A		
322.	1973	I AM A NYMPHOMANIAC	*	France	A		



	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
323.	1973	LAST DECAMERON – ADULTERY IN 7 EASY LESSONS, THE	走私奇譚	Italy	A		1973
324.	1973	LAST TANGO IN PARIS	*	France	A	1975	
325.	1973	LITTLE SUPER MAN, THE	生龍活虎小英雄	Hong Kong	A		
326.	1973	MANDARIN, THE	滿洲人	Hong Kong	A		
327.	1973	MASSAGE PARLOR ‘73	*	West Germany	A		
328.	1973	ONE BY ONE	死對頭	Hong Kong	A		
329.	1973	RED HOT	*	Italy	A		
330.	1973	RIBALD DECAMERON, THE	*	Italy	A		
331.	1973	SALINA	浪子與處女	Hong Kong	A		
332.	1973	SCANDALS STORY	*	Italy	A		
333.	1973	SIN'S OTHER FACE	*	Italy	A		
334.	1973	SUBURBAN WIVES	*	United Kingdom	A		
335.	1973	SUPERIOR YOUNGSTER	卜霸王	Taiwan	A		
336.	1973	SWINGING PUSSYCATS, THE	金絲貓叫春	West Germany	A	1973	
337.	1973	THREE MUSKETEERS AND THEIR SEXUAL ADVENTURES, THE	*	West Germany	A		
338.	1973	UNDAUNTED, THE	十面威風	Taiwan	A		
339.	1973	VENGEANCE OF THE ZOMBIES	*	Spain	A		
340.	1974	AFRICA UNCENSORED	*	United States	A		
341.	1974	BIRD IN THE HAND, A	*	France	A		
342.	1974	CHINA BEHIND	再見中國	Hong Kong	C	1980	
343.	1974	DEADLY WEAPON	*	West Germany	A		
344.	1974	DORMITORY GIRLS	*	West Germany	A		
345.	1974	EROTIK IN BEIRUF	*	West Germany	A		
346.	1974	FIEBRE	*	Argentina	A		
347.	1974	FORBIDDEN DECAMERON	*	Italy	A		
348.	1974	LE FAVOLOSE NOTTI D'ORIENTE	*	Italy	A		
349.	1974	MALIZIA	*	Italy	A		
350.	1974	OH CALCUTTA	*	United States	A		

	<i>Year of first submission</i>	<i>English title</i>	<i>Chinese title</i>	<i>Place of production</i>	<i>Major reasons for banning the film from public screening</i>	<i>Year in which the film was approved for public screening upon excision</i>	<i>Year in which the film was subsequently approved for public screening without excision</i>
351.	1974	PERCY'S PROGRESS	喜迎春	United Kingdom	A	1974	
352.	1974	PRIVATE CLUB (CLUB PRIVE)	*	France	A		
353.	1974	RENT A SEX MACHINE (LIEBE DURCH DIE AUTOTUR)	*	West Germany	A		
354.	1974	SEX CONNECTION	*	Switzerland	A		
355.	1974	SON OF YELLOW DRAGON, THE	*	Hong Kong	A		
356.	1974	TIGER TIGER TIGER	虎虎虎	Hong Kong	A		
357.	1974	TURKS FRUIT (TURKISH DELIGHT)	*	Holland	A		

Note : Major reasons for banning the film from public screening

A : Corrupt Morals, cause deep shock or disgust, encourage crime, particularly crimes of violence

B : Provoke hatred between persons in Hong Kong of differing race, colour, class, nationality, creed or sectional interests

C : Damage good relations with other territories

D : Unwarrantably offend religious bodies

\* : No Chinese translation

## Conservation of Electricity

17. **MS EMILY LAU** (in Chinese): *Madam President, regarding the conservation of electricity, will the executive authorities inform this Council:*

- (a) *whether they have assessed the scope for reducing electricity consumption in various types of buildings, including government offices, commercial and industrial buildings, residential buildings; if so, of the assessment details;*
- (b) *of the effectiveness of the measures to encourage conservation of electricity among electricity users in government departments and private buildings; and*
- (c) *of the plans to strengthen efforts to educate and encourage government departments, the private sector and the general public to conserve electricity?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS**

(in Chinese): Madam President,

- (a) The Electrical and Mechanical Services Department (EMSD) has been conducting energy audits for public buildings since 1995 to identify areas of high power consumption and measures to enhance energy efficiency. So far, 154 public buildings have been audited. Subsequently, energy saving measures and facilities were implemented in these buildings, resulting in an annual reduction of power consumption by 14 000 MWh.

Using equipment of higher energy efficiency is an effective means to reduce power consumption. The Government Store and Procurement Regulations require that consideration be given to purchasing products with greater energy efficiency where appropriate. Major procuring departments such as the Government Supplies Department and the Housing Department have specifically included requirements for labels issued under the Energy Efficiency Labelling Schemes in their tenders for procuring certain electrical appliances.

The EMSD has recently developed energy consumption indicators and benchmarks for private offices and shops in Hong Kong to assist the private sector to compare the power consumption of their buildings with others and to identify possible power saving opportunities and appropriate measures.

So far, the EMSD has not developed energy consumption indicators and benchmarks for residential buildings as their power consumption is generally lower than that of commercial buildings.

- (b) The Government has been taking active measures to conserve electricity and save the electricity bill. For example, through shifting to bulk tariff rates and implementing other energy saving measures, the top 20 power consumers in the Government have achieved an estimated saving of \$78 million annually, representing about 4.5% of the total power tariffs for these departments.

To reduce power consumption on air-conditioning systems, the Government has implemented a pilot scheme since June 2000 to permit the use of fresh water for operating water cooled air conditioning systems in non-residential buildings at designated locations. So far, we have received 19 applications involving a total floor area of 1 million sq m with an estimated annual power saving of 11 400 MWh.

To encourage the construction sector to adopt the Government's Building Energy Codes which set out the basic energy efficiency requirements for buildings, we introduced a voluntary Energy Efficiency Registration Scheme for Buildings in 1998. Buildings meeting the requirements will be awarded a certificate of registration and allowed to display the "Energy Efficiency Building" logo for publicity. So far, more than 70 buildings have been registered under the Scheme.

In addition, the Government signed the Demand Side Management Agreements with the two power companies in May 2000, prompting them to introduce the Non-residential Energy Efficient Lighting Rebate Programme in 2000 and the Non-residential Energy Efficient Air-conditioner Rebate Programme in 2001. A total of about 54 000 MWh of power consumption was conserved by customers of the two power companies in 2000 and 2001 through the use of more energy efficient electrical appliances and green practices.

- (c) The Government attaches great importance to publicity and public education and will continue the following initiatives to encourage government departments, the private sector, and the general public to conserve energy:
- promoting energy efficiency and disseminating relevant information through various means, for example, Announcement of Public Interest in electronic media, an interactive website "EnergyLand", and the Energy Efficiency Centre at the Science Museum;

- organizing seminars for secondary school teachers and students and incorporating the relevant information into teaching materials;
- organizing seminars for property management companies and professional bodies to educate them on energy efficiency measures and technologies;
- facilitating non-governmental organizations such as the Consumer Council to provide accurate information about energy saving devices to the public;
- promoting the Energy Efficiency Labelling Schemes for domestic appliances and office equipment through seminars for suppliers/retailers; and
- conducting audits for the facilities of various government departments to explore further means of conserving electricity.

### **Shortage of Study Rooms**

18. **DR RAYMOND HO** (in Chinese): *Madam President, it is reported that due to a shortage of study rooms provided by the Government, some people have to turn to libraries for their study. In this connection, will the Government inform this Council:*

- (a) *of the number average seating capacity and opening hours of the study rooms in each of the 18 administrative districts in the territory;*
- (b) *whether there are plans to extend the opening hours of the study room, including keeping them open on public holidays; and*
- (c) *whether there are plans to provide additional study rooms or places for such purpose; if so, of the details?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Chinese): Madam President,

- (a) (1) At present, the Government operates or subsidizes the operation of study rooms through various channels. Details are as follows:
- (i) There are a total of 30 study rooms in major and district public libraries. On average, each study room has 170 seats.
  - (ii) Of the 20 Family Support Resource Centres under the Social Welfare Department (SWD) and 56 Children and Youth Centres, 115 Integrated Children and Youth Services Centres and 13 Community Centres under the non-government organizations, 129 are providing study/reading room facilities with an average seating capacity of 47 each.
  - (iii) The Education and Manpower Bureau (EMB) subsidizes non-profit-making organizations to operate 61 study rooms. Their average number of seats is 130 each.
  - (iv) The Home Affairs Department (HAD) sets up study rooms in three community halls. The average number of seats is 28 each.
  - (v) The Leisure and Cultural Services Department (LCSD) provides temporary study corners for students to prepare for examinations in the period from April to June each year in eight selected sports centres in urban districts. They provide an average number of 27 seats each.
  - (vi) The EMB operates a Temporary Study Room Scheme from 1 April to 30 June. Under the Scheme, the EMB hires a total of 36 classrooms from nine secondary and nine primary schools. Each classroom has an average seating capacity of 40.

The distribution of the above study room facilities in the 18 administrative regions is listed in the Annex.

- (2) The operating hours of study rooms operated or subsidized by the various government departments are different. Details are as follows:
  - (i) Study rooms in public libraries: During the non-examination period (January, February and June to December) except on New Year's day, the first three days of the Lunar New Year, Christmas Day, the day following Christmas day, and library closing days, the study rooms are open for 70 to 74 hours per week. On weekdays, they are open till 10 pm. During the examination period from March to May, all study rooms will extend their opening hours to seven days a week, including public holidays, from 8 am to 10 pm, and admission will be by three sessions (that is, morning, afternoon and evening).
  - (ii) Study rooms under the SWD's and non-government organizations' (NGOs) ambit: The normal opening hours of these are from 10 am to 10 pm and they will also be open during public holidays on a need basis. Other centres meanwhile will convert some of their activity rooms into study/reading rooms to meet the demand of students during examination seasons.
  - (iii) Study rooms under the EMB's ambit: Most of them operate on Monday to Friday from 2 pm to 10 pm and on Saturday from 9 am to 1 pm. Some operate from 9 am to 12 noon on Monday to Friday and from 2 pm to 6 pm on Saturday. Ten of them are open on Sunday. Some study rooms also extend their opening hours during March to June to facilitate students to prepare for examinations.

- (iv) Study rooms under the HAD's ambit: Two of the three study centres are in Tsuen Wan and they are open from 10.30 am to 1 pm and from 2 pm to 10 pm from Monday to Saturday. The one in Southern District is open from 2 pm to 5.30 pm from Monday to Friday. It is also open from 9 am to 12 noon on Saturday. These are closed on public holidays.
  - (v) Temporary study corners under the LCSD's ambit: They are located in three sports centres in urban districts and are open from March/April (subject to local demand) to end June, from 7 am to 11 pm daily, except for maintenance.
  - (vi) Temporary study rooms under the EMB's ambit: Those located in primary schools are open from 7 pm to 9 pm from Monday to Friday whilst those located in secondary schools are open from 7 pm to 10 pm from Monday to Friday. All of them are closed on public holidays.
- (b) At present, there are already some study rooms that are open on public holidays. Depending on the need, others will be open on public holidays or will extend their operating hours. To meet students' need during the peak of the examination period, the EMB also hires classrooms in schools as temporary study rooms. At present, the Government has no plan to further extend the opening hours of study rooms.
- (c) According to the present plans, the LCSD will open two new district libraries next year. These two libraries will provide 330 additional study room seats. Besides, the LCSD will extend the provision of temporary study corners to 29 recreation centres in 18 districts to meet the seasonal demand. The EMB will continue to operate the Temporary Study Room Scheme to provide additional study room facilities.



## Annex

Distribution of Study Room and Temporary Study Room Facilities Operated  
or Subsidized by the Government

<i>District</i>	<i>Libraries</i>	<i>Number of Study Rooms</i> <sup>Note 1</sup>			<i>Total</i>
		<i>SWD/NGO Facilities</i>	<i>Public Housing Estates</i>	<i>Community Halls</i>	
Central and Western	1	5			6
Islands	1	1			2
Eastern	2	12	1		15
Wan Chai	1	5			6
Southern	2	7	4	1	14
Yau Tsim Mong	2	6			8
Sham Shui Po	2	4	6		12
Kowloon City	2	5	2		9
Wong Tai Sin	2	6	6		14
Sai Kung	2	5	2		9
Kwun Tong	2	10	7		19
Sha Tin	1	13	10		24
Tai Po	1	7	3		11
North	2	4	3		9
Yuen Long	2	7	3		12
Kwai Tsing	3	13	7		23
Tsuen Wan	1	7	2	2	12
Tuen Mun	1	12	5		18
Total	30	129	61	3	223

## Note 1:

Libraries	—	study rooms in major and district public libraries
SWD or NGO Facilities	—	study/reading rooms under the SWD and NGOs
Public Housing Estates	—	study rooms run by non-profit-making organizations in public housing estates with refund or rent and rates by the EMB
Community	—	study rooms in Community Halls operated by the HAD

<i>District</i>	<i>No. of Temporary Study Room Facilities</i> <sup>Note 2</sup>		<i>Temporary Study Room Facilities</i>
	<i>Sports Centres</i>	<i>Temporary Study Rooms</i>	<i>Total</i>
Central and Western	1	1	2
Islands		1	1
Eastern		1	1
Wan Chai	1	1	2
Yau Tsim Mong	1	2	3
Sham Shui Po	3	2	5
Kowloon City		1	1
Wong Tai Sin	1	1	2
Sai Kung		1	1
Kwun Tong	1	1	2
Sha Tin		1	1
Tai Po		1	1
North		1	1
Yuen Long		1	1
Kwai Tsing		2	2
Total	8	18	26

Note 2:

Sports Centres	—	study rooms in sport venues set up by the LCSD during examination seasons
Temporary Study Rooms	—	temporary study rooms set up in schools by the EMB from April to June

### **Property Management of PRH Estates Included in Buy-or-Rent Option**

19. **MR JAMES TO** (in Chinese): *Madam President, Hoi Fu Court (HFC) in Tai Kok Tsui, the first public housing estate included in the Buy-or-Rent Option, comprises four blocks which are rented out and one already sold. As the owner-occupiers of HFC have set up the Owners' Corporation, the relevant departments consider it inappropriate for the tenants to form a mutual aid committee. It is learnt that some tenants consider that their interests have been compromised unfairly. Moreover, there are often divergence of views and conflicts between tenants and owner-occupiers on property management matters. In this connection, will the Government inform this Council:*

- (a) *given that the consent of all owners is required for amending the Deed of Mutual Covenant (DMC) of the estate, whether it will consider enacting laws to enable the splitting of the DMC concerned into rented-out and sold portions, so as to resolve the current property management problem of the estate; if it will, of the details; if not; the reasons for that; and*
- (b) *whether it has reviewed the circumstances under which property management of a public housing estate with both owner-occupiers and tenants is governed by a single DMC; if it has, of the results of the review and the specific solutions proposed?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Chinese): Madam President, housing estates under the Housing Authority's Tenants Purchase Scheme and Buy-or-Rent Option, and estates with flats sold after payment of premium under the Home Ownership Scheme, feature a mixed tenure of private owners and public housing tenants. These estates are comprehensive developments comprising residential blocks, commercial complex and other facilities through integrated planning and design. Each estate is managed as an integrated entity under a single DMC, and in accordance with the Building Management Ordinance (Cap. 344). This management arrangement is also used in large-scale private housing developments.

To protect the interests of tenants, the Building Management Ordinance provides for the formation of an "approved association" and its representation on the management committee of the owners' corporation to reflect tenants' views. In a public housing estate with mixed tenure of private owners and public housing tenants, the Housing Authority, being owner of the public rental flats, is represented on the management committee or at the general meeting of the owners' corporation. Through such representation, the Housing Authority reflects tenants' views on day-to-day estate management, thereby protecting their interests. The Housing Authority's representative on the management committee will also seek to reconcile any differences in views between private owners and public housing tenants, and encourage them to work together in the interest of the estate as a whole.

As regards HFC, the tenants formed the Tenants' Association in December 2001. A representative has also been elected to serve on the

Management Committee to ensure that tenants' interests are protected. At present, the day-to-day management of HFC is undertaken by the Management Committee in accordance with the DMC and the Building Management Ordinance. The Management Committee has been able to reach agreement and make satisfactory progress in major estate management matters such as security, cleansing and maintenance.

The Honourable Member has proposed to split the DMC for HFC into public housing rental and privately owned portions. The DMC is a legally binding contractual agreement. Its provisions and requirements have been clearly set out when HFC was offered for sale. All owners (including the Housing Authority) must observe and comply with the provisions and requirements under the DMC as a legally binding agreement, and should not seek to amend it without owners' unanimous consent. In the spirit of contractual agreement, and to avoid impacting on the rights of individual flat owners conferred on them by the DMC, we do not consider it appropriate to enact legislation to override the terms of the DMC in this case.

As mentioned above, management of a housing estate with mixed tenure of owners and tenants under a single DMC is a common arrangement in Hong Kong. Generally speaking, these large-scale residential properties (including public housing estates) are managed effectively. Notwithstanding, the Housing Authority will take into account its experience in managing different kinds of housing estates when formulating the management arrangement for mixed tenure estates to facilitate effective management and promote harmonious relationship between owners and tenants.

### **Restrictions on Temporary Residents in Guangdong Province Touring Hong Kong**

20. **MR HOWARD YOUNG** (in Chinese): *Madam President, it has been reported that, since 1 January this year, the Guangdong provincial authorities have implemented a new policy to allow temporary residents in eight cities of the Province to apply locally for visiting Hong Kong. However, they are not allowed to bring along their elderly parents whose permanent registered residence is not in these cities. When implementing this policy, some of these cities have imposed additional restrictions, such as a maximum of two visits to Hong Kong every year. In this connection, will the Government inform this*

*Council whether it has held discussions with the Central People's Government or the Guangdong provincial authorities about relaxing the above policy to allow temporary residents to bring along their elderly parents whose permanent registered residence is not in these cities to visit Hong Kong, and issuing instruction to lift the additional restrictions; if so, of the results of the discussions; if the policy will be relaxed and such instruction will be issued, of the effective date; if they will not, the reasons for that?*

**SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR** (in Chinese): Madam President, the Government has been working with the mainland authorities to adopt measures to facilitate mainland visitors travelling to Hong Kong to further promote the tourism industry. Our liaison efforts have resulted in a number of improvements in recent years, including the extension of the validity period for business visit endorsements, the abolition of the quota system of the Hong Kong Group Tour Scheme, the increase in the number of mainland travel agents authorized to organize group tours and allowing temporary residents in selected cities of Guangdong to apply at the local Guangdong authorities (that is, in the city in Guangdong where they reside) to visit Hong Kong. We are discussing with the mainland authorities concerned on details for Guangdong residents to visit Hong Kong in their personal capacity.

We have not discussed with the mainland authorities concerned the issue of allowing temporary residents to bring along their elderly parents whose permanent registered residence is not in those designated cities to visit Hong Kong. In order to allow more flexibility to mainland residents to visit Hong Kong, the SAR Government will discuss with the mainland authorities the possibility of adopting more flexible arrangements regarding necessary exit/entry controls and visit endorsements.

## **BILLS**

### **Second Reading of Bills**

#### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): Bill. We shall now resume the Second Reading debate on the Juvenile Offenders (Amendment) Bill 2001.

**JUVENILE OFFENDERS (AMENDMENT) BILL 2001****Resumption of debate on Second Reading which was moved on 14 November 2001**

**PRESIDENT** (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill will address this Council on the Report of the Bills Committee.

**MISS MARGARET NG** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Juvenile Offenders (Amendment) Bill 2001 (the Bills Committee), I shall address the Council on the highlights of the deliberations made by the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001 (the Bill).

The Bills seeks to implement the recommendations made by the Law Reform Commission (LRC) by amending section 3 of the Juvenile Offenders Ordinance to raise the minimum age of criminal responsibility from seven years of age to 10 years of age. It also introduces consequential amendments to the Reformatory Schools Ordinance. The recommendations made by the LRC also include the recommendation that the rebuttable presumption of *doli incapax* should continue to apply to children of 10 and below 14 years of age, that is, a child of that age group is presumed to be incapable of committing a crime, unless the presumption is rebutted by proof.

The Bills Committee has held seven meetings, including one meeting to listen to views of deputations and individuals.

While the Bills Committee and deputations generally agree that the existing minimum age of criminal responsibility should be raised, they have different views on whether the minimum age should be raised to 10, 12, or 14 years. The Bills Committee therefore has made reference to the minimum age of criminal responsibility in other jurisdictions and their experience.

The Bills Committee notes that there is no authoritative research or study on what should be the minimum age of criminal responsibility and the LRC Report of the Age of Criminal Responsibility in Hong Kong has pointed out that there is considerable disparity among different jurisdictions as to the minimum age of criminal responsibility, ranging from seven to 18 years, as it depends on

the social and cultural background of different communities and the degree of maturity among children. Hong Kong's current minimum age of seven years is at the lowest end.

Organizations and individuals that support raising the minimum age of criminal responsibility to 14 years of the view that the development process of children is such that a child under the age of 14 is unable to appreciate the gravity and consequence of his actions, nor is the child capable to comprehend criminal proceedings. According to them, the traumatic experience of being criminally prosecuted and convicted at such a young age will impose a stigma on a child and destroy his self-esteem which will not do any good to the effective rehabilitation of the child.

These deputations have pointed out that the United Nations Committee on the Rights of the Child (UNCRC) has criticized jurisdictions in which the minimum age is 12 years or less. They have also pointed out that in other jurisdictions including the People's Republic of China and Taiwan, the minimum age of criminal responsibility is set at 14 years. Moreover, other legislation in Hong Kong such as the Evidence Ordinance and the Criminal Procedure Ordinance recognize the age of 14 being the age at which a child can reliably be said to have reached maturity.

Some other deputations and individuals opine that it is acceptable for the Administration to adopt a step-by-step approach to raise the minimum age to 10 years in the first instance, and subsequently raise it to 12 or 14 years after a comprehensive review on the existing measures for dealing with unruly children. Some of these deputations have expressed the view that raising the minimum age further to 12 or 14 years in the absence of adequate support and rehabilitation services for child offenders will increase the possibility of children being exploited by adult criminals.

The Hong Kong Bar Association has given the view that while raising the minimum age of criminal responsibility to 10 years is the minimum step in the right direction, it will be more appropriate to raise it to 12 years.

Deputations and the Bills Committee consider that it is necessary to retain the presumption of *doli incapax* for children aged between the revised age and 14 years, in order to safeguard the interests of children who are above the revised

minimum age but below 14 years of age. This will ensure that only mature children are held criminally responsible for their acts.

In the course of deliberations, members of the Bills Committee generally share the view that it is the responsibility of society and parents to teach children right from wrong and to assist children in their development. Members opine that the approach should be to rehabilitate rather than to punish juvenile offenders. In this regard, members consider it most imperative to provide adequate support and rehabilitative services for juvenile offenders, and not merely amend the law to raise the minimum age of criminal responsibility to 10 years.

The Bills Committee notes that the international trend is to raise the minimum age of criminal responsibility and to adopt alternative measures to criminal court proceedings to handle juvenile offenders. In other jurisdictions such as Canada, the minimum age of criminal responsibility has recently been raised from the established common law rule of seven to 12 years of age.

After considering the arguments presented by the deputations and the Administration on setting the minimum age of criminal responsibility, the majority of members are of the view that merely raising the minimum age to 10 years in law is too modest a step and will not bring much improvement to the current systems or render more protection to children. These members consider that a child of 10 years of age cannot possibly distinguish between right and wrong, and even for those more mature children, they cannot fully appreciate the consequences of their wrongdoings and the resultant criminal proceedings. They also note that very few children below 10 years of age were arrested and charged for crime in past years, and most of the offences committed by children below 12 years of age were not serious in nature. For these reasons, these members consider that the minimum age should be set at 12 years, which is the usual age when a child has completed primary school education and acquired some understanding of the consequences of their acts.

At the Bills Committee meeting on 2 December 2003, a vote was taken on the question of whether the minimum age of criminal responsibility should be raised to 12 years. Six out of the eight members present at the meeting voted in favour of raising the minimum age to 12 years. The Administration was subsequently requested to consider whether or not it would propose relevant amendments.



At the Bills Committee meeting on 22 January 2003, the Administration informed members that it would not propose amendments to raise the minimum age to 12 years. The Bills Committee took a vote at the meeting on the question of whether Committee stage amendments should be moved by the Bills Committee to raise the minimum age to 12 years. Three out of the four members present voted in favour of the Chairman of the Bills Committee moving Committee stage amendments to raise the minimum age to 12 years. I would move a Committee stage amendment to this effect later.

Madam President, the Bills Committee has also discussed the adoption of measures other than the criminal justice system to deal with juvenile offenders. The Bills Committee has also urged the Administration to improve on the Police Superintendents' Discretion Scheme (PSDS) and other protective measures so that more appropriate services can be provided to children and juveniles at risk to help them come back onto the right track. In this regard, the Bills Committee has made the following suggestions:

- (1) The Administration should put in place more effective measures to ensure active participation of the cautioned offenders under the PSDS in the supportive/rehabilitative programmes and monitoring by their parents or guardian. These measures include the "conditional release" mechanism under which the young offender must successfully complete the supportive/rehabilitative programmes before a decision is taken by the police on whether or not to prosecute him.
- (2) A formalized system such as a family group conference should be set up to require the police, as soon as the child is arrested, to facilitate intervention by parents and professionals, such as social workers, teachers and psychologists, to ensure that the child's needs and welfare are fully assessed and appropriate services are rendered immediately.
- (3) As police officers may not have the necessary professional training, so different police officers may apply different standards in making referrals for services, thus the Administration should provide clear guidelines to police officers on referral for service.

The Administration has taken on board most of the suggestions made by the Bills Committee. For example, the police will adopt new measures to persuade parents of child offenders to accept support services. The police will also draw up a set of new guidelines to refer cases to the Social Welfare Department and the Education and Manpower Bureau. The Administration has also proposed that family group conferences can be held for juveniles given the second or further caution under the PSDS to draw up a plan of services or programmes to be given to the juvenile.

As to children in need of care or protection, the Administration is of the view that the present scope of application of care or protection orders as specified under section 34 of the Protection of Children and Juveniles Ordinance is sufficiently broad in justified cases to cover children and juveniles at risk, including those who have been convicted, those who are likely to commit criminal offences and those who are under the minimum age of criminal responsibility.

The Bills Committee has also urged the Government to conduct a general review of the juvenile justice system. The LRC in its Report on the Age of Criminal Responsibility in Hong Kong released in May 2000 has recommended that the Administration should conduct such a review. The purpose of the review is to ensure that there are effective alternatives to prosecution which on the one hand provide adequate security to the community, and on the other prevent errant youngsters from degenerating into hardened criminals.

In this regard, the Administration has informed the Bills Committee that a consultancy study was commissioned in mid-2002 to study on measures adopted by overseas countries in handling unruly children below the minimum age of criminal responsibility and mischievous juveniles above the minimum age. The Administration has undertaken that it will propose to raise the minimum age further from the age of 10 to 12 years when proposals for measures in handling unruly children below the minimum age of criminal responsibility are made.

As the review of the juvenile justice system involves policy matters which are outside the scope of the Bill, the Bills Committee has suggested that the Panel on Administration of Justice and Legal Services should be invited to consider what improvements should be made to the juvenile court system, and follow up the findings of the consultancy study commissioned by the Administration.

With regard to the Committee stage amendments on the transitional arrangements and consequential amendments proposed by the Administration, the Bills Committee does not hold any divergent views.

Madam President, the Bills Committee supports the resumption of the Second Reading debate of the Bill. I would like to take this opportunity to thank members of the Bills Committee for their co-operation, serious deliberations on the Bill and the constructive suggestions they have tendered.

Madam President, with your permission I would like to make a short speech on the Bill in my personal capacity.

Madam President, the contents of this Bill are in fact very simple as they seek to amend only the numbers on age, and the changes are not very great either, for at present, very few children below 10 years of age are arrested. So even if the Bill is not passed today, no substantial impact would be caused to the realistic situation. But why did the Bills Committee hold seven meetings and spend such a long time? The only reason that this is the only opportunity that Members of this Council can exert pressure on the Government to make some improvements on some long-standing issues related to the handling of child and juvenile offenders.

When we approached people from the social work and legal professions, we found that they were very worried about this. Not only did they feel that the minimum age of criminal responsibility, that is, seven years of age, was too low, they were more concerned about the question of the so-called matching measures. The real problem is: Irrespective of which age is the minimum age of criminal responsibility set, they are worried that children or juveniles below this age would not be getting matching care and attention. That is to say, if they have done something mischievous or when they are on the verge of breaking the law, what kind of care and attention will they get?

In addition, for those children who are above this age, not every one of them should be handed over to the Court and be subject to criminal proceedings under relevant laws. For that would not do any good to their personal growth and that may have some adverse impact on the development of their sense of responsibility or self-esteem in future. So we are gravely concerned. If when this Bill is passed, only the numbers of age are changed and the matching measures remain unchanged, then we are not making any contribution to society.

Moreover, we will have let slip an opportunity of improving our outdated measures on handling child and juvenile suspects.

Madam President, owing to the above reasons, we have spent a lot of time on discussions with the Government to study how the minimum age of criminal responsibility can be changed with this Bill on the one hand, and the matching measures can also be changed on the other. We hope that with the passage of this Bill, the actual system in this regard and the handling of these child and juvenile suspects can be changed. Those in the service of these young people, such as social workers, voluntary workers and the legal profession, all think that they should be given more means to handle this difficult issue.

We also notice that this is in fact our only opportunity, for the Government has accorded a very low priority to such matters. Had this Bill not been introduced for enactment, there might not even be enough resources to allow the Government to commission a consultancy study. So we think that we should follow this matter up. The future of those children and juvenile, especially those at risk, is of the utmost importance. Many people in society are spending a lot of efforts to care about these young people. They see where the problem lies, but there is no chance for this issue to be put on the agenda as other political issues. Therefore, the issue has been postponed time after time, and every time it is not given due attention. Therefore, the present occasion is really an important opportunity.

Madam President, although I think that the Bills Committee may not serve the purpose of improving these matching measures to the fullest, at least we believe this is a good start. If this momentum is sustained, it would lead to some substantive reforms in the benefit of the relevant institutions in Hong Kong.

Madam President, I so submit.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, I speak on behalf of the Democratic Party to support the resumption of the Second Reading of this Bill and to support raising the minimum age for criminal responsibility. In addition, we will support the amendment to be moved by Miss Margaret NG on behalf the Bills Committee to raise the minimum age for criminal responsibility from 10 years of age to 12.

We all know that the crux of the problem related to the discussions on the minimum age of criminal responsibility is to assist child offenders in attaining healthy development. We will never want these children to embark on a long criminal career just because of committing one or two offences. We also hope that the adoption of certain procedures will help minimize the chances of these children breaking the law again.

I support raising the minimum age of criminal responsibility from 10 to 12 years of age. However, there are actually arguments in the community on this issue, and there are differences in opinion even within the Democratic Party. Some people think that the minimum age should be 10 years, some others think it should be 12, while yet some others think that it should be 14. In the end, we came to agree that the age of 12 would be a rather suitable threshold. Miss Margaret NG mentioned earlier that the age of 12 years is an important milestone for children as they will begin their secondary schooling at this age. When children leave primary school and begin their secondary school studies, often they will have a feeling that they have grown up. So they are in high spirits. They have this feeling of maturity, though it is a change from being in the most senior class in primary school to being in the most junior class in secondary school. So the transition from primary schooling to secondary school education is a very important milestone in the development of children. When we examine the crime rates and figures, despite the slight growth in those for 10-year-old offenders, there is a marked increase for the 12-year-olds. It is therefore appropriate to set the minimum age of criminal responsibility at 12 years.

As I have said, irrespective of which age is set as the minimum age of criminal responsibility, the most important thing is what can be done to help these children. So my greatest concern is however the overall matching measures. I do not care so much about what exactly is the age of criminal responsibility, for I think that child offenders both above and below that age all need help. We should consider how these child offenders can be helped. With respect to the question of what should be set as the minimum age of criminal responsibility, sometimes I would question why such a simple two-level system is drawn up. Can we devise a three-level system instead? Can we, for example, set up a standard for those at the age of 10, another for those at the age of 12, and then another one for those at the age of 14, 16 or 18?

In fact, can see that one of the reasons for disputes with respect to this issue is that this is a question of statistics and that the degree of maturity differs at each age of the child. Every age in a young person may mean substantial and concrete changes. This would have an effect as to whether or not the young person would continue to commit offences or how the judicial proceedings would affect him. The issue is very complicated and it cannot be solved simply by setting an age as the minimum age of criminal responsibility.

I am glad that the Bills Committee can hold some in-depth discussions on all these matching measures. As Miss Margaret NG has said, the issue has already been discussed many times, and those involved in the work among young people have also taken part in this. Perhaps it is because of the priorities in the Government, or that the Security Bureau has been busy, or that there has been a problem in arranging a schedule for the drafting of this Bill, that the issue can be discussed only this time. The Bills Committee has held seven meetings and spent several months on deliberations, but I think that there is still quite a lot of work to do. I hope that the Security Bureau and other relevant departments will make more efforts to improve and study the issue, in particular, on what can be done outside the judicial process. For example, we may consider the option of "conditional release" of juvenile offenders as proposed by Miss Margaret NG earlier and not to prosecute them. In other words, a decision on not to prosecute the juvenile offender will only be made when he or she has met certain requirements. I think this idea should be explored.

Another point is that given the change in judicial policy after the minimum age of criminal responsibility is raised, children under that age will not be able to take part in the Police Superintendent's Discretion Scheme (PSDS). I hope the Security Bureau can study into this or discuss with the Secretary for Justice to examine whether or not some adjustment can be made to the PSDS as a matter of judicial policy, even if its name will be changed as a result. This would enable assistance in the form of similar administrative procedures be made to child offenders whose age is below the minimum age of criminal responsibility. I have mentioned in the Bills Committee that caution is an action very often employed by police officers, and a caution must not necessarily be made only under the PSDS. It is because, for example, when a police superintendent sees someone being unruly on the street, he can walk up to that person and cautions him. That is why the giving of a caution by a police superintendent does not

have to be made under a formal system. Many ways of handling young offenders, especially the giving of a caution by a police superintendent, would also have substantial impact on parents, irrespective of whether that is called the PSDS or not. Any verbal warning given by a police superintendent would be helpful. So I hope that the Government would look into how matching measures can be put in place and how a plan similar to the PSDS can be provided to help child offenders.

Madam President, the Democratic Party will vote in support of the amendment proposed by Miss Margaret NG. Thank you.

**MR JASPER TSANG** (in Cantonese): Madam President, anyone who walks into the classroom of Primary Five or Six or Secondary One or Two students would be amazed by the vast differences among them. The differences of students from that age group do not only lie in their physique, but also in their intellectual development as they talk and behave. In some of these classrooms, I notice that the relationship of some of these students is not like that of brothers and sisters, and some are even like parents and children. Those who are less mature would be very child-like while those who are more mature would show the kind of care and attention to their classmates like those from grown-ups to the young people. This kind of phenomenon can be found in any classroom of the above age group.

Charles DICKENS in his book *Oliver Twist* penned a vivid portrayal of differences in such an age group. In reading this novel, we will note the differences between Oliver TWIST and his good friend "Artful Dodger". The former grew up in an orphanage but despite this upbringing, he was a very timid, innocent and weak character. He was rather ignorant of the outside world. When he was about 10 years old, he met Artful Dodger in a trip downtown. The latter was about his age, but much more sophisticated. Oliver could not understand what he said. Artful Dodger might be considered a hardened thief and when he was brought before the magistrate, he was not the least frightened. He showed a "couldn't-care-less" attitude when he was told that he would be put into jail. His age is about the same as Oliver's. That is why we can say that there are great differences between children of that age bracket. Students from the age group of 9 to 12 show this kind of great disparity at this stage of their development and it can be rightly said that it is a characteristic of the youngsters of this age group.

Apart from this kind of differences, as an education worker I also find that students of this age group do have tremendous potentials for moulding. Their behaviour at this stage of their development from childhood to adolescence is not predictable. Children of that stage of development have a very high degree of sensitivity and the experience they encounter may have very great impact on their later development. In education theories, there is a theory called "Pygmalion effect" and that is a term from Greek mythology which means if you regard someone as an angel, then that person will really become an angel; but if you regard a person as a crook, then he will really become one. So if there is any deviant behaviour in children of that stage of development, the experience that we give them will place them in a position of what they will later become. It is therefore important that they will be given a chance to correct themselves.

Now I would like to talk about the views of the Democratic Alliance for Betterment of Hong Kong (DAB) on the issue of the minimum age of criminal responsibility on the basis on these two characteristics. I think that it would be futile if we want to find out a definite age from theories of physiology or psychology of child development where children under such an age would not know the consequences of their acts and above which they should be able to know that they should be responsible for what they do. It would be simply impossible to find such a scientific demarcation line for precisely the reason that children of that age group have great differences in their degree of maturity. And even if they are placed under a homogenous socio-cultural environment, owing to various reasons, they will have great disparities in their development. It would be meaningless to draw a line, a line that will give us conscious knowledge that children above it will be held responsible for what they do, and that it will be unfair to require the same from children under that age.

As children have tremendous potentials for development, we should examine what kinds of channels we can offer these young offenders and what kind of environment we should place them in so as to ensure that they will not go astray again and that they can become good citizens instead of becoming a burden to society. So before we decide on the minimum age of criminal responsibility, we should see what kind of influence this would have on the children in reality if such a minimum age is set. The kind of question we need to ask ourselves is not whether children above or below such an age would really know that they should be responsible for what they do. Questions of this sort are meaningless. The question we should really ask is what kind of different



treatment that children above or below such an age would get if they commit an offence and what different options are available for them.

We know that under the existing laws of Hong Kong, children below the minimum age of criminal responsibility will not be subject to any legal sanction irrespective of what offences they have committed and they will not be prosecuted because of their age. The law enforcement departments cannot impose any mandatory measures on these children, for they simply cannot do so. Besides this minimum age of criminal responsibility, there is also a rebuttable presumption of *doli incapax*. The child in question may be prosecuted and convicted if the presumption is rebutted, but if this presumption is not rebutted and as the onus of rebutting the presumption rests with the prosecution, the child in question must be released.

When members discussed the issue in the Bills Committee, almost no one opposed raising the minimum age from seven years, and then a proposal was made to the Government to raise the minimum age to 10 years and later to 12 years. Madam President, we have the following view: Various counselling and rehabilitative services are provided by the Government presently to children of this age group, that is, those from eight or nine years of age to about 10. These have been mentioned by the Chairman of the Bills Committee and Dr LAW Chi-kwong earlier. But we think these are not enough. We think more efforts should be made by the Government and more improvements should be made. At present, when a child above the minimum age of criminal responsibility has committed an offence, the child will be subjected to various sanctions and restrictions imposed by the law enforcement departments; but for those children under that minimum age, there is not much that can be done. Children from 10 to 12 years of age are obviously stronger in physique than children of seven to eight years of age. They have greater physical strength and are able to do more things. Their thinking may be more mature. We are worried that if these children are exploited by criminals, the kind of illegal or destructive things they can do would be far graver. So for those children below the minimum age of criminal responsibility, there is indeed a possibility that they will come under the unchecked influence and manipulation of criminals. However, we are aware that if the minimum age is raised to 12 years of age, then there is really a lack of ways and means in counselling and rehabilitative services to help young offenders aged 10 to 12 correct themselves. On the contrary, there is a greater risk that they will be manipulated by criminals.

After weighing the pros and cons, we think that the suggestion made in the amendment is not a sensible approach. Therefore, the DAB supports the original proposal made by the Bill to set the minimum age at 10 years of age and we do not agree with the amendment proposed by the Bills Committee. However, Madam President, we agree very much with Miss Margaret NG and Dr LAW Chi-kwong who said in their speeches that what we should study is not merely a question of age, but more importantly, the issue of matching measures. The Government should think of more effective measures to help children of that age group so that young offenders will come back on to the right track. In this respect, we hope that the Government can honour the undertaking it has made during the scrutiny of the Bill and introduce a fine-tuned proposal for implementation as soon as possible.

Thank you, Madam President.

**MS CYD HO** (in Cantonese): Madam President, the various committees under the United Nations human rights covenants have expressed concern about the exceptionally low minimum age of criminal responsibility in Hong Kong over the past seven or eight years. In October 1996, the United Nations Committee on the Rights of the Child reached a conclusion and recommended that Hong Kong should undertake a review of the laws on the minimum age of criminal responsibility with a view to raising it with reference to the principles and provisions of the Covenant. In November 1999, the United Nations Committee on the International Covenant on Civil and Political Rights (ICCPR) called for the raising of the minimum age in Hong Kong to ensure that the rights of the child under Article 24 of the Covenant would be safeguarded. In May 2001, the United Nations Committee on Economic, Social and Cultural Rights urged the Hong Kong Government to revise the current minimum age of criminal responsibility at seven years to ensure that the rights of the child under Article 10 of the Covenant would be safeguarded.

The issue of minimum age of criminal responsibility has attracted extensive attention both in Hong Kong and abroad. Judging by world standards, the age of seven years is really too low for criminal responsibility. Our minimum age is only similar to some countries which names I do not wish to mention here. However, progress in this respect has been slow. In 1998, the Law Reform Commission (LRC) was invited to undertake a review of this. Consultation was made in 1999, a report was submitted in 2000 and a Bill was

introduced in 2001. But the legislative amendment proposed was only in a number, and that was to change the number from 7 to 10, without any matching measures coming along with this change. We are very disappointed at such a state of affairs. It is really the first time when I have joined a Bills Committee that has held seven meetings merely to discuss a number.

From the information provided by the Government, it can be seen that the LRC has advanced some arguments, thinking *inter alia* that a child under the age of 10 may not be able to distinguish right and wrong, nor realize the grave consequences of his or her acts. Thus it would be unfair in the view of the LRC to the child and detrimental to the child's development if we are to subject the child to criminal proceedings. In fact, it would be likewise applicable if the words "10 years of age" in the arguments of the LRC are replaced by "12 years of age" or "14 years of age". I agree very much with Mr Jasper TSANG when he said earlier that when we enter a classroom, we would find that the kind of relationship shown among the young people may vary from those of siblings and parent-child relationship to all sorts of others. Children of a similar age group may vary a lot in their intellectual development and such a difference may be more than that in physique. That is why it would not be appropriate if we just draw an arbitrary line without any concern for matching measures and drag these children into criminal proceedings. This will not help the rehabilitation of the children at all. It should not be made the focus of the issue as well. I believe what the Government is doing is to take such a rash course of action before the second hearing of the United Nations Committee on the Rights of the Child.

When the Bills Committee invited deputations to present their views on the issue, initially many front-line social workers did not dare to support raising the minimum age to 12. We were very surprised and even a bit outraged to learn this, for we did not see why social workers who should do the best they could to protect the children were taking such a conservative stand. After talking with the social workers, we found that it was due to the absence of a point of intervention, that is to say, when there are no criminal proceedings, they will not be able to come into contact with these children and hence it would be impossible to do any counselling work in future. After talking with the social workers, we came to the view that instead of discussing a particular minimum age, it would be much better if we can urge the Government to improve the entire set of matching measures so that young people with deviant behaviour may be given an opportunity of rehabilitation without being subject to prosecution.

The Government recently commissioned the City University of Hong Kong to undertake a study on overseas experience in relation to this issue. A seminar was held and I found it very useful. I would like to mention the experience in New Zealand in particular. New Zealand uses the method of family case conference. Sometimes the victim and his or her family members would also be invited to the conference and discussions are held with the young offender. The occasion can enable the young offender to know the feelings of the victim and also give the victim or the victim's family an opportunity to pardon the offender. In the conference, the remedies would be discussed, like compensations, voluntary service, and so on. Participants of the conference will have a better understanding of the deviant behaviour in question and the parties concerned will be pardoned and compensated and finally, the young offender can be accepted by the family and the community. This process is worthy reference to us.

However, work in this respect may lead to different results if it is spearheaded by different Policy Bureaux. In Hong Kong, the Policy Bureau which engages in discussions with the Bills Committee is mainly the Security Bureau which is in charge of enforcing criminal law. Officials from the Social Welfare Department did not attend so often the meetings of the Bills Committee and they did not speak so often. It seems that officials from departments in charge of youth matters under the Home Affairs Bureau have never appeared. This is entirely a remedial process for offenders and not a rehabilitative approach meant to improve the situation of young offenders and prevent them from turning into hardened criminals after having done something which is only a minor deviant behaviour.

Will the raising or lowering of the minimum age of criminal responsibility cause an increase in juvenile delinquency? The answer is in the negative. For example, in Belgium, the minimum age of criminal responsibility is 18 years, but the percentage of juvenile delinquents as a share of the crime rate of the entire population has been very steady over the past 20 years, that is, only about 2% and there have not been any great fluctuations. In recent years, there has even been a drop. From this it can be seen that the crux of the problem does not lie in the drawing up of an arbitrary age line and the question of whether or not prosecution should be initiated, it is on the contrary a question of education and rehabilitation.

I therefore urge the Government to, after receiving the findings of the study it has commissioned the City University of Hong Kong to conduct, put the findings into practice as an inter-departmental effort. More social and public resources should be provided to the young people concerned in the form of counselling and rehabilitation starting from the detection of deviant behaviour. That will be much better than applying harsh laws on them after they have become hardened criminals.

Madam President, I support very much the amendment proposed by the Bills Committee and I also hope other Members would also lend it their support.

**MS MIRIAM LAU:** Madam President, I rise to speak on my own stand in regard to this Bill, and the Honourable Mrs Selina CHOW will later on speak on the Liberal Party's stand in regard to the issue.

Madam President, I echo the sentiments of my colleagues who spoke before me in support of the raising of the minimum age of criminal responsibility to 12 instead of 10 as proposed by the Administration.

Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) urges that "the age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity". In my view, children under 12 are definitely immature. As the Honourable Jasper TSANG just said, there may be varying degrees of immaturity. However, a child that is less mature cannot be described as mature. Those of us who have experienced the bringing up of a child, and I believe that many of us around this Chamber have such experience, would know that this is very true. Children under 12 are less capable of making proper judgements or realizing the consequences of their own acts. They are easily influenced by their peers and may become delinquents. However, they are not criminals at heart. Furthermore, children within this age group do not yet have enough understanding about our legal system to competently stand trial. Under the current law, our Judges do not have the discretion not to record a criminal conviction against convicted offenders whatever may be their age. The result is that a young offender, may be by reason of a minor transgression of the law, committed under ignorance, playfulness or momentary greed, be branded as a criminal for the rest of his life, and I repeat, for the rest of his life.

The Government argues that children between 10 and 12 could easily be used by criminals for illegal activities if the minimum age of criminal responsibility is raised to 12. The problem of young children being used by criminals is a serious one. True enough, young children are vulnerable and may be used by true criminals as a tool for the commission of crimes. However, the problem cannot be solved by punishing the children, who themselves are victims. Neither can punishing the children deter the true criminals from continuing to make use of children for their criminal activities. To insist on punishing young children, who may merely be tools themselves, ignores the root causes as to why children come into conflict with the law in the first place. Surely, the target ought to be the true criminals who are behind the scene masterminding the crimes. These criminals ought to be apprehended and severely punished. They should be deterred from making use of and poisoning our young children.

The Government has agreed to review the possibility of introducing a system whereby conditional release may be granted to a juvenile delinquent to enable him or her to participate in rehabilitative programmes before a decision is made as to whether or not to prosecute. If such a system could be implemented simultaneously with the raising of the age of criminal responsibility, I would not oppose the minimum age of criminal responsibility being raised to 10 only because I believe that this would probably be a more effective way of really helping our young children.

However, the Government is not able to make any promise as to the possible date of implementation. For many years, Madam President, I have been advocating the raising of the age of criminal responsibility to the age of 14. Bearing in mind that the age of 14 is not an option before this Council, but the age of 12 is, I have therefore no alternative but to support the raising of the minimum age of criminal responsibility to 12. I support the amendment to be moved by the Honourable Margaret NG at the Committee stage.

Madam President, with these remarks, I support the Second Reading of the Bill.

**MR MICHAEL MAK** (in Cantonese): Madam President, I am also a member of the Bills Committee. I fully support the amendments put forward by Miss Margaret NG.

From my own experience of working with children, I feel that it is sad to see that the minimum age of criminal responsibility in Hong Kong is now fixed at seven years. Children of seven years of age are absolutely immature mentally and intellectually. However, what about children who have reached 10 or 12? In fact, it all depends on how we look at the issue and the kind of environment in which the child concerned grows up, or how he is shaped by the environment. I think if a child grows up in a vicious environment or if we cannot provide him with other matching measures to assist him, then the situation could be very bad.

The Secretary has said in this Chamber time and again that Hong Kong is not a crime city, and that it has a relatively low crime rate compared to other countries. If we look at the chart at Appendix IV to consider whether we should fix a certain age line under which the children will have no criminal responsibility, we can see that there have been seven-year-old children arrested since 1993, not to mention children aged eight, nine, 10, 11 and 12. If we discuss along this simple principle: That their arrests mean that they have committed offences, then we could further fix the minimum age at an even lower level, not just seven, but six, five or even four years. Therefore, I think the most important point is that we should determine whether he is mature mentally and intellectually and whether he has a motive in committing the offence. When I studied psychology, the most important point I learned was (I wish to remind Members of this) to find out whether a person had a motive in committing a crime, or whether he was in a state of mental confusion when the crime was committed. Talking about this point, I can say that in principle I support Financial Secretary Antony LEUNG in claiming that he actually did not have any motive in getting the "advantage". Therefore, in principle, I think he should not be penalized. However, the most important thing is, of course, whether he can furnish us with evidence to support his claim that he did not have such motivation at that time.

I think it is rather important that we should take a look at the growth, the upbringing and the education of the children or teenagers concerned. I hope Members can all support the proposal of setting the age of 12 years as the minimum age of criminal responsibility. If the proposal on the age of 12 is not passed, I reckon that the age of 10 would be passed. I hope that the relevant measures will emphasize education, instead of punishment. I never believe that punishment could help any people. Education is positive. And education has proved that we must use positive approaches before we can help others. Even if

this Bill is passed, I hope some other matching measures can be introduced to help these children, so that we can do something good for our next generation.

On the comparison with the situations in other countries, we can see that even our country, China, is doing better than Hong Kong. In mainland China, children under 14 years of age are exempted from any criminal responsibility. For other neighbouring countries, they all seem to be doing better than Hong Kong. But Singapore is an exception — its minimum age is set at seven years, which is not so good. However, many countries have set the minimum age of criminal responsibility at 12 years. For example, France has set it at 13, whereas many states in the United States have set the minimum age at 18. Therefore, in my opinion, as Hong Kong claims to be a cosmopolitan city, there are no reasons why the minimum age is not adjusted to 12. Besides, personally I think that the minimum age should be fixed at 14. However, under the present circumstances, I have not proposed any amendment. Finally, I support the proposal of Miss Margaret NG and consider that the minimum age of criminal responsibility should be set at 12 years.

Here, I hope all Members can support the amendment proposed by Miss Margaret NG. Thank you.

**MRS SELINA CHOW** (in Cantonese): Madam President, earlier on Ms Miriam LAU has expressed her personal views on this issue. In fact, we in the Liberal Party have also discussed the stand we should take in respect of the issue. A moment ago, I heard Mr Jasper TSANG say that there might be some significant differences among children aged between 10 and 12 in that they might display substantial differences in their intellectual maturity. In fact, the contrary can also be true. Some 10-year-old children could be as mature as "a father" in their intellectual development, whereas some 12-year-old children might just have a mentality of "a son". Actually, it is difficult for us to establish a direct relationship between the age of children and their intellectual maturity.

I know Ms Miriam LAU has very strong feelings about this issue. I have asked her and she has also mentioned this in her speech: Why does she think the minimum age of criminal responsibility should be set at 12? She said she actually thought it should be 14, instead of 12. However, as everyone seems to think that we should "take the mean", and I believe the Government is also slightly inclined to the thinking of "taking the mean". So, by taking the mean between seven and 17, it becomes 10. Therefore, Ms LAU takes the mean



between 10 and 14 to support setting the minimum age of criminal responsibility at 12.

Actually do we really strictly rely on that age line? I think the realistic situation may not be like that. Our consideration is: As the various matching services of the Government are so important, and the Government thinks that if the minimum age of criminal responsibility is set at 10, then all the matching services would be provided in a better banner, whereas there might be some difficulties if the minimum age of criminal responsibility is abruptly raised to 12. Should this be the case, we think, as the first step, we can support the proposal of raising the minimum age of criminal responsibility to 10.

However, we really hope that the Government can further raise the minimum age of criminal responsibility to 12 or 14 as soon as possible. It seems that the study conducted by the City Polytechnic University also suggests that the Government should gradually relax this in the right direction. If this is what the Government intends to do, we hope the time required to do it will not be too long. And if the direction is right, the minimum age in this regard should be raised further. Should the Government really implement this, I am not sure what Mr Jasper TSANG would think on the issue of intellectual maturity. We have talked to the Government and it seems that it also shares the same idea, that is, after the study is completed, and when the matching facilities of the Government are able to cope with the situation, it is prepared to raise the minimum age. With such an understanding, we support the original motion moved by the Government and oppose the amendment proposed by the Bills Committee.

Thank you, Madam President.

**MR MARTIN LEE** (in Cantonese): Madam President, I started my practice as a barrister in 1966. Soon after I became a barrister, I was very puzzled as I learned that the children of Hong Kong had to bear criminal responsibility since the age of seven. I did not have a child of myself at that time, and my son was born at a much later date. However, at that time I already thought that the minimum age of criminal responsibility should be set at 14 years. Today, I heard the speech of Ms Miriam LAU and found that all along she had also been supporting the idea of raising the minimum age to 14. I have heard Ms LAU deliver her speeches many time before. Every time when she speaks for her

constituency, she is always very earnest. But this time she was not speaking for her own constituency, yet her speech was even more brilliant, and I completely agree with her words.

Mr Jasper TSANG used to be a school principal. I strongly admire the first part of his speech, especially the part related to *Oliver Twist*. However, I feel that there might be some problems with his logic. I am saying this because, if his logic is correct, we may well be maintaining the minimum age of criminal responsibility at seven, and no change is necessary then. Therefore, I really hope that we will not let Hong Kong always stay so backward. Frankly speaking, as an international city, Hong Kong has been laughed at for many years for making seven-year-old children shoulder criminal responsibility. However, is there a need for us to raise the minimum age to 10 now? Or do we need to complete this process in two phases?

I also agree with the comments of Ms Cyd HO. But unfortunately, once the legislation is enacted by us, the relevant laws will be enforced by the Security Bureau. The law enforcement perspective of the Bureau is fully understandable. However, should this issue be handled by the law enforcement agency? Will social workers have completely different views? Therefore, within the Democratic Party, I also proposed to raise the minimum age of criminal responsibility to 14 years. Our present revised stand of supporting the proposal of raising it to 12 years is really "taking the mean". However, Mrs Regina IP may also say that the Government is also "taking the mean". In fact, if we really take the mean between seven and 14, the minimum age of criminal responsibility is not 10; it should be 10 and a half. So we still need to raise the minimum age a bit further. If it is already beyond 10, why do we not raise it further to 12? I hope the Liberal Party will support raising the minimum age to 12.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Juvenile Offenders (Amendment) Bill 2001 (the Bill) was tabled before the

Legislative Council for the First and Second Readings on 14 November 2001. The objective of the Bill is to raise the minimum age of criminal responsibility from seven years of age to 10 years of age. The amendment is proposed on the basis of the proposals in the Report on "The Age of Criminal Responsibility in Hong Kong" published by the Law Reform Commission (LRC) in May 2000. The proposals of the LRC would be implemented upon the passage of the Bill. The result of raising the minimum age of criminal responsibility is that no child below 10 years of age will be criminally responsible even if he has committed a criminal offence to obviate their going through any criminal proceedings that may have impact on their development.

I am grateful to Miss Margaret NG and other members of the Bills Committee on the Juvenile Offenders (Amendment) Bill 2001 (the Bills Committee) for their detailed discussions about the Bill and how juvenile offenders should be dealt with. Although the views of some members on some topics differ from those of the Government, the views of the Bills Committee on how juvenile offenders can be provided with more comprehensive supportive services are valuable reference for the Government when it works out the relevant plans in future.

Before the presentation of the Bill, the Government carefully considered the level at which the minimum age of criminal responsibility should be set. After taking into account the proposals of the LRC, the figures on juvenile offenders in Hong Kong, the social environment and the existing support services for child offenders, we think that it is most appropriate to set the minimum age of criminal responsibility at 10 years of age.

The statistics given by the police show that fewer children under 10 years of age are involved in criminal activities while there is a marked increase in criminal activities involving children from the age of 10. Taking the figures in the past decade as an example, an average of 481 children between 10 and 11 years of age were arrested each year, approximately three times of the numbers of arrested children aged below 10. The average number of children between 12 and 13 years of age arrested each year significantly increased to 1 904, representing more than 11 times of the numbers of arrested children aged below 10. The rate of conviction also increases with the age of children. Evidently, older children stand a greater risk of committing offences than younger children. Therefore, in raising the minimum age of criminal responsibility, we must

ensure that the amendment will not give older children who stand a greater chance of breaching the law an erroneous message that they do not need to be responsible for their unlawful acts.

The LRC has made the proposal to raise the minimum age of criminal responsibility to 10 years of age after detailed studies and extensive public consultation. Quite a number of respondents to the consultation document of the LRC support setting the minimum age of criminal responsibility at 10 years of age. The Bills Committee has also invited organizations and people from various sectors to express their views on the Bill. The 21 organizations or individuals who have expressed views on the Bill support raising the minimum age of criminal responsibility, of these, 14 (that is, 66%) support raising it to 10 years of age. This shows that the community generally accepts the proposed amendment of the Government.

In determining the appropriate new minimum age, the Government has considered the need to render protection to children of tender age as well as the need to ensure law and order and public safety of the community at large. To strike a balance between these three aspects, we think that 10 years of age is the most appropriate choice. During the discussions of the Bills Committee, a Member proposed setting the minimum age of criminal responsibility at 12 years of age rather than 10 years of age as proposed by the Government. Miss Margaret NG would later propose the relevant amendments on behalf of the Bills Committee. However, the Government opposes the relevant amendments.

Some Members think that the Bill fails to adequately protect children between 10 to 12 years of age, for despite their older age, some of them are still not fully able to distinguish right and wrong and it may be too harsh for them to bear criminal responsibility. However, besides proposing that all children under 10 years of age are presumed to be incapable of committing crimes, the Government also suggests retaining the presumption of *doli incapax* under common law, so that it will continue to apply to children of 10 and below 14 years of age.

The rebuttable presumption of *doli incapax* can provide adequate protection to children above the newly set minimum age and below 14 years of age because children of 10 and below 14 years of age can be prosecuted only after the presumption has been rebutted. The onus of proof is on the

prosecution and the standard of test is also very high. It is only rebuttable by the prosecution on proof beyond reasonable doubt that the child intently commits an offence and knows that the particular act is not merely naughty or mischievous, but seriously wrong. Therefore, as proposed by the Government, children of 10 and below 14 years of age will be presumed to be incapable of committing crimes; while the presumption applicable to the former can be rebutted, the presumption applicable to the latter is absolute.

We understand some Members' concern that bringing a child who has committed an offence to formal court proceedings may have adverse effects on his emotional and psychological development. Therefore, the Administration will try its best to deal with the cases of young criminals by the Police Superintendent's Discretion Scheme (PSDS) and institution of criminal prosecution will only be considered as the last resort.

Taking the figures between 1999 and 2001 as an example, 71% of the children aged between seven and nine arrested for breaching the law were cautioned under the PSDS and only 2.4% were prosecuted. 75% of children aged between 10 and 11 arrested were cautioned under the PSDS and only 5.4% were prosecuted.

If it is found that children who are cautioned under the PSDS need further follow-up services, the Juvenile Protection Section of the police may refer the cases to the Social Welfare Department (SWD), the Education and Manpower Bureau and non-governmental organizations for support services, upon consent of their parents.

One criterion for giving a caution under the PSDS is sufficient evidence to support prosecution. If 12 years of age is set as the minimum age of criminal responsibility, the PSDS will have to shut children below 12 years of age out because the Administration cannot institute prosecution. Although there are significantly larger numbers of children above 10 years of age arrested after committing offences, as the police cannot caution them under the PSDS or prosecute children between 10 and 12 years of age who have breached the law, these children may not get the relevant support services as opportunities for early intervention will be lost.

The community is also concerned that the higher the level to which the minimum age is raised, for instance, to 12 or 14 years of age, more children may

be used by criminals for illegal activities. In 1973, the Government suggested raising the minimum age to 10 years of age and Members at that time expressed concern. During the resumption of Second Reading debate of the Juvenile Offenders (Amendment) Bill 1973, the following opinion was recorded:

"It is arguable whether a child of seven, eight or nine years of age is capable of carrying out an act with criminal intent. But leaving this question aside we consider that children of those ages are old enough to be used by criminals for unlawful purposes. .... To raise the minimum age therefore we may play into the hands of those who would use young children as safe pawns in furtherance of their own vile rackets."

Due to the above concern, the then Legislative Council resolved that the minimum age should be retained at seven years of age.

Today, some Members and organizations think that children below 12 years of age may not be able to distinguish right and wrong and they should not bear criminal responsibility for their acts. However, if all children below 12 years of age do not have to bear criminal responsibility, they may easily be lured by others to take part in illicit activities. It is because they may think that such acts do not carry consequences or have negligible consequences. Since older children are more capable of understanding instructions, it is more suitable for them to be manipulated for delinquency. Thus, it is easier for children between 10 and 12 years of age than children below 10 years of age to be used by adult criminals.

For the above reasons, we think that it is suitable to raise the minimum age of criminal responsibility to 10 years of age first for it is a prudent and progressive approach.

After raising the minimum age of criminal responsibility, we must ensure that there are adequate and effective alternatives to prosecution for following up child offenders. On the one hand, we have to adequately ensure law and order, and on the other, we have to prevent them from beating the same old disastrous road.

The Government has commissioned a consultancy study to systematically study the measures adopted by overseas countries in handling unruly children with a view to further improving the services for children and juveniles at risk

after the minimum age of criminal responsibility has been raised. The relevant study would be completed in May this year.

Before the implementation of the new measure, the Government will adopt administrative measures to improve the existing mechanism for referral by the police of children to other organizations for support services. These administrative measures include:

- (a) issuing information leaflets to introduce to parents of unruly children the support schemes and follow-up services provided by the relevant government departments and non-governmental organizations, to enable parents to pay attention to the problems of their children, to assist them in assessing the seriousness of their children's problems and to encourage them to give consent to the referrals to be made by the Police;
- (b) setting up direct liaison points between the police, the SWD and the Education and Manpower Bureau to ensure timely referral; and
- (c) apart from the existing referral criteria for children cautioned under the PSDS, drawing up separate guidelines for children below the minimum age of criminal responsibility to facilitate referral by the police of cases to the SWD and the Education and Manpower Bureau with parents' consent.

In response to a suggestion made by the Bills Committee, we agree that family group conferences should be held with parents' consent for cases of children above the newly set minimum age with serious problems, for instance, the juveniles have been given the second or further caution, or provided services by three or more organizations. Family group conferences can ensure that professionals in various areas such as social workers, teachers and psychologists can participate as soon as possible in discussions about the appropriate course of action to provide the best assistance to children arrested.

Upon completion of the ongoing consultancy study, we will carefully consider the results of the study and make proposals for the provision of new support measures for children below the minimum age. We promise that we will suggest further raising the minimum age from 10 to 12 years of age at that time.

Given the substantial increase in the number of arrested children above 10 years of age, if the minimum age is set at 12 years of age, it will be difficult to follow up as many as 470 criminal cases each year and we may lose the opportunities of intervening in and providing support services to children between 10 and 12 years of age who have violated the law, which is very undesirable. At this stage, we think that it is most appropriate to raise the minimum age of criminal responsibility to 10 years of age.

Madam President, I hope Members will support the Bill to raise the minimum age of criminal responsibility from seven to 10 years of age.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Juvenile Offenders (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Juvenile Offenders (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.



**JUVENILE OFFENDERS (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Juvenile Offenders (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clause 1.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 2, 3 and 4.

**MISS MARGARET NG** (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 3 and 4, as set out in the paper circularized to Members. The purpose of the amendments is to change the minimum age of criminal responsibility from 10 to 12.

Madam Chairman, earlier we heard Mr Jasper TSANG speak on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB). He said the minimum age of criminal responsibility should not be set at a rigid line, and that drawing a line was meaningless because the growth processes of different children were very different, and their levels of maturity were also different. In fact, no matter where we set the minimum age of criminal responsibility, the

reasons mentioned by Mr Jasper TSANG are all relevant. Why should we set the minimum age of criminal responsibility at 10? Or why 14 is an appropriate age line? Or even why we need to set a minimum age of criminal responsibility? In fact, the question is not whether the children are mature enough; or whether there are substantial differences between children of 12 years old or 12 and a half years old, or between 10 or 10 and a half years of age. The real significance is what kind of treatment is accorded to our children. This is especially so in our system in which very strict provisions have been laid down for this. There is only one choice for juvenile offenders who are above the minimum age of criminal responsibility: If he does not accept the caution under the PSDS, or if the PSDS does not apply to him, then he will be prosecuted. If prosecution applies, there can be only one procedure, namely, to face a criminal trial. Even if the trial is conducted in a Juvenile Court, it is still a criminal trial. Even a presumption of *doli incapax* is established, how the presumption is eventually judged will still be a matter to be decided in the trial. Therefore, if we think that the proceedings cannot be avoided at the moment, even we understand that the court proceedings will have a destructive effect on the mentality of the children, we still cannot avoid bringing the children, whose mentality cannot stand such proceedings, to the Court.

Madam Chairman, how can we be so unsympathetic to do this? Sometimes, the Superintendent concerned does not institute a prosecution against a certain child just because there is insufficient evidence to prove the actions of the child, or to rebut the presumption of *doli incapax*. I had asked them repeatedly in meetings of the Bills Committee that on what basis they would make their decisions. After listening to their numerous clarifications, we came to a crystal clear conclusion: There is neither a scientific system, nor a professional system to determine whether a child is capable of committing the crimes, or whether he knows he has the abilities to commit crimes. However, these children are eventually brought to the Court.

Madam Chairman, in the course of this scrutiny, which group of people raised the loudest voice to insist that setting the minimum age of criminal responsibility at 10 years was too low? Apart from the social workers, the legal sector has voiced the strongest insistence on this issue. Ms Miriam LAU also said that, over the years, she has thought that the minimum age line should not be so low. As a lawyer having practised family law for so many years, and as a member of the Bills Committee on a Bill that is related to family law, she has the

strongest feeling on this issue. Among the solicitors and barristers who attended the meetings of the Bills Committee, some of them have been involved in a lot of prosecution cases. They all think that it is really incredible to have the minimum age of criminal responsibility set at the age of 10. It would have a major destructive effect on the children. Even if it is set at the age of 12, it would just be barely acceptable. Those lawyers who have substantial experience in assisting children in their defence or in child criminal cases such as cases involving child disputes are also very insistent, because they clearly know what such criminal court proceedings are like. Mr Jasper TSANG said, even for adults, such court proceedings are a heavy burden, not to mention the impact on the children. Therefore, after careful deliberation, we really feel that it is too harsh to set the minimum age of criminal responsibility at 10.

However, why has the Bills Committee proposed the age of 12, instead of 10 as mentioned by Ms Miriam LAU? Of course, Ms Miriam LAU may present her own suggestion. We have not moved the amendment as suggested by her mainly because we know that a Bills Committee is just a committee for scrutiny of a bill, and as the matching measures are unknown at the moment, we can only take the safest step forward. Madam Chairman, we have sought to set the minimum age of criminal responsibility at 12 not because we have a particular ideal or we have an over-romantic idea of children, or we have a strong sentimentality or excessive affection, thereby raising the minimum age. We have set it at 12 just because we sincerely think that this is the safest age line.

Madam Chairman, the Secretary for Security says that there are a lot of juvenile offenders aged between 12 and 14. We are believers in presumed innocence. And the figures do not represent the number of people arrested, but only reflecting the number of people prosecuted. If we can raise the minimum age of criminal responsibility to 12, then in other words, those children aged 10 or 11 who were prosecuted should not have been prosecuted indeed. Let us see how many such children are involved. For children aged 10 who were prosecuted, there were five in 1999, three in 2000 and four in 2001. For those who were 11 years of age, there were 15 in 1999, 27 in 2000 and 13 in 2001. So they are not really substantial figures. If this amendment is passed today to raise the minimum age of criminal responsibility to 12, altogether 67 juvenile offenders could have avoided facing such barbarous criminal proceedings that have a destructive effect on their mentality. Sixty-seven children are by no

means a small figure. Madam Chairman, each of them is a human being. The mentality of each of them is affected. Madam Chairman, even if we can only set the minimum age of criminal responsibility at 12, we would consider that a safe option, and it can make 67 children enjoy safer and better treatment. Therefore, we think it is worthwhile.

Madam Chairman, why have we been so keen about this issue? It is just because we fear that we might miss the opportunity. Of course, the Government may say that even if this amendment is not passed today to raise the minimum age of criminal responsibility from 10 to 12, it may still raise the minimum age in future on its own initiative. However, the issue is not just simply about whether the minimum age is raised. It is about creating the momentum required to make the Government improve the matching measures, so as to solve problems faced by child offenders who have reached the minimum age of criminal responsibility. Frankly speaking, if there are many different ways to deal with children who are above the minimum age of criminal responsibility, and if some ways are more suitable for their age — for example, there should be some more informal ways to deal with children who are near the age range of 10 or 12, such as inviting their families or family members to have a conference — if we do have so many different ways of dealing with the children, we do not have to be so keen and insist that the minimum age of criminal responsibility must be raised from 10 to 12. This is the biggest problem. Madam Chairman, the PSDS is not without limitations. If the family members of the child disagree, then the Scheme cannot be used. In that case, the child concerned shall have to face the criminal proceedings.

With these remarks, Madam Chairman, I hope I can persuade Members to accept these amendments. Thank you, Madam Chairman.

*Proposed amendments*

**Clause 2 (see Annex I)**

**Clause 3 (see Annex I)**

**Clause 4 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

**MR JASPER TSANG** (in Cantonese): Madam Chairman, a moment ago, I have already explained why the DAB supports the original proposal in the Bill to raise the minimum age of criminal responsibility to 10 years. But after listening to the speeches delivered by several Members, I wish to make some supplementary remarks before we vote on the amendments proposed by the Bills Committee.

Miss Margaret NG has rightly pointed out that young people above the minimum age of criminal responsibility will have to face either prosecution or the PSDS after having committed offences. Miss Margaret NG says that if there are more options, more non-barbaric ways of dealing with these juvenile offenders, we do not have to be so keen in proposing to raise the minimum age of criminal responsibility. However, from another perspective, what can we do about children below the minimum age of criminal responsibility? Presently, there is nothing we can do. For young offenders, if there are more mandatory counselling as well as approaches and systems that can help their rehabilitation, the impact would not be too significant even if we raise the minimum age of criminal responsibility yet even higher. This is because there are still many ways to ensure that young offenders below the minimum age of criminal responsibility could reform themselves and turn a new leaf in their life. Therefore, there are two aspects in this issue.

Miss Margaret NG has just said that, how can we be so unsympathetic as pushing children between 10 to 12 through such a barbaric criminal judicial system. How can we be so unsympathetic? If we feel that we are being unsympathetic in making 12-year-old children go through such experience, then for children of 13 and 14, are we going to say that we can be unsympathetic to them and impose the judicial system on them? That is why Mr Martin LEE also says that this is not sympathetic, and suggests the minimum age of criminal responsibility should best be set at 14. In fact, for children of 15 and 16, or even for adults, as mentioned by Miss Margaret NG, it is still a major challenge for them to endure the judicial proceedings, and it must be very traumatic experience for them.

If we have to talk about "being unsympathetic", then where should we draw the line for our sympathy? If we think from this perspective and want to establish a demarcation age line at which a person could have sufficient emotional strengthen to stand judicial proceedings, then we are just repeating the

same futile attempt, that is, we want to draw an age line in the development of the young people, thinking that the intellectual maturity of young people under such a line would not be sufficient to enable them to such harsh judicial proceedings, and above which they should have sufficient mental strength to stand such proceedings. Is it like that?

Here is my reply to the question raised by Mr Martin LEE: Why not revert to the age of seven? This is because we can see that there are differences between children of eight to nine and those of 10 to 11. I have just said that I can note the vast differences after walking into their classrooms, because Primary Five or Six and Secondary One or Two students are very different. Similarly, we can see that, when the students reach senior primary classes or junior secondary forms, the greatest changes take place in their physique, their physical conditions and build and even their mentality. For most of these students, the physical changes take place much earlier than their intellectual maturity. When they reach the age of 11 to 12, they are undoubtedly capable of doing a lot of things which could not be done by children aged seven to eight.

We may also ask this question: If we absolutely do not provide any counselling or restraint, and also because of the problem arising from the setting of the minimum age of criminal responsibility, the adult criminals may make use of and control the children unscrupulously. In that case, we are placing these children in such dangerous situations, are we also being unsympathetic? Of course, if such situations never take place, and if the children are not made use of, controlled and influenced by the criminals, maybe we never have to subject them to such brutal judicial proceedings.

As for the allegation that children of 11 to 12 years of age may not be able to stand the torture of judicial proceedings, whereas it is barely acceptable to subject children aged 13 to 14 to such proceedings, I believe that, if Members bother to think about it more carefully, they would realize such a situation actually does not exist. Let me mention once again Artful Dodger, whom I have cited in my example. Artful had behaved in such a mature way in court that I believe he was even more sophisticated than young people aged 17 or 18. If there was such a child in London some 120 years ago in London, can we deny that there might be such children in Hong Kong nowadays? Conversely, can students who have been growing up in schools, even at the age of 16 or 17, definitely be able to stand the torture of judicial proceedings?

Therefore, we should not just focus on the subjective elements in respect of the young people. We should not just subjectively determine what stage they have reached and then conclude that we may impose punishment on them and request them to bear up those responsibilities. Instead, when we study this issue of the minimum age of criminal responsibility, we should see what kinds of conditions we may offer them in an objective manner. Therefore, let me answer the question of Mrs Selina CHOW: Will DAB later support raising the minimum age of criminal responsibility even higher? The answer is of course in the affirmative. But this does not mean that we believe those children will become more mature as they grow older, thus justifying our proposal of raising the minimum age of criminal responsibility. This is not what we think. It is because the Government by then would have completed the relevant study and the matching measures could catch up with the needs of the time. As I have just explained, when we have enough ways and channels to help juvenile offenders below the minimum age of criminal responsibility to mend their ways, then we can proceed to raise the minimum age of criminal responsibility, and that would definitely be good for all of us. Therefore, we would not rule out the possibility that we may support raising the minimum age of criminal responsibility even higher in future when the objective conditions have changed. We may even say that, we totally agree with the claim that the raising of the minimum age from seven to 10 years is just one small step forward in the right direction. And we by no means think that after having taken this small step, our project is fully completed.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Chairman, I recall that I first received a letter from a group of juvenile prisoners in 1996. In the letter, they revealed that they were a group of juvenile prisoners detained at Her Majesty's pleasure. At that time, I had no idea what the phrase "at Her Majesty's pleasure" meant, so I tried my best to find out the implications of this phrase. I discovered that, capital punishment was still meted out by the Court of Hong Kong before 1993. However, the Court had never imposed capital punishment on young offenders aged below 18. Instead, they were "detained at Her Majesty's pleasure". What was the purpose of such a treatment? The purpose is, in view of the immature mentality of such children under 16 years of age when the crimes were committed, they were given an opportunity to reform. That is why a system called "at Her Majesty's pleasure" was in place. In other words, an administrative measure is used to deal with the problem, in the hope that a distinction could be made between these juvenile offenders and adult criminals. In this sense, the Court actually made a consideration, recognizing

that people of different ages should be given different treatments. That was the rationale behind the establishment of such a system.

The discussion today is also focused on the issue of age. What is considered the appropriate age? Where should we draw the ideal demarcation line? Of course, it is very difficult to define. It is difficult for us to define the appropriate age. Miss Margaret NG has just said that we should have a scientific basis to draw this demarcation line. But this is by no means easy. Yet, why have we proposed the age of 12, instead of 10? The most basic and simple comparison is, the age of 12 is at least the age of a pupil who has just graduated from the primary school. However, from a realistic point of view, are there any other justifications to support this allegation? In fact, it is really difficult to find sufficient evidence. However, there is another far more significant message in our proposal, that is, it is a more important issue for us to consider how we should treat juvenile offenders.

If we say that juvenile offenders below the age of 10 should bear criminal responsibility, then we are saying that they should be given punishment, they should be punished by the Court, to face possible jail terms or other forms of punishment. So we can see that the adult society is so simplistic. We have only one way of addressing the problem of juvenile crimes, namely, punishment, punishment, and nothing more than punishment. And then the problem is considered solved.

However, have we ever thought of assisting child offenders to reform, assisting them to identify and solve their problems? What are the ultimate problems? Can such problems really be solved by punishment? In fact, punishment is not all that matters — not as simple as that. Our society puts these people into the file of punishment, and treats them as rubbish, and then the file is closed. We could not care less about them. According to what I have seen in the prisons, they are just cast aside, and then that is it. No one bother to care about them. This approach has a destructive effect on their mentality. This is a fact.

Mr Jasper TSANG has just said that we need to maintain the minimum age of criminal responsibility at 10, instead of 12, because he feels that we still do not have the matching measures, and we also do not have other mechanisms, so we should use the age of 10 as the demarcation line. In fact, I would like to ask Mr Jasper TSANG a question. As a Member of the Executive Council, has he



ever considered how more matching measures can be introduced? If yes, it is better than accepting the unreasonable reality by simply changing the minimum age of criminal responsibility to 10 years. Why can he not think about whether our adult society can do something more for our young people? Why can he not think from this perspective, instead of just adopting a simple method and a simple principle and just giving them the punishment?

Today, we want to raise the minimum age of criminal responsibility. In fact, no other matching measures have ever been made. We can asked the Government: Up to now, what additional measures have been implemented? What kind of new mechanisms have been added? What kinds of matching options have been provided for young offenders aged between seven and 10? What have they done? Have they ever done it? No to all these questions. As such, with the present logic, why should we set the minimum age at 10, instead of 12?

In addition, Mr Jasper TSANG kept on saying that these children might be used by adults to commit offences. In fact, this is exactly the reason why we need to do more, instead of just using punishment to address the problems. Besides, after imposing punishment on them, will such a possibility become lower? Even if these children are sentenced to jail, is it true that such a possibility will become lower? Not necessarily. Instead, we should do more work in other aspects so as to educate them, to train them, and to turn them into people of good virtues. These are problems that we may encounter when we give them guidance. Such work must be done. However, Mr Jasper TSANG has not considered all such issues. He just tells us that we should change the minimum age of criminal responsibility to 10 as soon as possible, making them face these problems as soon as possible. Could the problems be removed by making them face the problem? I would like to ask him: What are the arguments? Why can we keep down their crime rate by deciding children of a certain age group should face criminal responsibility, or make them not to commit crimes again? I really cannot understand it. I would like to ask Mr Jasper TSANG to provide us with some examples to illustrate that the situation can be improved by making such choices.

Madam Chairman, I feel that it is imperative for us adults not to think that only punishment can address our problems. I hope that we can be more lenient so that young offenders can be given the opportunity to mend their ways, and to make them understand where the problems lie. This approach is much better

than leaving a deeply imprinted black mark on them which will bring them great difficulty and great obstacles in the growing process. These are the real issues that the adults should contemplate.

Madam Chairman, I so submit.

**MS CYD HO** (in Cantonese): Madam Chairman, according to child psychologists, seven or eight abilities will be developed in the growth of a child, including *inter alia* the ability to use his muscles and the abilities to read and write. Among these abilities, the ability to distinguish right and wrong and to exercise self-discipline in dealing with moral issues seem to develop most slowly. Why? As the children are taken care of by adults in their tender years, they learn about the world through the adults. They do not have to make any choices. That is why people say that they do not have the abilities to exercise self-discipline and make judgements, and the adults have made all kinds of judgements for them. Actually when do the children start developing such an ability? With some guidance from the adults, this ability is gradually developed when they first walk out of the house of protection and start facing temptations and experiencing tests of life by themselves.

Earlier on, an Honourable colleague said that the threshold for the children of Hong Kong emerged when they were promoted from primary to secondary schools. When they have become junior adults, they can now move around with schoolmates in shopping malls and all kinds of places after school. After having gained some personal experience of the outside world, they will gradually develop such an ability. A 10-year-old child still does not have such an ability, because he still relies on the school bus to take him to and from school. He is still living in a protection house.

The children are most unfortunate. Before they become adults, they are often exploited by other people. I remember a case in which a Shenzhen primary pupil crossed the boundary to school every day. The customs officers eventually discovered that he was a cross-boundary carrier of "parallel goods". After investigation, it was revealed that his mother had instructed him to carry the goods across the boundary. Under such circumstances, as the child was not independent and could not master his own life, and he did not do it on his own free will, and in case he was not legally represented, he might casually give some incriminatory statements which would make his situation very unfavourable.

Therefore, such a blemish would be with him for the rest of his life, and it might not be possible for him to reverse it. This is an undesirable situation.

Given the fact that children under the age of 10 years have not developed the ability to distinguish right and wrong and to exercise self-discipline, I hope Honourable colleagues will accept the theories of psychologists and join hands in supporting the amendments moved by Miss Margaret NG.

**MRS SELINA CHOW** (in Cantonese): Madam Chairman, actually I just wish to add a little remark to follow up my earlier speech. All the speeches delivered are correct. In fact, we in the Liberal Party have had a very heated discussion on this issue. We have very different opinions. And our conclusion is: We respect the strong views of Ms Miriam LAU, and hope that the Government will raise the minimum age of criminal responsibility as soon as possible. If the various parties could complete the matching measures earlier, we also hope that the minimum age of criminal responsibility can be raised gradually. Therefore, we shall abstain from voting on the amendment which proposes to raise the minimum age of criminal responsibility to 12 years, and shall vote in favour of the original motion.

**MR MARTIN LEE** (in Cantonese): Madam Chairman, Mr Jasper TSANG opposed raising the minimum age of criminal responsibility from 10 years to 12 years on grounds of inadequate matching measures.

This is indeed a "chicken and egg" question. Knowing the view taken by the DAB, the Government delayed introducing matching measures so as to delay raising the minimum age to 12. Had Mr TSANG supported the proposal of raising the minimum age to 12, the Government would have to introduce the relevant matching measures in haste because it knew that the problem could then not be resolved. As such, I hope Mr TSANG can lead the Government because, being a Member of the Executive Council, he has to assume the key responsibility of leading the Government instead of being led by it.

The Artful Dodger to whom Mr TSANG referred was particularly tricky. As Members are aware, a mischievous guy is especially tricky. Mr TSANG

even described him as having no fear of appearing in court. We believe he had no such fear however old he was. Therefore, it is not appropriate for us to incriminate children as innocent as Oliver TWIST just because of one tricky youngster. Indeed, one of the principles of common law is that it is better to have wrongly spared 99 persons than wrongly "convicted" one innocent person. Therefore, it is inappropriate for the rest of the young people to be incriminated because of this Artful Dodger. On the contrary, a more correct approach we should take is to raise the minimum age of criminal responsibility in the interest of those young people who are as innocent as Oliver TWIST.

I share Miss Margaret NG's view that if the minimum age cannot be raised now, it will be extremely difficult to find another opportunity to raise the proposal again. Secretary IP once said that a proposal of raising the relevant age from seven to 10 was mooted as early as 1973. However, the idea was rejected by Members at that time for fear that youngsters might be exploited as a result. It is really surprising that Mr TSANG still uses this as an excuse after three decades. Should Members calculate the relevant age like computing interest, the appropriate age should be raised to 12 after adding a small sum of interest, given that there was already a proposal to raise the relevant age to 10 three decades ago in 1973.

Finally, I would like to ask this question: If today's amendment is not passed, are we going to wait another 30 years before the minimum age can be raised to 12? If so, I have to recite (instead of singing) a line from a song sung by Elvis PRESLEY — "It's now or never".

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I oppose the amendments proposed by Miss Margaret NG to clauses 2, 3 and 4 of the Bill.

Miss NG's amendments will raise the minimum age of criminal responsibility from seven to 12 years of age. As I have said during the resumption of Second Reading debate, we think that the change in the minimum age of criminal responsibility should be made in a step by step manner.

As Mr Jasper TSANG has pointed out just now, and we also agree with him, there is actually not any magical cut-off date, neither 12, 13 or 14 years of age, that can sufficiently demarcate the degree of maturity of children which varies from person to person.

I wish to respond to the points just made by several Members, in particular, the point made by Mr Martin LEE. Members should not worry that it is now or never to raise the minimum age of criminal responsibility to 12 years of age, because it is definitely not the case. I have just said that we have commissioned a consultancy report by the City University. Upon completion of the consultancy report, we will carefully consider the findings of the study and make proposals for providing new support services to children below the minimum age. We promise that we will then propose further raising the minimum age from 10 to 12 years of age. In other words, the Government agrees in principle to raise the minimum age from 10 to 12 years of age and we will definitely not have to wait for 30 years and I hope that we will not even have to wait for three years. Why do we think that the minimum age should be raised to 10 years of age? We mainly want to be realistic. If the minimum age is rashly raised to 12 years of age while there are not any matching measures, children between 10 and 12 years of age will not get the services that they should have.

I also wish to cite some data for consideration by Members. First of all, Miss Margaret NG has said that, in view of the prosecution figures, prosecution is rarely instituted against children between 11 and 12 years of age but the number of such children arrested is large. Since I have already touched upon that, I do not wish to repeat my points here. We should also note the fact that the offences committed by them are more serious in nature, such as wounding, serious assault, burglary and criminal damage. These cases are quite serious and more or less similar to those committed by adults. These figures may enlighten us in relation to the claim that children below a certain age are relatively innocent and will not commit serious offences.

Another consideration is, as I have just mentioned, if we raise the minimum age of criminal responsibility to 12 years of age in the absence of matching measures, we may give some erroneous messages to some children, and also to some lawless elements or people who wish to use children for illegal activities in particular.

Lastly, I wish to explain a practical point about why the Government opposes raising the minimum age to 12 years of age at this stage. Indeed, it has something to do with matching services. Under the existing arrangement, most child offenders are dealt with under the Police Superintendent's Discretion Scheme (PSDS) and they do not have to undergo criminal proceedings. As I have just said, between 1999 and 2001, 71% of the arrested children aged between seven and nine were cautioned under the PSDS, 75% of arrested children aged between 10 and 11 were cautioned under the PSDS and only 5.4% were prosecuted. Even if children have to stand trial, their cases will be handled by the juvenile courts. The juvenile courts will take suitable measures, for instance, the defendants will appear in Court accompanied by their parents or guardians, the judges may ask the witnesses questions and have the right to refuse attendance by the media at the proceedings to protect the interests of children. The Juvenile Offenders Ordinance has stipulated that suspects below 14 years of age will not be sentenced to imprisonment.

The PSDS is widely accepted and commonly recognized as an effective way to assist problem children and young people in turning over a new leaf. Under the PSDS, the Secretary for Justice authorizes a police officer at the grade of Police Superintendent or above to caution juvenile offenders below a certain age in lieu of prosecution. The PSDS is only applicable to children who can be subject to criminal prosecution and meet the relevant guidelines. If the minimum age of criminal responsibility is raised to 12 years of age, the PSDS will shut problem children below 12 years of age out. As I have just said, substantially larger numbers of children of or above 10 years of age are arrested for violating the law, if the Police Superintendents cannot caution children between 10 to 12 years of age and the Secretary for Justice cannot prosecute them, the Administration will lose the opportunity of cautioning them and the children will lose the opportunity of turning over a new leaf. Organizations including non-governmental organizations providing support services will not be able to suitably intervene and provide services. If the police wait until their behavioural problems have become deep-rooted to take follow-up actions, it will only get half the result with twice the effort.

For the above reasons, we oppose raising the minimum age of criminal responsibility to 12 years of age at this stage but we promise that, upon completion of the report on the consultancy study by the City University, the

Government will consider providing further support and follow-up services and it will submit a proposal to the Legislative Council as soon as possible, to further raise the minimum age of criminal responsibility to 12 years of age.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Miss Margaret NG, do you wish to speak again?

**MISS MARGARET NG** (in Cantonese): Madam Chairman, the Secretary for Security said the process of raising the minimum age of criminal responsibility from seven to 10 years was a progressive one, saying it would be too drastic if the minimum age is raised from five to 12 all of a sudden. But is this really the case? Madam Chairman, we may take a look at what will happen should the minimum age be raised from seven to 10.

Looking back at the ages of the children put through criminal proceedings over the past three years, we will find that two nine-year-old children were prosecuted in 1999 and three in 2000 as well as in 2001; one eight-year-old was prosecuted in 1999 and nil in 2000 as well as in 2001; and one seven-year-old was prosecuted in 1999 and nil in 2000 and 2001. From these figures we are discussing at the moment, we can see that even if the minimum age is raised to 12, it is going to be a minor, progressive process as opposed to a drastic step.

On the other hand, it is incorrect for the Secretary to say that there is a lack of matching measures to deal with child offenders below the minimum age of criminal responsibility. This is because the Care and Protection Order is in place. This Order was deliberated by the Bills Committee in conjunction with the Government in great details in the course of scrutiny. Under the existing legislation, an application for a Care and Protection Order can be made to Court if a child below the minimum age of criminal responsibility is found to be in a situation that poses risk to his development. The Court will then make a mandatory set of plans to define and take care of the child's behaviour. There is at present no need for these laws to be amended; most of the problems can already be dealt with if the laws can be used more frequently and flexibly. It is not true that we are in a helpless position when faced with child offenders below the minimum age of criminal responsibility.

Madam Chairman, it was also pointed out by the Secretary for Security that it is evident from the offences committed by children aged between 10 and 12 that older children tend to commit more serious offences. Moreover, there is a growing number of such offenders who commit such serious offences as assault, wounding, and so on. Actually, the Secretary should understand that the name of an offence cannot possibly reflect the gravity of the crime committed. I have the experience of handling such tasks as prosecution and defence. I have also had the experience of handling matters related to the Care and Protection Order. I did witness how the matters were dealt with by others. What is, for example, a "mugging" or the so-called robbery? Actually, robbery refers to the combined actions of theft and intimidation, or violence. For instance, a child who threatens to beat up another child in a bid to solicit money will be considered to have constituted the offence of robbery under the law. Therefore, it is not easy for us to understand what has really happened by simply looking at the name of the offence. On the contrary, I was surprised to find a child being prosecuted for robbery because of such behaviour. However, there is nothing we can do; these are the elements specified in the law. Very often, we should think in a completely different manner. The existing laws have left us with no alternatives but to prosecute the children for these offences and thus left them with very serious criminal records. Actually, the cases of those children with such behaviour might be very different.

Madam Chairman, I would like to respond briefly to several points, one of which being related to children below the minimum age being manipulated by vice influence to carry out illicit activities. This is also a matter of considerable concern to members of the Bills Committee. But why are these children being exploited? Is it because they are only 10, 12 or 14 years old? Actually, 14-year-olds are equally vulnerable to exploitation. Such being the case, where is the point of equilibrium? Is it true that these children will do as being told so readily? I think it all depends on how these children are educated in their daily lives. At present, for instance, many children find it most unbearable when they have no money to spend. If they are told they can make lots of "quick money" by selling pirated discs, they might do it if, after balancing all factors, they conclude that it is a simple task so long as they can evade arrests. However, this is beyond the question of what the minimum age should be. Actually, it is more imperative for us to address the issue of moral education among youngsters as a whole. We have to examine ways to help them become law-abiding citizens. It is fundamentally not possible for these problems to be resolved by simply determining the minimum age of criminal responsibility.



When referring to a young person called Artful Dodger, Mr Jasper TSANG said he did sympathize with the situation today, given the existence of such a youngster in London 120 years ago. However, I do not think children in modern time tend to mature early. I think the situation happens to be the opposite. We can indeed see that 11 years of age was considered in London in the Middle Ages a suitable age for marriage. Therefore, it can be said that we are indeed going backward as we grow old. This is because the childhood of human beings is extending constantly in line with social development. In the 14th century, insofar as a person aged 13 was concerned, his childhood was already over, or had probably ended a long time ago. On the contrary, our childhood is longer nowadays.

Lastly, Madam Chairman, I would say that the Government puts the cart before the horse in insisting on lowering the minimum age of criminal responsibility for reasons of a lack of matching measures. This is because the formulation of these measures is purely an administrative issue. For instance, we are all very concerned about and supportive of the Police Superintendent's Discretion Scheme. Why does this Scheme apply only to child offenders above the minimum age of criminal responsibility and, as a result, the minimum age has to be lowered? It is because the Government believes this Scheme is better than any other schemes. But why does the Government not consider applying the Care and Protection Order more flexibly? The Government is actually to blame for the lack of matching measures.

I am very pleased to hear the Secretary for Security say that she would not be acting in a "now or never" manner, like what was sung by Elvis PRESLEY in one of his popular songs. We were told that we would not have to wait 30 years or even three years before the minimum age would be revised. What worries us most is that it is very easy for the Secretary to make such comments today, but it will not be as easy to put her words into action. I certainly hope the Secretary can put her words into action in two years. I personally feel that, even given the present safe condition, matching measures are actually available; yet the Government is reluctant to use them. Under such circumstances, it is absolutely appropriate, reasonable and safe for the Government to raise the minimum age to 12. Besides, there is no dismissal of the possibility of the minimum age being further raised to 14 upon the completion of the study too.

Madam Chairman, I hope Honourable Members can consider that extended discussions were conducted before the Bills Committee gave its support. Moreover, we voted twice as opposed to once. Fewer members turned out to vote on the second occasion because the scrutiny had already completed as the whole matter had presumably ended. However, we were told by the Government that certain consequential amendments had yet been made. As a result, an additional meeting was called for no reason, and thus fewer members turned out to vote. Nonetheless, it is extremely clear that the proposal has the support of the Bills Committee. After holding a number of meetings, conducting detailed deliberations and listening to the views of a number of deputations, the Bills Committee finally expressed its willingness to support the proposal of setting the minimum age of criminal responsibility at 12 years of age. I hope Honourable Members can have faith in the Bills Committee and support today's amendments as well as the amendments proposed by the Bills Committee. Otherwise, I would have to date Honourable Members for another debate the same time next year to examine whether the Government's promise has been broken or honoured. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

**CHAIRMAN** (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for three minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Ms Miriam LAU, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr WONG Yung-kan, Mr Abraham SHEK, Mr LEUNG Fu-wah, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mr Howard YOUNG and Mr Tommy CHEUNG abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the motion.

Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Dr TANG Siu-tong, Mr NG Leung-sing and Mr YEUNG Yiu-chung voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the motion, 10 against it

and five abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 14 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 2, 3 and 4 stand part of the Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clause 2A      Section added

New clause 3A      Duties and powers of manager.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clauses 2A and 3A, as set out in the paper circularized to Members, be read the Second time.

New clause 2A specifies the transitional arrangements for the Juvenile Offenders (Amendment) Bill 2001. Some children between seven years of age and the newly amended minimum age of criminal responsibility have to bear

criminal responsibility for they have committed offences before the minimum age has been officially raised but they have not been cautioned or convicted before the relevant amendments come into effect, so, we have to make transitional arrangements to handle such cases. The Bill has not included children below 10 years of age under the criminal law system because consideration has been given to their tender age. Therefore, if these children are convicted after the commencement of the amendments, we will have violated the original policy intent of the Government in making the presumption that children below 10 years of age are incapable of committing offences. Under such circumstances, the Government has proposed an amendment to specify that persons who have committed offences under the existing ordinance but cannot bear criminal responsibility after the amendment ordinance becomes effective should not be prosecuted if they have not been convicted before the commencement of the amendment ordinance.

New clause 3A repeals section 19(2) of the Reformatory Schools Ordinance. Under the existing provision, a child offender under the age of 10 years sent to a reformatory school may board out with any suitable person until he reaches the age of 10 years subject to the specified conditions. Children under the age of 10 years will be presumed as incapable of committing offences after the enactment of the Bill and the relevant presumption cannot be rebutted, thus, children under the age of 10 years cannot be prosecuted and will not be sent to reformatory schools. After the commencement of the amendment ordinance, section 19(2) of the Reformatory Schools Ordinance will become an unnecessary provision, therefore, the Government suggests making a consequential amendment to repeal the provision.

Madam Chairman, I hope Members will support these new amendments.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 2A and 3A be read the Second time.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clauses 2A and 3A.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clauses 2A and 3A be added to the Bill.

*Proposed additions*

**New clause 2A (see Annex I)**

**New clause 3A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clauses 2A and 3A be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

### **JUVENILE OFFENDERS (AMENDMENT) BILL 2001**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the

Juvenile Offenders (Amendment) Bill 2001

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Juvenile Offenders (Amendment) Bill 2001 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Juvenile Offenders (Amendment) Bill 2001.

### **Resumption of Second Reading Debate on Bill**

**PRESIDENT** (in Cantonese): We will resume the Second Reading debate on the Fire Services (Amendment) Bill 2001.

### **FIRE SERVICES (AMENDMENT) BILL 2001**

#### **Resumption of debate on Second Reading which was moved on 4 July 2001**

**PRESIDENT** (in Cantonese): Mr IP Kwok-him, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

**MR IP KWOK-HIM** (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Fire Services (Amendment) Bill 2001 (the Bills Committee), I would like to report on the key deliberations of the Bills Committee.

The Fire Services (Amendment) Bill 2001 (the Bill) seeks to achieve three major purposes: First, to provide for the powers of the Director of Fire Services (the Director) in relation to investigation of matters relating to a fire and abatement and prevention of fire hazards; second, to empower the Chief Executive in Council to make regulations providing for the regulation of new types of fire hazards and the making of a court order concerning fire hazards;



and third, to amend the level of fines for offences under the Fire Services Ordinance (FSO) and its subsidiary legislation.

The Bills Committee has held five meetings with the Administration to discuss the various proposals in the Bill and the policy issues in relation to the proposed Fire Service (Fire Hazard Abatement) Regulation (the proposed Regulation) to be made under the amended FSO. The Bills Committee has also met with the deputations from transport groups to gain an understanding of their concerns over the Bill and the proposed Regulation.

Apart from proposals to improve the existing regulatory framework for the abatement of fire hazards, the Bill has also proposed to prohibit improper stowage or conveyance of motor vehicles and motor vehicle parts containing residual fuel in an enclosed freight container or goods compartment on land under the proposed Regulation.

Some members of the Bills Committee and deputations from the trade pointed out that tractor owners and drivers who in practice are unable to ascertain the goods inside the containers should not be held liable for improper stowage and conveyance of motor vehicles or parts of motor vehicles containing residual fuel in an enclosed freight container or goods compartment.

As the proposed Regulation contains detailed provisions regulating conveyance or stowage of motor vehicles or parts of motor vehicles in containers, members were of the view that the Administration should consult the trade on the proposed Regulation. At the request of the Bills Committee, the Administration has held discussions with the trade deputations on the proposed Regulation.

The Bills Committee has noted queries made by the trade deputations as regards the need to regulate conveyance and stowage of a whole motor vehicle because the explosion risk under such circumstances is indeed very low.

The Administration has indicated that, according to the conclusion drawn on discussions by the International Maritime Organization (IMO), given proper stowage, there is indeed very little explosion risk in conveying a whole vehicle in a closed container in sea transport, as a vehicle is designed to prevent leakage of fuel. In addition, there has hardly been any known incident of explosion involving sea conveyance of motor vehicles in the past.

In view of this, the Administration has agreed to move a Committee stage amendment to amend the empowering provision in new section 25 in the principal Ordinance by removing the reference to "a motor vehicle". It has also undertaken to amend the provisions in sections 17 and 18 of the proposed Regulation to exclude the conveyance or stowage of a whole motor vehicle from the scope of regulation.

Upon the request of the Bills Committee, the Government has agreed to, after consultation with the trade and relevant departments, promulgate guidance notes to tie in with the future implementation of the proposed Regulation. The Government has also undertaken to launch comprehensive publicity before the commencement of the proposed Regulation.

In the interest of proper enforcement, the Administration has proposed to suitably amend section 22 of the proposed Regulation to ensure that the investigation powers of authorized officers will also cover relevant containers not already being carried on a vehicle. It is therefore necessary to amend the empowering provision, that is, the proposed section 25(1)(hg) of the principal Ordinance. Members of the Bills Committee have raised no query on the Administration's proposal.

At the request of the Bills Committee, the Administration will propose Committee stage amendments to amend the proposed provisions related to the investigation powers of the Director. Amendments will also be introduced to improve the drafting of a number of proposed provisions.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill.

With your permission, Madam President, I would like to speak in my personal capacity.

Madam President, I would now speak on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB) and present some of the views of the DAB on the Bill.

As Members are aware, all vehicle owners are forced to tolerate expensive fuel as fuel taxes and oil prices have remained high in Hong Kong. A number

of unlawful elements have thus exploited this opportunity by sneaking in duty-not-paid fuel and have it sold at a price 30% lower than the market price. Apart from the fact that such fuel is not guaranteed in terms of quality, what is more alarming is that filling stations are often located near residential areas. Although a number of oil tanks and dispensers are kept in these illegal filling stations, fire prevention facilities are totally absent. In some of these filling stations, there are even no fire extinguishers. This problem must not be neglected because the public is subject to serious potential hazards.

Actually, a number of operations pinpointing the relevant problems were carried out in the past, but the results were not obvious. Some unlawful elements simply choose to engage in small-scale operations to fight a guerrilla war against law enforcement officers. To this end, they will store only a small amount of fuel at each station. So long as the standard is not exceeded, law enforcement officers can only issue a fire hazard abatement notice even if oil dispensers and filling tools are found on the spot, or even when refuelling activities are being carried out. Prosecution is not possible, unless the problem is still not improved when inspection is carried out for a second time in the year. This explains why these filling stations can continue to operate for a period of time. The loss incurred will be limited even if these stations are eventually outlawed by law enforcement officers. The operators may as well "set up a new station at one end of a street after enforcement action was taken against the one at the other end of the street".

Some big operators have even "gone so far" as to employ a tactic of "setting up a new station after the closure of an old one". I still recall an arson incident that took place in Yuen Long in the end of last year in which an unlawful filling station was set on fire. It was found in the wake of the incident that enforcement action had been taken 40 times over the past five years, or nearly once every half month, against the marked oil station operated at the scene of the incident.

We can thus see that the authorities concerned are indeed powerless in combating illegal filling stations. This phenomenon is largely attributed to the fact that the existing legislation has become obsolete, thus allowing unlawful elements ample room to carry out activities to the detriment of public safety. The existing legislation has not only failed to deal with premises frequently used as illegal filling stations, it has also posed considerable constraint on law

enforcement. At the same time, the excessively light penalties have made it difficult to achieve a deterrent effect.

As such, the DAB agrees that the Ordinance should be amended promptly. The Administration has proposed in its submitted Bill to enhance a number of proposals concerning law enforcement powers and increased penalties, including empowering officers of the Fire Services Department (FSD) to take prosecution action against the operators direct, empowering courts to issue closure orders against premises used repeatedly as illegal filling stations, and so on. The DAB supports these amendments, and it is believed that these measures can enable FSD officers to take more effective action to regulate and prosecute these illegal filling stations that endanger the lives of the public.

The Bill has also defined improper stowage or conveyance of motor vehicles and motor vehicle parts containing residual fuel in an enclosed container or loading compartment as a fire hazard. It has also empowered officers of the FSD, the police and the Customs and Excise Department to stop, board, search and detain the relevant vehicles if they have reasonable grounds to suspect that such an offence has been committed. It is indeed easy to imagine that should an enclosed container or loading compartment be used improperly for stowing or conveying motor vehicle parts containing residual fuel, the tractor will naturally become a mobile bomb, given that the fuel is highly volatile and inflammable. This is something we are most reluctant to see, though this has happened before.

The DAB supports the proposal of empowering the authorities concerned to strengthen law enforcement in this aspect. Nevertheless, we are also concerned that the arrangements provided for in the original Bill will exert pressure on tractor drivers because it is virtually impossible for them to ascertain whether the motor vehicles or motor vehicle parts in a particular container are not stained with fuel. As such, we agree that the relevant Regulation be amended to prevent innocent owners or drivers who have no knowledge of the contents of the containers from being held criminally liable. On the other hand, we have noticed that there is little explosion risk in conveying a whole vehicle in a closed container as a vehicle is designed to prevent leakage of fuel. Therefore, we have acceded to the Government's proposed amendment to exclude the conveyance of a whole vehicle in a closed container from the scope of regulation.

With these remarks, I support the relevant Bill on behalf of the DAB. We also support the Second Reading of the Bill. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MS MIRIAM LAU** (in Cantonese): Madam President, this Bill seeks to empower the Chief Executive in Council to make regulations providing for the regulation of improper stowage or conveyance of motor vehicles containing residual fuel and vehicle parts stained with fuel in an enclosed container. In the interest of public safety and the safety of tractor drivers, transport bodies are generally supportive of the relevant amendments to prevent such fire hazards.

Nevertheless, the trade noted that the new Regulation might impose an unreasonable burden on drivers and tractor owners who have no right to inspect the contents of the containers. They pointed out that a driver and a tractor owner would be unable to know the contents inside the container if a goods owner or shipping company has made arrangements for another company to pack the goods. The trade has thus expressed the hope that the Government can provide a code of practice for the trade's compliance in the course of conveyance so that a reasonable and legitimate decision can be made in relation to the conveyance of motor vehicles or vehicle parts for clients. Sections 17 and 18 of the Fire Service (Fire Hazard Abatement) Regulation (the proposed Regulation), as originally worded, have imposed a relatively clear liability on the part of the drivers, but the liability of goods owners, freight forwarders and other relevant parties is far from clear. According to the Government, both the cargo owners and freight forwarders shall be liable because they are responsible for freight arrangements. However, it has also conceded that the legislation is not clear enough. In this connection, the freight industry has raised a proposal in the hope that the Government can make the relevant provisions clearer. The Government has actively responded by agreeing to introduce amendments to the proposed Regulation to make the liability of the various parties clearer. I welcome this.

I also welcome the undertaking by the Fire Services Department (FSD) that relevant guidelines will be formulated to ensure that tractor owners and drivers clearly understand the relevant requirements so as to prevent them from being caught by the law inadvertently. I hope the FSD can, in the course of formulating the relevant guidelines, fully consult the trade and relevant government departments to ensure that the guidelines are reasonable and pragmatic and have due regard to the realistic operation of the trade.

In the meantime, I hope the FSD can expeditiously consult the transport industry and relevant government departments to ensure that the relevant guidelines are in place before the commencement of the Ordinance to enable the trade to fully understand the relevant requirements.

With these remarks, Madam President, I support the Bill.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the Fire Services (Amendment) Bill 2001 (the Bill) was presented to this Council for the First and Second Readings on 4 July 2001. Apart from updating some obsolete provisions of the Fire Services Ordinance (FSO) to meet the needs of present-day circumstances, the Bill also aims at improving the regulatory framework to cope with new types of fire hazards more effectively and to protect public safety.

I am very grateful to Mr IP Kwok-him, Chairman of the Bills Committee, and other members of the Bills Committee for their detailed scrutiny of the contents of the Bill and relevant matters. During the five meetings held by the Bills Committee, members expressed a lot of valuable opinions on the Bill and the draft Fire Service (Fire Hazard Abatement) Regulation (the draft Regulation) jointly presented to the Bills Committee. After detailed discussions, the Bills Committee finally expressed support for the Bill and a number of amendments. I will move the relevant amendments later at the Committee stage.

As pointed out by me in moving the Second Reading of the Bill, one of the major objectives of the Bill is to improve the regulatory framework to cope with new types of fire hazards, including the conveyance of motor vehicles and motor vehicle parts on land as well as the illegal operation of vehicle filling stations. Between 1997 and 1999, three incidents of explosion involving freight containers carrying used motorcycle parts took place and caused casualties. To prevent the recurrence of similar incidents, we propose that improper stowage or

conveyance of motor vehicles and motor vehicle parts stained with fuel in an enclosed freight container or goods compartment shall be an offence.

In the course of discussions, particular concern was raised by members of the Bills Committee on whether the relevant provisions in the draft Regulation will impose an unreasonable burden on tractor owners and drivers. Similar views were also expressed by representatives of the trade.

Both members of the Bills Committee and representatives of the trade share the view that it is difficult for tractor drivers to ascertain whether the motor vehicles and motor vehicle parts carried in the containers are stained with fuel because they have no right to inspect the contents of the containers. The draft Regulation has not provided that drivers are obliged to open the containers to carry out inspection. Actually, the Administration seeks to pinpoint drivers who knowingly convey enclosed containers containing motor vehicle parts stained with fuel without regard to public safety. We have no intention to pinpoint law-abiding drivers who follow the usual practice of the trade and are completely ignorant of the actual contents of the containers.

It was pointed out by members that sections 17 and 18 of the draft Regulation have spelt out clearly the liability on the part of the drivers for improper conveyance or stowage of motor vehicles or motor vehicle parts. However, the liability on the part of cargo owners, freight forwarders and other relevant parties is not spelt out clearly. The Administration's policy intent is to deal with all persons who fail to convey or stow motor vehicle parts improperly. These persons are not confined to drivers. Cargo owners and other relevant parties are included as well. Under sections 17(1)(b) and 18(1)(b) of the draft Regulation, a person commits an offence and is liable if the person knowingly causes or permits improper conveyance or stowage of motor vehicle parts on land. In response to the opinions expressed by members and the trade, we will aptly fine tune the provisions when the Regulation is formally enacted in future to ensure the liability of various parties is expressed clearly.

Members of the Bills Committee and the trade have also suggested the Administration to examine the need to regulate the conveyance of a whole motor vehicle in a container because the conveyance in itself is safe. After further examination, we have come to realize that the Marine Department has previously

proposed to the International Maritime Organization (IMO) the regulation of conveyance of motor vehicles and parts of motor vehicles stained with fuel in international sea transport. Following discussion in the IMO, it is concluded that, given proper stowage, there is indeed very little explosion risk in conveying a whole vehicle in a closed container in sea transport, as a vehicle is designed to prevent leakage of fuel. Such being the case, we will amend the relevant provisions in the draft Regulation and the empowering provisions in the Bill to exclude "whole vehicle" from the proposed scope of regulation.

To assist the trade in understanding the requirements of the new law, the Fire Services Department (FSD) will, before the commencement of the new law, formulate a set of guidelines and make adequate preparation by carrying out extensive publicity. In formulating the relevant guidelines, the FSD will consult the relevant departments and the trade to ensure that the guidelines are reasonable and pragmatic and have due regard to the mode of operation of the trade.

Another fire hazard that causes serious fire safety concern in recent years is illegal vehicle filling stations. Illegal storage or mishandling of fuel may cause fire and explosion, and in turn lead to casualties and property losses. For this reason, empowering provisions are made in the Bill to make regulations so that the storage of any liquid fuel for the purpose of the business of supplying the fuel for transfer to a motor vehicle's fuel tank on any premises other than a place so licensed or approved under the Dangerous Goods Ordinance shall be an offence. If illegal refuelling activities recur on such premises within 12 months, the Court may make a closure order effective for six months to effect complete closure of such premises.

Members of the Bills Committee were concerned that the relevant proposal might incriminate innocent owners, purchasers and mortgagees, and render innocent members of the public homeless as a result of a closure order. The Bill and the draft Regulation have in essence proposed setting up a mechanism to protect the interests of innocent people. We have proposed to empower the Court to notify the owner of the premises of the conviction against anyone using the premises for illegal vehicle refuelling activities. On application by the owner, the Court may order the termination of the tenancy of such premises. We have also proposed that the relevant owners, purchasers and mortgagees be allowed to apply for the closure orders to be suspended or rescinded.



It is worthwhile to note that, given the very simple operation of vehicle refuelling activities and only minimal equipment and manpower are required, FSD officers and police officers will encounter numerous difficulties in enforcement if a complete closure of such premises is not effected. This will virtually encourage illegal filling stations to continue to operate. According to our experience and observations, illegal filling stations are mostly small street-side stores with rapid change of operators and the illicit business is usually run on a temporary and make-shift basis for the maximization of profits within the shortest possible period of time before it is cracked down by the authorities concerned. We believe that there should be few, if any, *bona fide* innocent persons who would be affected by a closure order.

As regards the proposal of enhancing the power of law enforcement officers, some members asked whether it was necessary to empower FSD officers to demand instant production of a person's proof of identity in taking enforcement action against fire hazards. Actually, under the existing FSO, FSD officers are empowered to require any person to give his or her correct personal particulars for the purpose of issuing a fire hazard abatement notice, provided that a notice is served on that person within a timeframe of not less than 24 hours. From our experience, this provision is ineffective for a certain degree of difficulty will arise in actual implementation. The fact that the FSD is required to deliver a written notification to a person of unknown identity may delay the abatement work and the fire hazard will thus last more than 24 hours. In order to protect public safety, it is necessary for us to amend the law to enhance the power of FSD officers in enforcement.

Apart from taking the abovementioned measures to cope with new forms of fire hazards and enhance the power of front-line officers in enforcement, our legislative proposals also cover the following:

- (1) To streamline provisions of the FSO in relation to the abatement of fire hazards and make the Fire Service (Fire Hazard Abatement) Regulation;
- (2) To strengthen the contents and the penalties of the FSO and its subsidiary legislation;
- (3) To empower the Director of Fire Services to investigate into the cause of fire;

- (4) To extend the scope of protection of a fire insurance policy under the FSO; and
- (5) To revise and update a number of obsolete provisions in the FSO.

After careful scrutiny, the Bills Committee has expressed support for various proposals. Insofar as the drafting of the provisions is concerned, we have reached a consensus with the Bills Committee on a number of technical and textual improvements. I will explain several amendments in detail later at the Committee stage.

Madam President, I hope Members will support this Bill and the Committee stage amendments to be proposed by me later. We plan to expedite the enactment of the relevant Regulation after the passage of this Bill to complete the legislative process with a view to enabling a number of legislative proposals to take effect as early as possible for the further protection of public safety. To facilitate understanding of the new law and compliance by the trade and the public, extensive publicity will be carried out before the commencement of the new law.

I beg to move. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Fire Services (Amendment) Bill 2001 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Fire Services (Amendment) Bill 2001.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Committee stage. Council is now in Committee.

### **FIRE SERVICES (AMENDMENT) BILL 2001**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Fire Services (Amendment) Bill 2001.

**CLERK** (in Cantonese): Clauses 1, 2, 6 to 9, 11 to 19 and 23 to 27.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 3, 4, 5, 10, 20, 21 and 22.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. The amendments are mainly as follows:

In clause 4 of the Bill, the proposed new section 8A serves to confer on FSD officers powers of fire investigation. Under the new section 8A(2)(f), FSD officers may require any person to answer questions from FSD officers for the purpose of fire investigation. The Bills Committee proposed that section 8A(3) be amended to expand the scope of legal professional privilege of those persons to cover answers given by them under new section 8A(2)(f). We agree with this view of the Bills Committee and propose to make this amendment.

We propose to stipulate clearly in new section 8A(5) that FSD officers' obligation of non-disclosure of certain information obtained during fire investigations should also cover information derived from documents obtained or inspected under new section 8A(2)(g).

As I mentioned in my speech on the resumption of the Second Reading debate of the Bill, the Bills Committee and the container transportation industry have provided many valuable views on the provisions regulating improper conveyance or stowage of motor vehicles or motor vehicle parts in a container in the draft Fire Service (Fire Hazard Abatement) Regulation (draft Regulation). We have accepted the views of members of the Bills Committee and the industry, and propose to exclude a whole motor vehicle from the proposed scope of regulation in the draft Regulation.

For the purpose of the above amendments in future, we propose that the empowering provisions in new sections 25(1)(he) and (hf) as proposed in the Bill be amended at the same time. We have consulted the Law Society of Hong Kong (the Law Society) on the entire set of legislative proposals. The Law Society considers the Bill reasonable and essential. In the meantime, the Law Society has given its views specifically on the regulation of conveyance and stowage of motor vehicle parts in containers in the industry. The Law Society pointed out that a container may not refer to a motor vehicle or be carried in or by a motor vehicle, for a container may be placed separately from a motor vehicle or independently on the ground. Therefore, the power of authorized officers to stop, board and search a motor vehicle or a container carried in or by that motor vehicle in section 22 of the draft Regulation should also cover containers placed independently.

The views of the Law Society are consistent with our policy intent. The new section 25(1)(hf) proposed in the Bill empowers the relevant authorities to make regulations on the stowage of motor vehicle parts which are stained with fuel in a container that is or is to be conveyed on land. However, the container may not necessarily form part of a motor vehicle or be carried in or by a motor vehicle. In the interest of proper enforcement of the law, it is necessary for us to make suitable amendments to section 22 of the draft Regulation to ensure that the investigation powers of authorized officers will also cover relevant containers not already being carried on a vehicle.

To tie in with this amendment, we propose that the empowering provisions in new section 25(1)(hg) in the Bill be slightly amended. To enhance the clarity and adequacy of the Bill, we propose some textual and technical amendments to clauses 3, 4, 5, 10, 20, 21 and 22. These amendments cover the definition of "fire service installation or equipment" in clauses 3, 20, 21 and 22, and new sections 8A(4), 8B, 9(f) and 25(1)(hb), (hd) and (hi).

All these amendments are proposed after detailed discussions by the Bills Committee, and they are supported by the Bills Committee. I hope Members will support the passage of the relevant amendments.

Thank you.

*Proposed amendments*

**Clause 3 (see Annex II)**

**Clause 4 (see Annex II)**

**Clause 5 (see Annex II)**

**Clause 10 (see Annex II)**

**Clause 20 (see Annex II)**

**Clause 21 (see Annex II)**

**Clause 22 (see Annex II)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Clauses 3, 4, 5, 10, 20, 21 and 22 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

<b>CLERK</b> (in Cantonese):	New clause 3A	General powers of entry
	New heading before new clause 22A	Fire Safety (Buildings) Ordinance
	New clause 22A	Interpretation.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clause 3A, new heading before new clause 22A and new clause 22A, as set out in the paper circularized to Members, be read the Second time.

New clause 3A seeks to make some textual amendments to section 8(3) of the Fire Services Ordinance. This is consequential to the amendment moved by me earlier to new section 8A(4) which contains similar wording.

When the Bill was tabled at the Legislative Council in July 2001, the Fire Safety (Buildings) Bill was being scrutinized by a Bills Committee. The definition of "fire service installation or equipment" in the Fire Safety (Buildings) Bill was adopted from the definition in the Fire Services Ordinance. With the enactment of the Fire Services (Buildings) Ordinance in July 2002, the definition of "fire service installation or equipment" therein should be consequentially amended to align with the new definition now proposed in the Bill. We therefore propose the addition of new clause 22A.

These amendments are proposed after detailed discussions by the Bills Committee, and they are supported by the Bills Committee. I hope Members will support the passage of these amendments. Thank you.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 3A, new heading before new clause 22A and new clause 22A be read the Second time.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): New clause 3A, new heading before new clause 22A and new clause 22A.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Chairman, I move that new clause 3A, new heading before new clause 22A and new clause 22A be added to the Bill.

*Proposed additions*

**New clause 3A (see Annex II)**

**New heading before new clause 22A (see Annex II)**

**New clause 22A (see Annex II)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 3A, new heading before new clause 22A and new clause 22A be added to the Bill.



**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule.

**CHAIRMAN** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raise their hands.

(No hands raised)

**CHAIRMAN** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

**Third Reading of Bill**

**PRESIDENT** (in Cantonese): Bill: Third Reading.

**FIRE SERVICES (AMENDMENT) BILL 2001**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the

Fire Services (Amendment) Bill 2001

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Fire Services (Amendment) Bill 2001 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Fire Services (Amendment) Bill 2001.

**MEMBERS' BILL****First Reading of Members' Bill**

**PRESIDENT** (in Cantonese): Members' Bill: First Reading.

**THE BANK OF EAST ASIA, LIMITED (MERGER OF SUBSIDIARIES) BILL**

**CLERK** (in Cantonese): The Bank of East Asia, Limited (Merger of Subsidiaries) Bill.

*Bill read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.*

**PRESIDENT** (in Cantonese): As the Bank of East Asia, Limited (Merger of Subsidiaries) Bill presented by Mr NG Leung-sing relates to government policies, in accordance with Rule 54(1) of the Rules of Procedure, the signification by the Secretary for Financial Services and the Treasury of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bill.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I confirm that the Chief Executive has given his written consent for the Bank of East Asia, Limited (Merger of Subsidiaries) Bill to be introduced into this Council.

**Second Reading of Members' Bill**

**PRESIDENT** (in Cantonese): Members' Bill: Second Reading.

**THE BANK OF EAST ASIA, LIMITED (MERGER OF SUBSIDIARIES) BILL**

**PRESIDENT** (in Cantonese): Mr NG Leung-sing, you may now move the Second Reading of the Bill submitted by you.

**MR NG LEUNG-SING** (in Cantonese): Madam President, I move the Second Reading of the Bank of East Asia, Limited (Merger of Subsidiaries) Bill.

Madam President, the Bill presented today is related to the merger of the East Asia Credit Company Limited and the East Asia Finance Company, Limited with the Bank of East Asia, Limited. Although it is necessary to make certain changes to the wordings of the Bill to reflect the changes that have taken place in the legal aspect and in respect of regulation since the enactment of the relevant law in the past, the wordings of the provisions of the Bill are basically the same as those of the ordinance on bank mergers enacted by this Council in recent years. I wish to report that the Bill has been submitted to the Companies Registry, Inland Revenue Department, Securities and Futures Commission, Department of Justice, Financial Services and the Treasury Bureau, Land Registry and Office of the Privacy Commissioner for Personal Data for consultations. The Hong Kong Monetary Authority has approved of the Bill and notice of the Bill has been published in Chinese and English newspapers and the Gazette for the specified number of times in accordance with the Rules of Procedure of this Council. Madam President, you have ruled in accordance with the Rules of Procedure that the Bill is related to government policies, and the written consent of the Chief Executive is required before the presentation of the Bill. I wish to report that the Chief Executive has given his consent and I would like to thank the Secretary for Financial Services and the Treasury for the confirmation. Therefore, I have moved that the Bill be read the Second time.

The East Asia Credit Company Limited is a private company incorporated in Hong Kong having its registered office in Hong Kong. The company is a deposit-taking company registered under the Banking Ordinance (Cap. 155), carrying on the business of taking deposits in Hong Kong.

The East Asia Finance Company is a private company incorporated in Hong Kong having its registered office in Hong Kong. The company is a

restricted licence bank licensed under the Banking Ordinance (Cap. 155), carrying on the business of taking deposits in Hong Kong.

The Bank of East Asia, Limited is a public company incorporated in Hong Kong with listing on the Stock Exchange of Hong Kong having its registered office in Hong Kong. The company is a bank licensed under the Banking Ordinance (Cap. 155), carrying on the business of banking in Hong Kong

Since its establishment in 1985, the East Asia Credit Company Limited has been a wholly-owned subsidiary of the Bank of East Asia, Limited. Since its establishment in 1969, the East Asia Finance Company has been a wholly-owned subsidiary of the Bank of East Asia, Limited.

The East Asia Credit Company Limited, the East Asia Finance Company and the Bank of East Asia, Limited wish to merge with one another in order to run their businesses in a more satisfactory manner.

This Bill is the only practicable way for the East Asia Credit Company Limited, the East Asia Finance Company and the Bank of East Asia, Limited to merge with one another. The merger is conducted in the form of a Bill because there are a large number of outstanding agreements between the East Asia Credit Company Limited, the Bank of East Asia, Limited and its clients and business partners with normal daily business dealings. Through this Bill, the parties above do not need to sign new documentation, inconvenience will not be caused and they need not worry about any time limits for signing and returning the documentation to the East Asia Credit Company Limited or the East Asia Finance Company. Therefore, a merger being effected by way of a Bill will be beneficial to the clients and business partners of the East Asia Credit Company Limited and the East Asia Finance Company. The above parties will be clear about the fact that the property and liabilities governed by the laws of Hong Kong and the rights and obligations applicable under the laws of Hong Kong have been properly transferred from the East Asia Credit Company Limited and the East Asia Finance Company to the Bank of East Asia, Limited.

Over the past 20 years, there have been 16 mergers of other banks or financial institutions by legislation similar to this Bill. It sufficiently proves the benefits of the mergers of banks or financial institutions being effected by way of Bills. This Bill will make the merger practicable, the course of merger open

and transparent and easily comprehensible by the clients, other third parties and the public.

Members may rest assured that the East Asia Credit Company Limited, the East Asia Finance Company and the Bank of East Asia, Limited will not save any profits tax through this Bill. The Inland Revenue Department has thoroughly considered the provisions of the Bill about the tax implications and has approved of its contents. Madam President, I can confirm that, up till today, the East Asia Credit Company Limited and the East Asia Finance Company do not have any trading losses that can be offset by the assessable profits of the Bank of East Asia, Limited. The East Asia Credit Company Limited, the East Asia Finance Company and the Bank of East Asia, Limited do not have business losses from the past and they will not have losses within the forecast period. In other words, the merger will not reduce the tax liabilities of the bank.

Madam President, it is worth mentioning that the Bill will not have adverse effects on the rights of the employees of any organization. The existing employees of the East Asia Credit Company Limited and the East Asia Finance Company have signed employment contracts with the Bank of East Asia, Limited and joined the Mandatory Provident Fund scheme provided by the Bank of East Asia, Limited to employees. For the above reasons, the Bill does not have to make provisions for the assignment of employment contracts, pension, mandatory provident fund, pay and remuneration.

Madam President, I also wish to stress that the Bill has not in any way restricted the rights of the Government of the Hong Kong Special Administrative Region (SAR) and the regulators. Clause 17 of the Bill explicitly provides that the rights of the SAR Government shall not be affected. Clause 15 of the Bill also explicitly provides that the East Asia Credit Company Limited, the East Asia Finance Company, the Bank of East Asia, Limited and its subsidiaries will not be exempted from the regulation of any laws or legislation regulating the carrying on of business.

Madam President, I believe the Bill is not controversial and will be welcomed because it is consistent with the trend of development of the financial sector in Hong Kong and conducive to enhancing its competitiveness and stability.

With these remarks, Madam President, I urge Members to support this Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Bank of East Asia, Limited (Merger of Subsidiaries) Bill be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance to extend the period for amending subsidiary legislation.

First motion: Extension of the period for amending the Trade Marks Rules and the Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MISS MARGARET NG** (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed.

At the meeting of the House Committee on 14 February 2003, Members agreed to set up a Subcommittee to study the Trade Marks Rules and the Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003. I was elected Chairman of the Subcommittee. To give the Subcommittee enough time for deliberation and to report the result of deliberation to the House Committee, in my capacity as Chairman of the Subcommittee, I move the extension of the period for deliberation of the subsidiary legislation to 2 April 2003.

Madam President, I urge Members to support this motion.

**Miss Margaret NG moved the following motion:**

"That in relation to the -

- (a) Trade Marks Rules, published in the Gazette as Legal Notice No. 30 of 2003; and
- (b) Trade Marks Ordinance (Cap. 559) (Commencement) Notice 2003, published in the Gazette as Legal Notice No. 31 of 2003,

and laid on the table of the Legislative Council on 12 February 2003, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 2 April 2003."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss Margaret NG be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?"

(No Member responded)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies



through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Second motion: Extension of the period for amending six items of subsidiary legislation tabled in Council on 19 February 2003.

### **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR KENNETH TING** (in Cantonese): Madam President, I move that the motion under my name, as printed on the Agenda, be passed.

At the meeting of the House Committee on 21 February 2003, Members agreed to set up a Subcommittee to study the Import and Export (General) (Amendment) Regulation 2003, Import and Export (Registration) (Amendment) Regulation 2003, Import and Export (Removal of Articles) (Amendment) Regulation 2003, Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003, Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003 and Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003 laid on the table of the Legislative Council on 19 February 2003. I was elected Chairman of the Subcommittee. To give the Subcommittee enough time for deliberation and to report the result of deliberation to the House Committee, in my capacity as Chairman of the Subcommittee, I move the extension of the period for deliberation of the subsidiary legislation to 9 April 2003.

Madam President, I urge Members to support this motion.

**Mr Kenneth TING moved the following motion:**

"That in relation to the -

- (a) Import and Export (General) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 32 of 2003;

- (b) Import and Export (Registration) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 33 of 2003;
- (c) Import and Export (Removal of Articles) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 34 of 2003;
- (d) Reserved Commodities (Control of Imports, Exports and Reserve Stocks) (Amendment) Regulation 2003, published in the Gazette as Legal Notice No. 35 of 2003;
- (e) Dutiable Commodities (Amendment) Ordinance 2001 (19 of 2001) (Commencement) Notice 2003, published in the Gazette as Legal Notice No. 39 of 2003; and
- (f) Import and Export (Electronic Transactions) Ordinance 2002 (24 of 2002) (Commencement) Notice 2003, published in the Gazette as Legal Notice No. 40 of 2003,

and laid on the table of the Legislative Council on 19 February 2003, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 9 April 2003."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Kenneth TING be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member responded)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Kenneth TING be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee about the speaking time limits. As Members are already very familiar with the speaking time limits, I will not repeat them here. I only wish to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Medical fee waiver mechanism.

## **MEDICAL FEE WAIVER MECHANISM**

**MR FREDERICK FUNG** (in Cantonese): Madam President, I move that the motion as printed on the Agenda be passed.

Amidst the recession, layoffs and pay cuts in recent years, the incomes of most people in the middle and lower strata have gone down. However, the Budget recently announced by the Government still contains various proposals on increasing taxes and fees and charges, which will add to the already heavy burden of the people. Over the past 10 years, the problems of poverty and wealth gap in Hong Kong have turned increasingly acute. Given the prevailing economic circumstances, it is believed that these problems will only worsen. For this reason, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I have advised the Government to set up a second safety net consisting of health care, housing and transport assistance outside the Comprehensive Social Security Assistance (CSSA) Scheme, so that low-income earners can be provided with the necessary assistance to help them stand on their own feet before becoming impoverished. Unfortunately, the "medical fee

waiver mechanism" announced by the authorities are marked by many inadequacies although it does aim to assist elderly persons in difficulties, low-income earners and chronic patients. My aim of moving the motion today is to draw on collective wisdom. It is hoped that all people, particularly Members, can put forward their views on improving the mechanism. It is further hoped that they can urge the Government to relax the eligibility criteria for means-tested and non-means-tested cases, so as to realize the spirit of a second safety net and thus prevent the situation under which those people in need can only receive the assistance required after they have fallen into poverty.

(The PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair)

Under the medical fee waiver mechanism being proposed, only those people whose respective household incomes are lower than 50% of the median household income and whose assets do not exceed the prescribed limit are eligible for waiver. But the eligibility criteria under the mechanism are very similar to those of the CSSA system, meaning that the mechanism will fail to provide the appropriate assistance before people fall into poverty. More people will thus fall into poverty and have to live on CSSA. Will this do any good to society? Is this in line with the objective of self-reliance advocated by the Government? For all these reasons, there is a need to relax the eligibility criteria of the waiver mechanism.

The day before yesterday, the Government issued a new paper on an enhanced medical fee waiver mechanism (I do not know whether it was because of our debate today), in which "one additional line" is added on top of the originally proposed medical fee waiver level, that is, half of the monthly median income, or \$3,000 for singletons and \$6,350 for two-member families in dollar terms. In other words, a patient whose household income is between 50% and 75% of the lowest level of the median income may be granted a partial or full waiver subject to assessment by a medical social worker. This means that there will be "two lines" instead of "one line". Anyway, from this new paper, we can see that the Government seems prepared to relax the mechanism. But we still need to discuss several problems. The first problem is about income limits. According to past criteria, only a patient whose household income is equal to half of the median income can be eligible to a medical fee waiver. This income

criterion is actually more or less the same as the criterion adopted by the CSSA system. Since such an applicant can already meet the requirement of the CSSA system in terms of income, why does he still need to apply for a medical fee waiver? He may just apply for CSSA, so as to get government allowances to meet all his living expenses. Frankly speaking, the income limit for medical fee waiver, set at 50% of the median income, is rather on the low side. People may thus be encouraged to apply for CSSA instead. Under the new proposals, the lowest level is 75%, that is, between 50% and 75%. An applicant whose household income is at that level may be granted a medical fee waiver subject to assessment by a medical social worker. The waiver may be standing for a specified period of time, or it may be one-off. And, the percentage of fee waiver is not fixed. In other words, the new proposal of the Government is just a general framework, with the actual decisions being vested in medical social workers. The proposal in itself does not lay down any integrated policy. So, social workers will be left entirely alone to decide the form and amount of waiver. In our view, this approach will render patients whose family income is between 50% and 75% of the median income at a loss as to whether they can get any fee waiver or how much can be waived before they seek medical consultation.

The new paper of the Government has proposed another concession, one based on the number of elderly persons in a family. If there is one elderly person in a family, the family will be entitled to an increase in the assets limit by \$50,000. The maximum number of elderly persons for the purpose is two. Basically, the assets limit for a two-member family is \$60,000, but if there is one elderly person in the family, the limit will go up to \$110,000. If there are two elderly persons, the limit will further increase to \$160,000. These assets limits are still too low. I shall explain the reasons in my remarks later on.

Besides the low income and assets limits, the medical fee waiver mechanism still suffers from another problem. The eligibility requirements for one-member families are too harsh and detached from the realities. In general, the members of a large family can share the fees of some common facilities. For example, in a two-member family, the members may buy an electric cooker for two, and this may cost \$250. In a one-member family, the only member will just need an electric cooker for one person, but the price may well be as high as \$230. The price difference between the two types of electric cookers is really not so big at all. In other words, the money spent by a single person on

buying an electric cooker is not going to be half of \$250, or \$125. Since a singleton has to shoulder all these expenses alone, a one-member family's expenditure should be proportionately higher than that of larger families. The medical fee waiver mechanism is based on the median household income, but the monthly household median income is nothing but a reflection of market wage levels instead of any reflection of the basic needs and expenses of families of different sizes. For this reason, the income limit for one-member families is lowered to \$3,000. Actually, if a one-member family makes an income as low as \$3,000, it can already qualify for CSSA. As we know, even the minimum income level for Mandatory Provident Fund schemes has been raised from \$4,000 to \$5,000. As for two-member families, the income limit is \$6,350. In other words, the income of a one-member family has to be as low as \$3,000 before it can be eligible to apply for a waiver, but the minimum income of a two-member family can on the other hand be \$6,350, which is two times that of a singleton. Is this reasonable? Is it really true that the expenditure of a two-member family is exactly two times that of a singleton? I have already cited an example, so I shall not repeat it here. All this shows that the basis of computations of the fee waiver mechanism is obviously plagued with problems.

In view of this, the ADPL and I propose that the Government should stick to the existing mechanism, adopting the income and assets limits for public housing application. There are three advantages. First, those people who meet the income and asset requirements for public housing application are generally regarded as the needy, meaning that such limits will be more acceptable to the community. Second, since people are already familiar with the eligibility criteria for public housing, they will easily know whether they are eligible for medical fee waiver. This will facilitate the implementation of the policy, saving the expenditure on publicity and administration. Third, some reasonable adjustments were already made to the income limits for public housing to suit the needs of one-member families during the review last year, and the harsh eligibility requirements for one-member family have been dealt with. I hope that the Government can consider the adoption of this proposal in its future review and use the household income and assets limits for public housing application in the medical fee waiver mechanism. I must emphasize in particular that since these income and assets limits can also be adopted for families applying for public housing, I fail to see any reason why the same limits cannot be adopted for the medical fee waiver mechanism.

The ADPL and I both view that since elderly persons contributed to Hong Kong's prosperity in their youth, at this time when the social and welfare services are still unsatisfactory, we really need and are obligated to reward them with a secure old age. I have been told by many elderly persons that they hope to get half-fee concession for public health care services. But the responses of the authorities have been most disappointing to them. Some of these responses have it that the elderly persons in Hong Kong are very rich. There are also comments that money will not fall down from the heavens or grow from trees. These responses have made elderly persons think that the Government is trying to ignore them. How many rich elderly persons are there in Hong Kong anyway? Please name them. And, just how many of them do frequently use public health care services? Should we refrain from offering fee waivers to the majority of needy elderly people just because of a handful of rich senior citizens? Over the past few years, the Government has been urging public utility operators such as bus companies and railway corporations to offer half-fare concession to senior citizens. Why then has it tried to turn old people away when it comes to this issue? I hope that the Government can set a good example when handling this issue and offer half-fee concession to elderly people without requiring them to be means-tested.

As for chronic patients and the disabled, the ADPL and I do not think that the mechanism can offer them any effective assistance. Chronic patients by definition must require longer-term treatment, and they thus have to patronize public health services more frequently than others. So, their medical expenses will impose a very heavy burden on them. Besides, the disabled are mostly incapacitated. Since they do not have any income, medical expenses will very often become a major burden for them. Therefore, I propose that the Government should offer across-the-board half-fee concession to all chronic patients and the disabled. Those in receipt of the disability allowance should even be offered a full waiver. The validity period of a fee waiver should also be lengthened from six months in general to one year, so as to reduce the inconvenience caused by assessment to patients and to reduce the administrative costs incurred by assessment.

On the question of application of a waiver during its validity, the authorities view that public funds should be channelled to finance services which constitute a major financial burden on patients. Therefore, a fee waiver may

only be applicable to a number of services which the patient needs and frequently uses. The ADPL and I both think that once a medical social worker has assessed a patient to be in need of a medical fee waiver during a specified period of time, there should be sufficient ground to believe that the patient is experiencing financial difficulties and in need of medical fee waiver. For this reason, we think that he should be granted fee waivers for other health care services. For example, a diabetes patient has to visit a specialist out-patient clinic frequently, and he is granted fee waiver for that during a specified period of time by a medical social worker. Then, if he suddenly needs to use accident and emergency service, he will need to undergo another assessment before he can be offered a fee waiver. But since a previous assessment has already confirmed that the specialist out-patient clinic fee of \$60 will impose a heavy burden on the patient and he has been granted a fee waiver, why does he need to undergo another assessment when asked to pay the accident and emergency service fee of \$100? Is this not grossly unnecessary? Is this not a waste of public money? Will this not increase administrative costs? Will the Government not lose more gain? Therefore, we propose that for patients who have been granted fee waivers within a specified period of time, the scope of waiver application should not be limited to the services they frequently use. Other health care services should also be covered.

The above are my proposals. Actually, as it is worded, my motion does not specify which items should require a fee waiver and which items should not. It is hoped that the motion today can stimulate the thoughts of Members and induce them to put forward their views for the Government's consideration. That way, the Government may relax the fee waiver mechanism for the benefit of more members of the socially disadvantaged groups — elderly people, low-income earners and chronic patients.

Madam Deputy, I so submit.

**Mr Frederick FUNG moved the following motion: (Translation)**

"That, as the Government will introduce very shortly a new charging scheme for public health care services and, in parallel, enhance the existing medical fee waiver mechanism, this Council urges the Government to relax the eligibility criteria under the mechanism so as to benefit more people from the socially disadvantaged groups, such as elderly persons, low-income earners and chronic patients."



**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Frederick FUNG be passed.

**DEPUTY PRESIDENT** (in Cantonese): Mr YEUNG Yiu-chung will move an amendment to this motion. Dr LAW Chi-kwong and Mr LEUNG Yiu-chung intend to each move an amendment to Mr YEUNG Yiu-chung's amendment. The amendments have been printed on the Agenda. The motion and the amendments will be debated together in a joint debate.

**DEPUTY PRESIDENT** (in Cantonese): I will first call upon Mr YEUNG Yiu-chung to speak and move his amendment to the motion. Then, I will call upon Dr LAW Chi-kwong and Mr LEUNG Yiu-chung to speak. They will not move their amendments at this stage. Members may then debate the original motion and the amendments. After Members have spoken, I will call upon Dr LAW Chi-kwong to move his amendment to Mr YEUNG Yiu-chung's amendment, and will propose and put the question to you. Whether Mr LEUNG Yiu-chung may move his amendment to Mr YEUNG Yiu-chung's amendment will depend on the result of the vote on Dr LAW Chi-kwong's amendment. Then, I will put Mr YEUNG Yiu-chung's amendment or his amendment which has been amended, to vote.

I now call upon Mr YEUNG Yiu-chung to speak and move his amendment.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, I move that the motion of Mr Frederick FUNG be amended as printed on the Agenda.

Madam Deputy, the public health care services of Hong Kong are recognized as the most efficient. What people appreciate most are not just their low fees and high standards, but also, more importantly, the Government's principle that no one should be denied proper medical treatment due to lack of means. The right of Hong Kong people to receive medical treatment is basically protected under the efficient health care system. However, due to the huge demand of an ageing population and also reduced funding from the Government, the public health care system is facing unprecedented pressure.

So far, the provision of public health care services in Hong Kong has been marked by an emphasis on equity. Basically, all Hong Kong people, rich or poor, can enjoy equal access to public health care services. But times have changed. Society has now reached a consensus on "those who have the means pay more", and on the idea that public health care resources should be channelled to the disadvantages social groups such as the elderly, the poor and chronic patients, so as to ensure a more reasonable utilization of our limited resources. Although people do appreciate Dr YEOH's frequent explanation that the Government is constrained by limited resources to keep on providing heavily subsidized public health care services to those who have the means, the Government must still explain to the public what measures will be taken to fulfil the principle of looking after the vulnerable.

Last month, the Government of the Hong Kong Special Administrative Region (SAR) put forward a fee waiver mechanism based on assets and income tests and supplemented by the assessment of medical social workers, the aim being to provide non-CSSA recipients with a second safety net. The DAB supports this mechanism. Our only concerns are whether the assets test is too stringent and whether it is easy for the needy disadvantaged groups, such as the poor elderly, chronic patients and low-income earners, to obtain assistance.

As our population ages, elderly people have come to occupy an increasing proportion in the utilization of public health care services. According to the statistics of the Hospital Authority (HA), elderly persons aged 65 or above account for more than 40% of the total number of in-patient days. And, in regard to accident and emergency services, elderly persons aged 65 or above account for more than 50% of all the cases classified as "critical", "emergency" and "urgent". From the physiological perspective, it is normal for an elderly person to have health problems. But what is more noteworthy, what we need to consider, is that most elderly persons are retired, and even those who are not retired are mostly earning a very meagre income; their family members are their main financial support. In the course of serving the community, I have talked to many single elderly persons, so I understand their concerns. They do not have any family to depend on, and after several decades of hard work, their only possessions may just be a tenement flat in which they have lived for a couple of decades and some "funeral savings" amounting to \$100,000 or so. They can appreciate the current economic difficulties of Hong Kong, so they are willing to live a scrimping life and do not want to get any government assistance as far as possible. However, they all say that medical expenses are their greatest concern.

Madam Deputy, there are voices in society calling for a 50% fee waiver for all elderly persons across the board. Although this will be more convenient than the proposed means test mechanism, we must still ask whether this will violate our agreed principle of channelling resources to the socially disadvantaged groups. The DAB also estimates that if we implement this fee waiver across the board, the HA will receive \$600 million less in new revenue. This loss of new revenue will aggravate the \$300-million deficit situation of the HA. The HA will hence have stronger justifications for the cutting of hospital beds, manpower and various services. In the end, contrary to our expectation, the least financially able people will be seriously affected by the declining quality of health care services.

Public health care services in Hong Kong are still heavily subsidized by the Government. If we adopt the principle of "those who have means pay more" and allow relatively well-off elderly people or those who have family support to pay more for public health care services, then poor or unsupported elderly people may have more opportunities to benefit from fee waivers. This is also a desirable arrangement. However, the DAB must also point out that the new fee waiver mechanism is much too harsh, because a single elderly person possessing \$80,000 worth of assets or more will not be given any fee waiver. That is why I have moved an amendment to the original motion, urging the authorities to, among other things, relax the assets limit applicable to unsupported elderly applicants. That way, this group of people, who are most in need of help, can be offered better protection.

Madam Deputy, we should also pay heed to the situation of chronic patients. They are heavily burdened by medical expenses, and not only that, their chronic diseases also seriously affect their working capacity, the quality of their own life and that of their families. We do understand that different chronic diseases will have different impact on people's working capacity, and that even the same chronic disease will cause different effects in people, depending on the seriousness of individual cases. So, we think that it is difficult to offer any fee waiver to all chronic patients across the board. As a result, we are of the view that it is appropriate to assign the vetting work to medical social workers. Another issue which should be discussed is the validity of fee waiver certification. At present, a fee waiver certification issued by a medical social worker is valid for a maximum of six months. But a chronic patient will find it

very frustrating to file an application every six months. Besides, we cannot possibly expect a chronic patient to recover overnight, and given the current economic circumstances, unless an eligible chronic patient sudden wins the Mark Six Lottery, his financial conditions will certainly not improve within such a short time. Therefore, the DAB hopes that the validity of fee waiver certification can be lengthened from six months to one year. This will not only make things easier for chronic patients, but also relieve the administrative burden of medical social workers.

Madam Deputy, since the finances of the Government are so tight now, it is no longer possible for it to be as generous as it used to be. I therefore believe that the principle of "those who have means pay more" is more compatible with the current economic circumstances and principles of resource allocation. However, we must not forget that there are still disadvantaged groups in society, and the Hong Kong Government must look after them no matter what. The DAB hopes that the Government, when finalizing the various technicalities of the fee waiver mechanism, can listen more to public opinions and conduct more publicity work before commencement, so as to reduce the unnecessary misunderstanding and worries of various social sectors about the new mechanism.

Dr LAW Chi-kwong's amendment to my amendment proposes to offer a 50% fee waiver to all elderly persons across the board. The DAB cannot support it. His proposal violates not only the concept of effective resource utilization but also the principle of "those who have means pay more". Mr LEUNG Yiu-chung's amendment proposes to fully waive the new and increased fees and charges for elderly persons and chronic patients. This too is not in line with the principle of effective resource utilization, thus the DAB will not render its support either.

Madam Deputy, I so submit.

**Mr YEUNG Yiu-chung moved the following amendment: (Translation)**

"To add ", including relaxing the asset-assessment criteria for unsupported elderly persons, and to extend the maximum fee-waiver period for chronic patients from six months to one year," after "this Council urges the Government to relax the eligibility criteria under the mechanism".

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr YEUNG Yiu-chung to Mr Frederick FUNG's motion be passed.

**DR LAW CHI-KWONG** (in Cantonese): Madam Deputy, at the beginning, it never occurred to me that I should move an amendment to Mr Frederick FUNG's motion, because I thought that his motion could allow a large scope for discussion. But when Mr YEUNG Yiu-chung put forward his amendment, I discovered that he had significantly reduced the scope for discussion. Since his amendment is so specific, I have also made my amendment very specific by expounding the position of the Democratic Party. I hope that Members can support my amendment. Later on, Mr Albert HO will talk about the elderly people issue for the Democratic Party. He will also respond to Mr YEUNG Yiu-chung's remarks, clarifying that our proposal on offering a 50% fee waiver to all elderly people across the board is consistent with effective resource utilization. I shall let Mr Albert HO give his response a moment later. As for chronic patients, Mr WONG Sing-chi will speak on them for the Democratic Party, explaining how we think they can be helped under the fee waiver mechanism. I am going to focus on low-income earners and income limits.

On low-income earners, Members should realize that there is a problem with the Government's proposal, to which Mr Frederick FUNG has already alluded. The problem is about why the monthly median income for a one-member family has to be \$6,000. As we know, the median income now is \$10,000. So, why is the median income of a one-member family set at \$6,000? Over 40% of the people are not working. Who are these people? They are CSSA recipients, mostly elderly persons. If all these elderly persons, each receiving just \$3,300 in CSSA payment monthly, are also factored into this, then obviously, the monthly median household income will be on the low side. Therefore, when we consider setting an income limit, the overall median income of Hong Kong should provide very good reference. Unfortunately, all these figures, especially those connected with one-member families, also cover many elderly CSSA recipients, and this has brought down the overall figure. We can easily imagine that since as much as 30%, 40% of one-member families are not working, the reference figure will necessarily be very low! When drawing up the median income concerned, if we can approach the Census and Statistics Department and obtain statistics disregarding single CSSA recipients or one-

member families, we may well arrive at a median income slightly higher than that worked out by the Government. Therefore, when it comes to income, we have made it a point that the relevant figure should not be adopted.

Mr Frederick FUNG proposed to use the figure adopted for public housing application. We believe that this should provide good reference. But we still have to work out a more scientific method and decide what criteria should be adopted. The Government now sets the limits at 75% and 50% of the median income. I think this can be discussed, but owing to the discrepancy, the problem connected with one-member families is very serious. The fact is that even three- and four-member families are also faced with this problem, only that a four-member family cannot possibly get \$19,000 in CSSA payment. This proportion obviously requires adjustment. The Census and Statistics Department has all these statistics, so we need not fear that we cannot obtain the statistics disregarding CSSA recipients.

Besides considering the income of low-income earners, we must also consider their expenditure. The current proposal of the Government is mainly about their income, and no detailed treatment is given to their expenditure. I mean, in case a three-member family runs into a traffic accident, and all the three members have to be hospitalized for seven days, they will have to pay \$2,100. According to the Government's proposal, if the monthly income of this family is slightly above \$12,000, say \$12,001, they will not be eligible for any fee waiver. The problem here is that the \$2,100 which they pay for seven days in hospital already accounts for 18% of their household income. Members may wonder whether this will really pose any difficulties. This is of course open to discussion. But we must note that fixed expenditure usually occupies a good part of the income of a low-income family. There is not too much residual income for disposal, so there are bound to be difficulties when a low-income family has to pay \$2,100 unexpectedly. Therefore, I cannot see why we should disregard medical expenses when considering the case of low-income families.

Therefore, I think we should do some rethinking about how best to handle the problem of expenditure under the entire mechanism. A daily expenditure of \$100 may not matter so much to ordinary people, but if several members of the same family have to stay in hospital for prolonged periods, that family will certainly run into difficulties. Some may wonder whether such a family can manage. I think it can. They may use their credit cards or simply borrow money. But do we want our health care system to resort to this method?

Besides, social welfare is another problem. In the short run, loans may be a way out, but health care is really a vexing issue. For this reason, I hope that when the Government works on the fee waiver mechanism, it can consider the expenditure aspect. For example, if an applicant's medical expenses in the previous six months already occupied 10% of his income in the same period, he should be granted a partial fee waiver, say a 50% fee concession. In the case of the example cited by me, a 50% fee waiver will make the proportion lower than 10%. Why 10% specifically? It is the ratio applicable to public housing rents. I think medical fee waiver can adopt the 10% ratio as in the case of public housing.

Another problem is the validity of fee waivers. Honestly, whether the validity period should be half a year or one year is basically a problem of risk management. At what intervals should the Government conduct assessments to determine whether a fee waiver should be withdrawn due to changes in the applicant's circumstances? In some cases, it is possible to conduct assessments at short intervals. For example, in the case of low-income earners, we may review the validity of their waivers once every six months. But the circumstances of chronic patients will not change, which is why assessments should be conducted at least at one-year intervals. For elderly persons, unless they win the Mark Six Lottery, their life is unlikely to change in the time ahead. Therefore, the validity period for elderly persons should be extended to longer than one year.

Thank you, Madam Deputy.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Deputy, on 12 November last year, when Dr YEOH announced that new medical fees would be introduced and existing fees would be increased, he also stressed that no one would be denied proper medical care due to lack of means. In addition, the Government's paper on the medical fee waiver mechanism also reiterates that the fundamental objective of government financing of health care services is to improve public health and to protect the citizens from potentially high financial risks arising from catastrophic or prolonged illnesses.

Unfortunately, however, while these words still ring in our ears, we now find that the fee waiver mechanism proposed by the Government is entirely unable to achieve these two objectives. According to the proposal by the

Government, only a patient whose monthly household income does not exceed the average monthly CSSA payment applicable to his household size is eligible to apply for a full waiver of medical fees. In case a patient's monthly household income does not exceed 75% of the Median Monthly Domestic Household Income (MMDHI) applicable to his household size, he is only eligible to apply for a partial waiver. But we are just talking about filing an application here; as for whether there will be any fee waiver or how much will be waived, it is still largely unknown, as pointed out by Mr Frederick FUNG. A patient will of course feel desperate and helpless as a result. What is more, besides passing an income test, an applicant must also pass a means test. The assets limit for an elderly person, as mentioned by two Members just now, is \$80,000. If the savings of an elderly person are slightly more than \$80,000, then after putting aside a portion of the money as "funeral expenses", he will have to use the rest for meeting living expenses. What then can we expect him to do with his monthly living expenses? We think that all these tests are just too stringent, denying people of the assistance which they can otherwise enjoy.

All these means tests also fail to take account of other circumstances affecting the expenditure of the applicant's family. For instance, a family made up wholly of adult members and one consisting of dependent children will be facing entirely different circumstances. A family with dependent children will have to pay their children's school fees and other miscellaneous fees. This makes it entirely different from one made up wholly of adult members. Unfortunately, all these tests do not consider these differences, so it can be said that the whole mechanism is inflexible, restrictive and unable to benefit those in genuine need. What is more, we also see that not all patients with special difficulties are eligible to apply for a fee waiver. As I mentioned a moment ago, only a patient whose household income is between 50% and 75% of the median household income is eligible to apply to the Government for a fee waiver on the strength of non-financial factors. And, the factors determining the granting or otherwise of a fee waiver are altogether vague. One factor, for example, is whether or not a fee waiver could provide incentive and support to solve the patient's family problems. What is meant by "solve the patient's family problems"? Should reducing his household expenditure be considered a solution to family problems? The fee waiver mechanism is punctuated by too many doubts and unknowns. As a result, patients have to suffer in two ways. On the one hand, they are tortured by their diseases, and on the other, they have to worry about medical fees. Should we, as a just and caring society, treat the vulnerable in this way?



The current proposal of the Government is obviously marked by two problems: first, the means tests are far too stringent and rigid; second, the non-financial factors are ambiguous, leading to anxieties on the part of patients.

I may perhaps cite one more example to illustrate these two problems. I know a chronic patient suffering from Lupus Erythematosus. Her family depends mainly on her husband's income of \$13,000, which is just above the income limit that makes a three-member family eligible to apply for a fee waiver. Under the Government's proposal, she will definitely be denied any fee waiver. However, if we look carefully at the expenditure of her family, we will see that her situation is in fact very worrying. She lives in a small private residential unit costing some \$4,000 in rental. There is just some \$8,000 left, and the entire family will have to depend on this sum of money to meet their expenses. This friend of mine must be hospitalized for at least five days every month for medication. If her conditions are not stable, she will even have to stay in hospital for 10 or 20 days. Under the old mechanism, her monthly medical expenses amount to \$340 at the lowest and \$1,400 at the highest. This already takes up a rather substantial proportion of the family's disposable income after rental payment. This is already difficult enough, but under the revised fee structure, her monthly medical expenses will be increased at least by \$550, and if her conditions are poor, she may even have to pay \$2,000. After deducting \$2,000 from \$8,000, only \$6,000 is left to pay for the children's school fees and other fees and also her husband's travel expenses. After meeting all these expenses, how much will still be left? Each one will have less than \$1,000 a month. Do these people deserve our help and care?

Moreover, we must also understand that chronic patients, because of their poor health, may easily contract other diseases. Their medical expenses may thus increase greatly. It is indeed very difficult for them to cope. It is most regrettable that the harsh and rigid income test mechanism being proposed will not provide any help to them. This example is just the tip of an iceberg, and there are countless other cases.

Under the means test being proposed, properties not occupied by the applicant will also be counted. Some have thus raised a query. As we know, some elderly persons have to support their own living on proceeds from leasing their properties. The rent they receive is actually not as high as \$10,000 or \$20,000 as people would generally imagine. It may just be several thousand, and this is already all they can have to meet their living expenses. However,

because of such a constraint, they will not be given any medical fee waiver; this will pose real difficulties to them.

The non-financial factors will cause anxieties to elderly people, chronic patients and the disabled. The vague criteria make people fear that they may fail to get any fee waiver. The validity of waiver also presents a problem. If a waiver is valid on a one-off basis only, a patient may need to file an application every time he needs a fee waiver. This is definitely a great nuisance to patients.

Honestly speaking, these rigid measures will not only affect patients but also exert immense pressure on the Hospital Authority. I hope that the mechanism will not produce the opposite result and cause losses to both sides.

The Government has recently announced its decision to reduce the disability allowance by 11.1%. So, why has it decided to increase medical fees on the other hand? Is it not contradicting itself? As far as my understanding goes, the mission of a medical doctor is to mitigate people's pains. I therefore very much hope that Dr YEOH and Dr LEONG Che-hung can do something about the mechanism to help chronic patients.

Madam Deputy, I so submit.

**MR TOMMY CHEUNG** (in Cantonese): Madam Deputy, all along the Liberal Party has advocated that the Government should exercise prudence in monitoring its health care expenditure, and should not allow such expenditure to inflate indefinitely. This is especially true now that the Government is facing the serious problem of fiscal deficit. While the various sectors of society should share the burden of fiscal deficit, the Government has the responsibility to ensure that the limited public resources are utilized in the most effective and best possible ways. Basing on the same concept, the Government has decided to revamp the fee structure of the public health care system by adjusting the medical fees in a limited way, so as to make the people more prudent in using public medical services and minimize the abuse and misuse of services. The Liberal Party is of the view that this will not only ensure that public funds can be used more effectively, but also help to reduce the pressure of front-line health care workers, thereby enabling them to have more time and resources to take care of more needy patients. Therefore, this approach is acceptable.

However, the Liberal Party also stresses that the authorities must ensure that, after the revision of medical fees, no one will be denied appropriate medical care due to his financial difficulties. For this reason, the setting up of a medical fee waiver mechanism is obviously a realistic need.

From a paper issued by the Health, Welfare and Food Bureau to the Legislative Council Panel on Health Services on 24 February, and the recent open remarks made by Dr EK YEOH, Secretary for Health, Welfare and Food, it can be seen that the Government has introduced the enhanced medical fee waiver mechanism to cater to the actual medical needs of three socially disadvantaged groups who are not CSSA recipients, namely, the low-income earners, the chronic patients and the poor elderly persons. We think this has reflected, to a certain extent, that the Government is responsive to the demands of the people and has not ignored the needs of the socially disadvantaged groups.

In fact, even after the Government has made upward adjustments to medical service fees, there is still a large gap between the rate of recovery and the actual cost. For example, for the in-patient hospitalization charge in a public ward, the average unit cost per day in 2001-02 was \$2,490, but the new fee is just \$100 per day, plus \$50 as the admission fee. For an out-patient specialist clinic, the cost per visit in March 2002 was \$740, whereas the revised fee now is \$60 per visit, and the prescription fee is \$10 per medication. Besides, the costs of many medical fees are constantly on the rise, so in the light of the fiscal deficit, if the Government does not make a good job of its assessment and vetting and grant medical fee waivers too casually, it would be unfair to other taxpayers who do not enjoy any fee waiver. And it will defeat the purpose of the Government in introducing the charging scheme for public health care services.

The original motion moved by Mr Frederick FUNG urges the Government to relax the eligibility criteria under the fee waiver mechanism. The Liberal Party has some reservations about this. Firstly, for the low-income earners, chronic patients and poor elderly persons mentioned in either the original motion or the amendments, the Government has already indicated that they are the major targets for assistance.

In addition, the original motion urges the Government to relax the eligibility criteria of the elderly persons under the medical fee waiver mechanism. The Liberal Party agrees that the elderly persons have a greater need for medical services. However, is it a reasonable practice to relax the eligibility criteria of elderly persons across the board basis? We must know that the elderly persons are not necessarily in financial difficulties. If we relax the eligibility criteria of all the elderly persons, it will be unfair to other taxpayers, and it will make it impossible for the Government to concentrate the limited public resources on assisting the socially disadvantaged groups in genuine financial difficulties. Furthermore, under the new waiver mechanism, each application will be assessed and approved by medical social workers. The Liberal Party believes this will enable the unique situation of each elderly applicant in a sufficiently flexible manner.

Basing on the same principle, the Liberal Party considers the amendments proposed by Dr LAW Chi-kwong and Mr LEUNG Yiu-chung respectively to Mr YEUNG Yiu-chung's amendment similarly unacceptable. This is because not all the elderly persons and chronic patients have financial difficulties. And disability allowance recipients are already exempted from means test. Therefore, it is unrealistic for us to grant fee waivers to these groups of people on an across-the-board basis, which will not just bring about unnecessary expenditure to the Government, but also violate the principle of using resources on the most needy.

As for the amendment moved by Mr YEUNG Yiu-chung, it seeks to narrow down the scope of the original motion to relaxing the means test criteria for unsupported elderly persons. The Liberal Party supports this in principle. The amendment further proposes to extend the maximum validity period of fee waivers for chronic patients from the present six months to one year. As the Government has already indicated that medical social workers may exercise discretion in deciding the validity period of fee waivers, depending on the actual needs and situations of the patients. This shows that there is a certain degree of flexibility in the arrangement. Therefore, the Liberal Party does not have any strong views on whether or not the validity period should be extended to one year.

With these remarks, Madam Deputy, I support the amendment of Mr YEUNG Yiu-chung, and oppose the original motion and the other two amendments.

**MS LI FUNG-YING** (in Cantonese): Madam Deputy, organizations providing public health care services will adjust their fees and charges from 1 April onwards, including the fees and charges for general bed hospital care, specialist out-patient services, dressing, injection and private bed services. I agree that most of the medical costs have been borne by public money and if suitable adjustments are not made, it will be difficult to cope with the continuously rising medical costs and facilitate updating of medical equipment in keeping with the times. However, while adjusting such fees and charges, a cost-effective fee waiver mechanism must be established and it must be ensured that the relevant adjustments will not incur more social costs, otherwise, the losses will outweigh the gains. Can the proposals of the Health, Welfare and Food Bureau for adjustments in fees and charges and a fee waiver mechanism achieve the objective? In the motion debate of this Council on the medical fee waiver mechanism today, there are one original motion and three amendments pinpointing the medical fee waiver mechanism and focused on the fee waiver arrangements for elderly persons, low-income earners and chronic patients. Thus, the answer is very obvious.

I am very concerned about the medical fee waiver mechanism to be implemented by the Government. According to the Government's proposals, elderly persons must pass a certain form of means test before they can be granted medical fee waivers. This does not comply with the consistent policies of the Government for elderly persons and it at least does not comply with the policy for elderly persons that the Government has made efforts to promote to the private organizations. At present, all Hong Kong residents above 65 years of age can apply for Senior Citizen Cards and the cardholders can get fee discounts or priority services from government departments, public organizations and merchants. The major public transport companies in Hong Kong also provide half-fare concessions to elderly persons above 65 years of age. Moreover, the Kowloon Motor Bus Company (1933) Limited offers elderly persons above 60 years of age concessionary fares and the sports venues and cultural and recreational programmes of the Government also offer concessionary fees to elderly persons above 60 years of age. When the Social Welfare Department launched the Senior Citizen Card Scheme, it explained that the objective of the scheme was to affirm the contribution made by elderly persons to society in the past and spread the message of respect and care for elderly persons in the community. However, it is a scathing irony on the policy for elderly persons implemented by the Government that most elderly persons are denied

concessionary fees and charges for public health care services that are most needed by them.

Through my contact with low-income earners and people who have been incapacitated for a long time as a result of injuries at work, I know that they are unwilling to consult private medical practitioners when they are sick and they might as well postpone seeking consultation in order to save a hundred or so dollars in medical expenses. Putting up with their ailments, they would rather take long trips to seek medical consultation at public health care organizations. In recent years, the wages of the lower class in Hong Kong have been on a downward spiral and the adjustment in the fees and charges for public health care services will undoubtedly deal a further blow to their very weak sense of seeking medical consultation at the early stages of illnesses.

At the meeting of the Panel on Health Services of this Council on Monday, we discussed the effects of charging for services of the accident and emergency departments of public hospitals. According to the data provided by the Government, after the implementation of the fees and charges for services of the accident and emergency departments, comparing the period from December 2002 to February 2003 and the same period in the year 2001-02, the utilization rate of such services has reduced by 11.7%, with a 0.1% reduction in critical cases and a 10.7% reduction in semi-urgent cases. There are fewer patients at the accident and emergency departments, but where have the patients gone for medical consultation? If there are no corresponding increases in out-patient or private health care services other than the services of the accident and emergency departments, the levy of charges for accident and emergency services will only illustrate that some people who would otherwise have used such services would no longer use such services or they may not use any health care services at all. The patients should originally seek medical consultation at the early stages of their illnesses, but they have postponed seeking consultation in order to save that hundred or so dollars. The patients have to suffer and the authorities may have to spend more public money on the treatment of patients in future.

Madam Deputy, on this issue of policies on elderly persons, I certainly hope that the Government can set an example for private organizations, even if it cannot do so, it should at least keep up with private organizations in medical fee waiver. The Government should also have a simpler and more tolerant

mechanism for low-income earners and chronic patients. If the Government only considers the relevant standard of fee waiver on the basis of the CSSA, there is a long distance from our goal of respecting elderly persons and helping the socially disadvantaged groups.

Madam Deputy, I so submit.

**MR ABRAHAM SHEK:** Madam Deputy, understandably, nobody likes increases in medical fees. But the public's response to the new medical charges, however, has been relatively mild. The public is slowly but surely coming to terms with the "user pays" principle and having to spend a reasonable fee for quality medical services. They understand their responsibility as citizens of Hong Kong. That is why they accept, even reluctantly, the Government's medical fee increase.

What they have trouble accepting is the new fee waiver mechanism and the Government's unyielding attitude in the face of criticisms during public debates. If the new waiver mechanism is reasonable and fair — and if the Government really believes that these vulnerable groups have been misled by media exaggerations or the manipulation of non-governmental organizations — why could the Government not answer their concerns and ease their doubts? Instead of trying to win them over with reasons, the Government simply did not respond. When not just one or two, but a large number of groups join together into one passionate united coalition against a policy, I believe that the Government owes them a good and honest explanation.

One of the major concerns raised in the course of the debates is how low-income groups would be affected by these new mechanisms in the budget. Since all social security recipients would continue to be granted full waivers, it is non-Comprehensive Social Security Assistance (CSSA) recipients who would be most affected in this scheme. Those who earn between \$3,000 and \$4,500 would have to pay full charges if they also exceed ownership of a certain amount of capital assets, while others with fewer assets would get only a half waiver. In the Mandatory Provident Fund Scheme, the minimum exemption level for making contributions is \$5,000 a month. Obviously, the Government is using different standards in setting minimum income level for different waiver schemes. In the medical fee waiver scheme, the cut-off has been set at a level that could

leave many working poor outside the safety net. Many in this vulnerable group are elderly and they are the most prone to chronic diseases, emergencies, and the most likely to require public hospital services. It is possible that the new scheme could drive many of these people — who currently hold on their pride, dignity and self-respect, and live on their own means rather than to receive CSSA payments — to quit their jobs and switch to relying on social security assistance. The drawbacks then would offset any advantage gained in this new waiver mechanism.

A truly effective waiver mechanism should ensure that the needy would not be denied adequate medical care because of their lack of means. I appreciate Dr YEOH Eng-kiong's commitment and past efforts in adhering to this principle. I urge him to ensure that the new waiver mechanism would continue to endorse this policy. And to achieve this, attention should be placed on the implementation details.

Presently, before any needy patient can receive help, he has to endure a variety of bureaucratic formalities and complicated assessment procedures. With the introduction of the new system of charges, the processing time will likely be extended even longer since the workload of on-site medical social workers will increase. The result is that the amount of time and attention a worker can allocate to each case would be reduced. In addition, the means evaluation itself is not as simple as the Government suggests. Personal income and assets information are sensitive data. To be accepted for waiver, the applicant and every one of his family members will have to disclose personal financial details. This single requirement may threaten or jeopardize the relationship of a senior applicant with his or her family members.

Having said that, I still support a means test. It is needed to guarantee that resources are used in the most effective and efficient manner. Thus, it is important that the test be carried out in a fair, transparent and sensitive manner that would take into consideration factors like individual situations and relationships with family members. If not arranged properly, it would become a potential source of nuisance to applicants. The possible pressure, stress and embarrassment the means examination may cause could be so great that it could discourage needy patients from approaching public hospital services — and timely treatment may be delayed. Certainly, this cannot be the intention of the Government, and this should never be allowed to happen during the implementation of the scheme.



In addition to a system of charges, a savings scheme has also been identified as one of the reform strategies to achieve long-term financial viability in the health care system. While the former is scheduled to commence in April, the latter concept is still being studied and a concrete timetable nowhere to be seen. In this intermediate stage of reform when a possible alternate long-term protection scheme is still not in place, the financial burden on patients can certainly expect to grow heavier and heavier. Even as we devote efforts now to improve the fee waiver mechanism, it is imperative that we should step up our efforts in establishing a long-term protection plan, too.

With these words, I support the original motion and the amendment of the Honourable YEUNG Yiu-chung.

**MISS CHOY SO-YUK** (in Cantonese): Madam Deputy, despite the tremendous efforts made by the Government, the fiscal deficit problem is still here, economic recovery has yet to come, government revenues have substantially decreased and the general public have become more and more worried under these shadows. To restore people's confidence in its governance, the Government regards the fiscal deficit as its archenemy and seeks to get rid of the fiscal deficit by all means. However, even if people are willing to share the responsibility for the fiscal deficit in the hope of eliminating it, still they will consider the specific method to be adopted. If the method is too harsh, unfair or unreasonable, the Government will not be able to convince the public to support it with one heart, and the public support the Government needs most but not the fiscal deficit will be eliminated at the end.

After announcing its decision to increase medical fees and charges and the fee waiver mechanism, the Government emphasizes that no one will be denied medical services through lack of means. I have never raised objections to this point, but, is it reasonable if only this criterion is met? Certainly not! The reasons are very simple. If the fee waiver mechanism has complicated formalities, imposes a lot of restrictions on the applicants and has excessively harsh income and assets ceilings, people who need medical services will not choose to seek consultation unless they have no alternatives, and they will postpone treatment and even give up seeking consultation. Is that acceptable to us?

Madam Deputy, if we look at the fee waiver mechanism carefully, we will find that the requirements are relatively harsh. If a singleton wants to be granted a full waiver, his income cannot exceed \$3,000 and his assets cannot exceed \$30,000; even if he wants to be granted a partial waiver, his income cannot exceed \$4,500. For an elderly person living alone, his assets cannot exceed \$80,000, and so long as an elderly person has some savings, he will not meet the requirement for the waiver and he must pay the fees and charges in full.

Besides, non-financial factors are not considered under the fee waiver mechanism, for instance, the applications by chronic patients, people with disabilities and single parents must be assessed and approved by medical social workers at discretion, but there are no explicit guidelines for the criteria of assessment and approval and the rate of waiver.

In all fairness, the mainstream view of the community on increases in medical fees and charges is that they are not unwilling to compromise, nor are they against all increases in fees and charges by the Government. People think that fees and charges can be increased, but there must be a satisfactory fee waiver mechanism to protect the grass roots so that they will not be affected by the increases. Since the financial conditions of elderly persons differ, we actually do not intend to waive the medical fees for all elderly persons across the board. However, the assets ceiling of \$80,000 is so low that it must be relaxed, otherwise, elderly persons have to think twice before each medical consultation and their illnesses may become more serious at any time. Is the Government so hardhearted as to force elderly persons who have always lived frugally to spend even their meagre "funeral expenses" on medical consultation?

Now that the authorities have stated that after the implementation of the proposals for fee increases, the government subsidy for health care costs will only slightly drop to 96% from the existing 97%, does it really have to be so mean with elderly persons about dozens of dollars and set such ceilings and require them to report their assets? It will not only dampen the desire of elderly persons in filing applications but also fail to achieve the objective of building up a caring community. It also runs counter to the Chief Executive's usual advocacy that society should allow elderly persons to enjoy a secure old age.

Madam Deputy, I believe everybody knows that there is a fiscal deficit crisis and will not mind sharing the responsibility for the fiscal deficit. The

question only lies in the share of responsibility for each person and whether the process and method of sharing is reasonable. If the SAR Government wishes to avoid sustaining too much losses, that is, failing to eliminate the fiscal deficit and injuring public support, intensifying popular feelings against it and continuously eroding people's confidence in its governance, it has to judge the hour and size up the situation and relax the strict fee waiver mechanism, otherwise, its losses will ultimately outweigh its gains.

With these remarks, Madam Deputy, I support Mr YEUNG Yiu-chung's amendment and oppose the other amendments.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, presently, the medical services in Hong Kong are heavily subsidized by the Government, and the medical fees collected by the Government only account for 2% of the costs. Even after the increase in medical fees from 1 April 2003, the ratio could be adjusted upwards to about 3% to 4% only. At a time when the Government is facing great financial pressure, and on the premise of opening up new sources of income and cutting expenditures, the increase in medical fees is inevitable, if the quality of medical services in Hong Kong is to be maintained.

The increase in medical fees would inevitably increase the burden on people who have to use public medical services. The upward adjustment of fees would have a greater impact on people short on means, for example, the elderly people and chronic patients.

As public resources are limited, invariably we have to employ certain criteria to ascertain which groups of people need assistance. For example, in submitting applications for public housing and CSSA, applicants usually have to undergo the means and assets tests. In the case of medical services, it is also necessary for Hong Kong to formulate similar criteria now. Of course, a relatively simple approach is to use the age or the conditions of the chronic illness of the applicants as the criteria for granting fee waivers. However, this approach is also not entirely fair. Among these people, many of them belong to the low-income group. But among these people, some of them do have adequate means and are not necessarily the most needy ones. Therefore, if we

adopt such simplistic criteria, we may not be able to utilize public resources most effectively on those who are in genuine need of assistance from the community.

In comparison, the means and assets tests are a more objective and fair assessment approach. In fact, the assessment criteria proposed by the Government have been formulated after careful consideration. For example, the residential property owned and occupied by the patient or his family will not be included in the calculation of assets value.

However, the Government should try to simplify the procedures for processing applications for medical fee waivers. Otherwise, the needy people would be deterred from applying due to their worry that it may cause them too much trouble in declaring the incomes and assets of their family members. For elderly people with no family support, the Government should also consider their situations and relax the assessment criteria for them. Moreover, in order to address the practical needs of chronic patients, the Government should consider extending the validity period of fee waivers from six months to one year.

Madam Deputy, while launching the new charging scheme for public health care services, we should at the same time implement a medical fee waiver mechanism, so as to render assistance to the needy. After the two systems have been introduced and implemented for a certain period, the Government should review and adjust the operational and implementation details of the medical fee waiver mechanism, so as to make the mechanism better suit the needs of Hong Kong. I so submit. Thank you.

**DR TANG SIU-TONG** (in Cantonese): Madam Deputy, being the second largest government expenditure item behind education, health care expenditure has soared from \$22.6 billion in 1996-97 to \$31.3 billion this year. The incessant increases in health care expenditure year on year have exerted a heavy burden on the public finances of Hong Kong. Both the Government and members of the public need to address this problem squarely and work out a proper solution as soon as possible, lest the public health care system may collapse or its standard of services may decline. However, I hope that the Government can understand that while increases in medical charges may help recover a small portion of the costs, they cannot possibly encourage those people who have the means to switch to private medical practitioners for consultation,

meaning that they cannot possibly solve the structural problem of imbalance between the public and private health care sectors.

The fact is that people who have the means will continue to use public sector health care services even if the Government increases the charges, because they will still be far lower than those charged by private medical practitioners. Increases in charges will only produce a very slight impact on people who have the means. But then the increases will greatly add to the burden of low-income earners who are not recipients of CSSA. Although the Government will put in place a fee waiver mechanism, and it has repeatedly stressed that no one will be denied proper medical treatment due to lack of means, it must still be noted that the fee waiver mechanism being proposed is marked by many inadequacies indeed.

To begin with, the worst-hit victims of the introduction of medical fees will be those poorest elderly persons who need medical consultation and hospitalization on a regular basis. Of the 6.7 million or so people in Hong Kong now, more than 970 000 are elderly persons aged 60 or above. And, more than 70% of these elderly persons are chronic patients. More than 70% of the elderly persons have to seek treatment from public hospitals, and 55% of all public hospital in-patients are elderly persons. Disregarding the 100 000 or so elderly CSSA recipients who are entitled to full waivers, the rest of the elderly persons will still be affected by the fee increases. In the year 2000, the median income of elderly persons was just \$2,600. Elderly persons are the poorest in society. The Government will of course hasten to point out that as long as any elderly person can meet the eligibility criteria, they will be granted a fee waiver.

However, under the fee waiver mechanism proposed by the Government, only those people who can pass both the income test and assets test may apply for fee waivers. In the case of a single elderly person, for example, his assets must not exceed \$80,000. Since it is hard for elderly persons to earn any more income, the asset limits of \$80,000 is undoubtedly too harsh. The \$100,000 or \$80,000 they have saved is already all they have, or simply their "funeral expenses", their only means of security. By modern-day standards, the elderly persons concerned can never be considered rich. So, it is unreasonable to require them to pay more in health care fees than others. I maintain that the Government must appreciate the unique conditions of elderly persons and relax the assets limit for them.

In addition, the Government requires patients to declare their incomes on a household basis. The point is that there are many problem families in society; an elderly person may live with his family, but he may not be on good terms with his family members and may be regarded as a burden. An elderly chronic patient's family may neither be willing to pay his long-term medical expenses nor prepared to assist him by reporting their incomes in the application, thus plunging him into helplessness. Since the Government has already decided to offer fee waivers to those in need, I suppose the vetting mechanism must be endowed with enough flexibility to ensure that those in genuine need, most of whom probably being elderly persons, may still receive the care of society even when their families refuse to co-operate.

Some have advised that the Government should put in place an across-the-board fee waiver mechanism, so that the disadvantaged groups of society, such as the elderly, can benefit. The Government has however replied that this is neither feasible nor equitable, explaining that we should not focus all our resources on helping the vulnerable. But then, the fee waiver mechanism proposed by the Government cannot convince the public either, because one just fail to see how it can offer any particular attention to the disadvantaged, for chronic patients and the disabled will not get any special fee waiver or assistance anyway. In the past three years, just the Hospital Authority (HA) alone approved as many as 67 000 applications for fee remission; this means an average of 22 000 applications a year, showing that many people are now already unable to meet the medical fees and charges. Even if the authorities can grant fee waivers to elderly persons, chronic patients and the disabled in the future, the HA will still not gain any substantial benefit after deducting the administrative costs. Therefore, I hope that the Government can respond to society's opinions positively and further streamline the fee waiver mechanism, so that the disadvantaged can receive protection much more easily.

Finally, a point on specific enforcement. The fee waiver will be effective on a one-off basis, or it will remain effective within a period of six months. This is really inadequate for elderly persons or chronic patients who need medical consultation on a regular basis. Currently, the waiting period for a follow-up consultation is two to three months in general. If the fee waiver has to be renewed on a half-yearly basis, then an elderly person who has broken his bones in a fall may have to apply for a fee waiver twice for the first orthopaedics consultation with two follow-up consultations. This is really a waste of time. Besides, complicated vetting and renewal procedures will only lead to enormous

unnecessary administrative work, which will mean loss than gain to the HA. Therefore, I consider that the Government must extend the validity period, so as to reduce unnecessary administrative costs and make things easier for beneficiaries.

With these remarks, Madam Deputy, I support the original motion and the amendments moved by Mr YEUNG Yiu-chung and Dr LAW Chi-kwong.

**MR LEE CHEUK-YAN** (in Cantonese): Madam Deputy, on behalf of the Hong Kong Confederation of Trade Unions, I rise to speak for the respective amendments of Dr LAW Chi-kwong and Mr LEUNG Yiu-chung and also the original motion of Mr Frederick FUNG.

We are, however, unable to support Mr YEUNG Yiu-chung's amendment, because it narrows the scope of the original motion, limiting discussions on the fee waiver mechanism to the premise that all will be fine as long as we focus on perfecting the assets test for elderly persons. Well, Mr YEUNG Yiu-chung may eventually succeed in fighting for a relaxation of the assets test for the elderly, so let us see whether Dr YEOH will say anything on the Government's willingness or otherwise to do so. I hope that Mr YEUNG Yiu-chung will not mention, on his street publicity boards, only his success in fighting for a relaxation of the assets test for the elderly; he should also mention that he has successfully voted down a 50% medical fee remission for the elderly. Is Mr YEUNG going to do so? If he is, I would say that he really has guts. If he is not, he will just be telling people that he has succeeded in fighting for something very trivial, without saying that in doing so, he has also voted down a motion on offering a 50% fee remission to the elderly.

When Mr YEUNG Yiu-chung stated his opposition to a 50% fee remission for the elderly earlier on, he illustrated his principal argument by asking this question: Are we supposed to reduce the number of hospital beds then? His principle is that those who have the means should pay more. This is almost the same as Dr YEOH's statement that assistance should be offered to those in need only. The Secretary once asked, "From where can we get the money if we were to help everyone. From the heavens? Or, from a tree that grows money?" I believe that when he was making this rather emotional remark, the Secretary must be filled with the anguish or agony of one who was sandwiched. Sandwiched between whom? Between the Financial Secretary and the people,

naturally. The Financial Secretary wants to cap health care expenditure to eliminate or reduce the fiscal deficit, but the people do not want health care charges to go up incessantly and add to their burden, because they simply cannot cope. But the Government still wants to add to their burden. So, the Secretary is sandwiched, and in a fit of anguish, he asked from where we could get the money.

However, I still think that we must answer the Secretary's question on where to get the money. This is a question that always warrants an answer. Before we make any political decision, we must answer this question: Where can we get the money? Talking about the decision to offer a 50% fee remission to elderly persons, I think the underlying rationale is very simple: We must respect the elderly. I am sure the Secretary will certainly agree that Hong Kong really owes the elderly a lot. Elderly people all over the world are provided with pensions, but those in Hong Kong are not. In that sense alone, we already owe our elderly people a lot. That being the case, should we really show a bit more respect for the elderly by offering them a 50% fee remission? If society as a whole agrees that we should show respect for the elderly, then we should offer them a 50% fee remission. But where can we get the money? This question must be discussed and answered by society as a whole. One possibility is to auction our lands. Why must we suspend land auctions until January next year? Is jacking up the market always the most important thing to do? Does society as a whole support jacking up the market? Actually, by suspending land auctions to jack up the market, we will waste a lot of money. Why is it impossible to resume land auctions immediately to increase our revenue?

Another possibility is to ask all members of society whether they are willing to contribute \$100 each. This is in fact one possible solution. If society as a whole judges that priority should be accorded to something, I think the entire society should hold discussions to identify the sources of money. The greatest pity is that while the entire society was still discussing the conditions of our public finances, the Government already hastened to work behind closed doors and offered a windfall to property developers, saying there would be no more land auctions this year. This measure will ruin the free market, but the Government has still taken it. When the Government decided to take this measure, why did it pay no attention to health care and social welfare expenditures, but just consider the needs of property developers? This is just the priority worked out by the Government behind closed doors. Can we be convinced? When we now put forward some demands, the Government instead



tries to suppress us by referring to other items of health care expenditure, saying that it would have to reduce the number of hospital beds. This is not convincing at all. To sum up, I think the question of where to get the money should be answered by the Government and also by society as a whole. But the most important point is that we must first decide whether Hong Kong should treat the elderly better.

Another point concerns the chronically ill. The adoption of 50% of the median household income as the threshold under the fee waiver mechanism can basically solve the problem encountered by low-income earners. But it must also be noted that people whose household incomes are between 50% and 75% of the median household income will still have to apply for fee waivers. The incomes of these people are low, though not so low as to fall below 50% of the median household income, so their ability to meet medical expenses is really very limited. They may still be able to pay the \$200 or \$300 in-patient charges if they suddenly have to stay in hospital for a couple of days. But if a person is chronically ill, or if many of his family members are sick, then with a monthly household income of some \$10,000 only, the \$4,000 to \$6,000 in-patient charges they have to pay in a year will impose a very heavy burden on them. What are they going to do then? Will the Secretary introduce more transparency to the mechanism, telling us what criteria will be adopted for the chronically ill? Please do not just say that they can approach social workers and the latter will assess their applications on their individual merits. It must be noted that different people may adopt different approaches to assessment. So, what are the criteria of assessment? I hope that there can be more transparency, for this would be of great help to chronic patients. One example, as cited by Dr LAW Chi-kwong earlier on, is that medical expenses should not exceed 10% of the total household income. This is one possible criterion. I mean, in the case of a chronic patient, all medical charges in excess of 10% of the household income should be waived. But what actually are the criteria? I hope that the Secretary can tell us this evening how a "chronic patient" is defined and how they are going to help these patients. Thank you, Madam Deputy.

**DR LO WING-LOK** (in Cantonese): Madam Deputy, as a medical doctor, I am trained to save lives. When trying to save lives, we will always exert our utmost. We are always told by our teachers and peers in the course of training that we must respect human lives. That is why when we are trying to save lives,

we will totally disregard the factor of money — whatever the background of the patient may be, whether he is wealthy or poor, we will still exert our very best to save his life. Thus trained, a medical doctor will certainly find resource allocation a very painful task. That is why I certainly do not envy Dr YEOH, who has recently been engaged in the work of resource allocation, for doctors are trained to save lives. Although human lives and health are priceless, social resources are nonetheless limited. This explains why everywhere in the world, whenever people talk about health care services, they cannot afford pure idealism and must also consider resource allocation. When it comes to resource allocation, the ideal situation will be providing all the people with the medical services they need. This is however very much a utopian situation, not found anywhere in the whole world, probably not even in the most affluent places. Therefore, resource allocation can take on only two modes: first, the provision of some specific services to all, and second, the provision of all required services to some specific groups of people. What kind of services must be provided to all? One example is accident and emergency service. Any person, rich or poor, may run into a traffic accident, and there is simply no way to know whether he is rich or poor when he is unconscious. In brief, all Hong Kong residents must be provided with reliable resuscitation, and so, all should have equal access to accident and emergency service.

Who then should be provided with all the medical services they need? Poor people — because they lack the means and ability to provide themselves with the medical services they need. For this reason, I think society should provide them with some kind of protection. What kind of services should be provided to "all"? And, what kind of services should be provided to just "some specific groups of people"? This will involve the drawing of a line somewhere. The need to adopt various mechanisms when drawing a line will necessarily give rise to arguments and conflicts in society. The new mechanisms on fees and fee waiver recently introduced by the Government have aroused lots of anxieties, concerns and arguments in society in respect of where the line should be drawn. I of course have to ask, "Are there any other mode of delivery?" There is actually another mode which can be considered, that is, a universal health care insurance system, which is absolutely fair. Some countries are practising such a system. In these countries, all nationals, whether they are wealthy or poor, are entitled to the same health care services. One will not enjoy a shorter waiting period, nor any better care, because of one's wealth. Canada is practising such a system. But such a system has to be supported by very heavy

taxation. We may say that a health care system financed by tax revenue is more in line with the concept of progressive taxation and is fair to all, in the sense that wealthier people have to pay more taxes and poor people less. In the final analysis, however, such an absolutely fair system must be supported by huge financial resources, so even large amounts of tax revenue may not be fully able to cope. Therefore, even the fairest and most progressive mechanism may have to be regressive in one way or another.

What is meant by "regressive"? This means the imposition of a health care levy on a per capita basis; everyone, rich or poor, is required to pay the levy. The levy is regressive in the sense that both rich and poor people are required to pay the same amount of levy. Naturally, if we do a comparison of incomes, we will see that the burden on the poor is heavier, which explains why the levy is regressive in nature. The medical fee increases recently introduced by Dr YEOH are also regressive in nature. Why? We may look at the charge of \$100 for accident and emergency service as an example. The less well-off have to pay \$100 while the more well-off also have to pay \$100. A comparison of incomes will tell us that the burden on the poor is definitely heavier. Given all these regressive measures, some people will be adversely affected, hence there is a need to introduce remedial measures like an assets limit test, an income limit test and a test on other non-financial factors mentioned by me at the beginning. The Hospital Authority has in fact put in place all these three types of measures. As Members are aware, these three types of measures will make the mechanism very complicated, giving rise to possible disputes over every segment. The workload of medical social workers may increase and in the end, the administrative work involved may become all too onerous. However, as I mentioned just now, we must still consider the availability of resources and their sufficiency and allocation.

There are many people in Hong Kong, and I think that the hundreds of thousands of elderly people on the verge of poverty are in dire need of government medical care. As pointed out by Dr YEOH, although some elderly people multi-millionaires, many others or most elderly people are absolutely penniless. As a doctor, I very much hope that the Government can provide appropriate care to the elderly. They are just several hundred thousand in number, and the several million other people in the community may not object to giving them more care. And, most people have not raised any objection at all

indeed. I hope that the Government can consider what measures can be taken to ease the anxieties of these old people, to rid their old age of such a heavy burden.

Lastly, I wish to say that since the table cover is only so small, the entire table top cannot possibly be covered whichever way one pulls it. That is why I must appeal to Dr YEOH not to focus only on any micro-level mechanism. He must instead consider how best to implement health care financing outside the publicly-funded health care sector, because Hong Kong is faced with an acute shortage of health care resources.

Madam Deputy, I so submit.

**MR MICHAEL MAK** (in Cantonese): Madam Deputy, because of a slightly emotional remark he has recently made ("Are we going to get money from the heavens? Or, from a tree that grows money?"), Dr YEOH has come under the severe criticisms of society. I have known Dr YEOH for some 10 to 20 years. I think that although he no longer practises medicine, he still remains a kind doctor at heart, full of unquestionable concern about the elderly, low-income earners or the vulnerable. I wish from the bottom of my heart that Dr YEOH can take the opportunity today to tell us whether he was just being too impulsive or emotional when he made that particular remark which has become a target of so much criticism. I hope that the Secretary can give me a reply, so that I can change the way I now look at him, so that I can restore my impression of him as a kind-hearted doctor. I fear that, now that he is a Bureau Director, he may have become very much like a heavenly being who is completely ignorant of the plight of mortals. But he must note that being a Bureau Director under the accountability system, he must appreciate the plight of the people; if he does not, it will be very difficult to launch any health care reform. I have spoken my mind, and I hope that the Secretary can give me a clarification.

The revised fee structure of public health care services soon to be introduced by the Government will not only have enormous impact on the people, but also closely affect my colleagues in the health care sector. April is fast approaching, but it is a pity that the enhanced medical fee waiver mechanism put forward by the Government to tie in with the revised fee structure is still marked by many unknowns. I therefore request the Government to improve the existing medical fee waiver mechanism.

The authorities have only pointed out that those patients whose monthly household income does not exceed the average monthly CSSA payment applicable to their household size (at present it is approximately at the level of 50% of the Median Monthly Domestic Household Income (MMDHI)), and who pass the assets limit test will be considered for a full waiver of their medical fees at public clinics/hospitals. For those patients who cannot meet the above criteria, the authorities will consider other non-financial factors and medical social workers will be given full discretion to consider other factors such as the clinical condition of the patient, his family background and other expenses. In a word, they are at the mercy of medical social workers. But the ridiculous point is that the authorities have not set down any uniform standards to define non-financial factors. For instance, what is meant by "clinical condition"? Will one who has had a disease for one or two years be considered a chronic patient? What is meant by "other justifiable social factors"? What is the meaning of "solve the patient's family problems"? There are really too many unknowns. Some colleagues have told me that even they themselves, not to speak of members of the public, have many questions about the mechanism! The failure of the authorities to remove these unknowns will only create inconvenience to members of the public and my health care colleagues. I am also worried that people seeking medical consultation may vent their spleens on front-line health care workers, thus adding to their pressure. I hope that the authorities can provide us with clear guidelines on these unknowns.

Madam Deputy, I always advocate that a mechanism of some sort should be put in place, so that those who have the means can shoulder part of the medical costs. But I also emphasize that any medical fee waiver mechanism must cater for the needs of the elderly, the underprivileged, patients receiving disability allowance and low-income earners. Honestly, \$50,000 is already the "funeral expenses" of an elderly person. We simply must not be so immoral as to turn our axe at their "funeral expenses". Basically, if the elderly are provided with satisfactory health insurance and retirement protection, there should be no need for a fee waiver mechanism in some measure. However, in our society today, one simply cannot find any satisfactory retirement protection system and health insurance system. That is why the medical care burden of elderly people is very heavy and so is their psychological pressure. For this reason, I think that any mechanisms are good mechanisms if they can offer a 50% fee remission to all elderly people and relax the assets limit preventing single elderly persons from applying for a higher rate of remission.

The new fee waiver mechanism must not leave out anyone in need. According to the statistics of the Census and Statistics Department, during the period from September to November 2002, totally 87 000 households in Hong Kong earned less than \$4,000 a month. And, as revealed by the household income report for September to November 2002, about 22% of all households in Hong Kong (each with an average of 3.1 persons) earned less than \$7,999 during the period in question. We can easily imagine what kind of life these households are living. These households have not applied for CSSA, so medical fees do exert a very heavy pressure on them. I am worried that they may choose not to seek medical treatment for financial reasons.

The new fee structure of public health care services must of course cater for the needs of the elderly, the vulnerable and the poor, but the Government must at the same time set up a satisfactory mechanism with as few grey areas as possible. It must also explain and clarify the fee structure to members of the public, so as to reduce the conflicts between front-line health care staff and patients. It must educate the public and assist them in choosing the right kind of medical services, enable those who have the means to share part of the health care costs and instill in people proper concepts on medical treatment and medical costs. "Prevention is better than cure". The Government must try to promote this concept as early as possible through education on primary health care education.

**MR WONG SING-CHI** (in Cantonese): Madam Deputy, I must first declare my interest. It is most unfortunate that every time when we discuss the issue of medical fees, I have to make such a declaration, because my wife is a chronic patient suffering from renal failure. I hope that my wife can recover as early as possible, then I will not need to declare my interest anymore. However, I do not think that this will be possible in the foreseeable future. I suppose she will still be tortured by the disease for quite some time to come. Therefore, let me wish that she can get well soon. I am of course very grateful to the Government, because it has been providing quality medical services, and my wife has thus been able to receive good medical care.

I know fully well how a chronic patient feels, and with a chronic patient in my family, I can also tell the long-term pressure and worries felt by the family members of chronic patients. Therefore, today, I shall speak on the effects of medical fee increases on chronic patients and their families.

Next month, public health care fees will be increased. Before that, a fee of \$100 has already been introduced for accident and emergency service. I suppose this fee does not really matter so much to most ordinary people, because they may consult a doctor at most once or twice a year, and they may not need to go to any accident and emergency department even once a year. Many people probably want to seek treatment from an accident and emergency department just for the sake of convenience, when out-patient clinics are closed on Sundays. Abuses and misuses are other reasons. However, following the imposition of the fee, these people will no longer go to an accident and emergency department when they have a common cold, and they may just stay home for a rest. This is not bad after all because a person who has caught a common cold should actually do so. But things are very difficult for chronic patients. My wife is chronically sick, so I can feel the plight fully. Whenever my wife screams at night, I will wake up immediately to see whether she is fine. If I find that she is really very painful or that there are other problems, I will drive her to an accident and emergency department. Every time, I am terribly frightened. Sometimes, when I am working and not expecting a telephone call from my wife, I will be very worried if I receive a call from her. Such are the worries of a chronic patient's family members. I now earn a comparatively stable income, so I can still cope even after the imposition of the \$100 accident and emergency service fee. But for poor people or low-income earners, if their family members or they themselves are chronically sick, the fee may well increase their financial burden. They are not only faced with the sickness of their family members, but are also constantly worried that their family members may have to go to an accident and emergency department for treatment at any time, because they do not know whether this will increase their financial burden. The pressure felt by low-income chronic patients and their families is really very heavy.

Last month, the Health, Welfare and Food Bureau announced a new fee waiver mechanism. Although the authorities have pointed out that a guiding principle of the mechanism is to channel public funds to help the vulnerable groups such as low-income earners and chronically ill patients, the latter are still worried, because the fee waiver mechanism is based on income. Low-income earners are put under immense pressure because the granting of a fee waiver is determined on the basis on gross income instead of the income left after deducting medical expenses. Under the fee waiver mechanism, a singleton earning less than \$3,000 a month with less than \$30,000 worth of assets may be granted a waiver. But if a person earns more than \$4,500 a month, he will not

even be eligible for fee remission. Currently, a person earning less than \$3,000 is also required to pay medical fees. After deducting the medical expenses, only a very limited amount of money will be left. That is why the mechanism will simply add to the pressure on these people.

The Government now proposes that if a patient cannot meet the income criteria, a medical social worker can exercise discretion in handling his case. We will not query the assessments of medical social workers, but even if they can do their job well, we still think that this arrangement is very time-consuming. Besides increasing the workload of medical social workers, this arrangement may also increase administrative costs. Dr LAW Chi-kwong's amendment, which proposes to grant automatic fee waivers to patients receiving disability allowance, is therefore one possible way to do away with time-consuming administrative procedures. It is not at all easy for chronic patients to be granted disability allowance; they must be totally incapacitated, bedridden or suffering from serious disabling mental condition, such as mental illness. Besides, they must also provide proof from the Department of Health and the Hospital Authority that the conditions have persisted for no less than six months. Most of these patients, who are incapacitated and sick, should already be granted fee waivers under the existing mechanism. The introduction of automatic fee waivers will not only reduce administrative costs but also cater for the practical needs of chronic patients, saving them the trouble of lodging applications.

Lastly, I hope that instead of focusing on money only, the Secretary can be kind to chronic patients and their families, so that they can still see a ray of hope amidst their difficulties.

Thank you, Madam Deputy.

**MR NG LEUNG-SING** (in Cantonese): Madam Deputy, the Government announced the adjustments to the fees and charges for public health care services in November last year. The new fees for services of the accident and emergency department have been implemented since 29 November and other fee adjustments will be implemented on 1 April this year. At that time, an improved medical fee waiver mechanism will also be implemented to ensure that no one would be denied suitable medical treatment through lack of means and that the new fees and charges will not affect low-income earners too greatly.



To utilize public health care resources in the most reasonable way is an important task of the Government under the present social and economic circumstances. In the past, the Government heavily subsidized public health care services and provided the accident and emergency services free of charge. As a result, the services were abused, an imbalance in the deployment of resources arose and the overall public health care expenditures continuously increased. Indeed, the situation cannot persist in the long run. If we cannot prudently and properly utilize public health care resources, we may not be able to continue to maintain the quality of health care services or enable people who are sick to get timely and reliable treatment, and the burden of taxpayers will become increasingly heavy. The community and every member of it will ultimately bear the responsibility for such consequences. We should be aware that, even under the new scheme of fees and charges, the Government still heavily subsidizes the costs of health care services and there are still structural problems with the overall public health care expenditure. Therefore, the Government should expedite the study on a universal medical savings scheme to expeditiously lay a foundation for the sustainable development of public health care financing in Hong Kong.

Before and after the introduction of accident and emergency department fees, some people worried that worse-off patients might not receive timely treatment. Actually, CSSA recipients can get free public health care services and people who are not eligible for CSSA but have financial difficulties may apply for special waivers when they seek consultation. After the implementation of accident and emergency department fees at the end of November last year, the Hospital Authority (HA) received, according to information provided by the Census and Statistics Department, a total of 1 105 applications for waiver of accident and emergency department fees between December last year and January this year, and approximately 92% of these applications were approved. Evidently, while implementing accident and emergency department fees, the existing fee waiver mechanism is still operating effectively and there will not be delays in treating people who have financial difficulties. Moreover, we can see that the cases of application for waiver of accident and emergency department fees only accounted for less than 0.3% of the total number of visits to such departments during the same period, which shows that the overall effects of accident and emergency department fees on people are negligible. More importantly, there were on average 5 709 daily visits to the accident and emergency departments under the HA in December last year,

11.4% less than the numbers of visits in the preceding month and 9.6% less than the number of visits during the same period in the preceding year. It shows that the fees and charges can more effectively enhance the triage system to reduce abuse of accident and emergency services and enable patients who really need to use the services to be given treatment more quickly.

(THE PRESIDENT resumed the Chair)

The adjustment of the fees for other health care services will be implemented in April together with the new fee waiver mechanism. I think that the new fee waiver mechanism should cater for the special needs of chronic patients and elderly persons, and it must have objective and stringent criteria so that waivers will be granted to genuinely needy patients who are not great in number. The mechanism should also reflect in time and accurately changes in the actual financial conditions of patients granted waivers to avoid improper utilization of resources. Madam President, I so submit.

**MS CYD HO** (in Cantonese): Madam President, the Frontier has always endorsed health care financing, but we think that several categories of people must be granted waivers. First, families receiving CSSA; second, chronic patients; third, elderly persons; and fourth, low-income families. Actually, we have already compromised as we originally asked for 100% waivers for these four categories of people, but I still support Dr LAW Chi-kwong's amendment today which meets our goal half-way. We have repeatedly discussed medical fees and charges recently, but it is a great pity that each of the discussions has ended unpleasantly.

The Secretary said in a recent interview on the radio that some organizations had misled elderly persons into thinking that they might not be able to afford medical consultation or get suitable treatment after the implementation of the new fees and charges. The Secretary has also said at a lot of meetings that 90% of the worried elderly persons are eligible. Of course, the Government should not subsidize people like LI Ka-shing. I really hope that 10% of the elderly persons in Hong Kong can have the means just like what LI

Ka-shing does though they do not have to be as rich as he is. We still agree that those who have the means should pay more.

For elderly persons who do not have the means, now that the Secretary has said that most of them are eligible and they are so worried, why can we not carry out the identification procedures earlier? In view of the fact that the Hospital Authority has so much information on the patients who have sought consultations, we may not be able to complete the identification procedures before 1 April. However, since many social service organizations are in contact with many worried elderly persons, why can we not be more active and carry out trial identification procedures on a group of elderly persons through these organizations? In particular, some elderly persons often gather at those organizations for small talks, our doubts can be dispelled if it can be proved that some of them can continue to receive appropriate health care services without increasing their financial burden. In fact, we do not have to conduct the identification procedures on a full scale in one go and we only need to do so by sampling. I think that it is a feasible administrative measure and I really hope that the Secretary will seriously consider it to show worried elderly persons that their peers have no problems in completing the identification procedures and they do not have to be worried.

I very much agree with the point made in the amendment that the relevant validity period should be extended from six months to one year. In fact, I think that the period should be longer than one year because, with the exception of elderly persons who have generous savings and income from shares or bonds transactions, other elderly persons do not have any income. After they have completed the identification procedures, they can rest assured that they will be eligible as long as they are alive. I hope the Government can extend the relevant period and refrain from putting increasingly heavy burdens on elderly persons.

Moreover, I also wish to discuss the issue of partnership with service organizations. The Secretary has said during a radio programme that inadequate communication has given rise to a lot of misunderstandings, so he may have to directly talk to elderly persons more often in future and establish direct channels. I very much agree and it is really desirable that the Secretary should meet the people more often for direct conversations. Nevertheless, I also ask the Secretary to consider that he must maintain good partnership with social service organizations unless he says that the Bureau will be directly responsible for the relevant work in future. If the Bureau has ample resources

and manpower, I think that there is no problem if the Government incorporates the staff of service organizations into the Civil Service. But if it is not the intention of the Secretary, then I think it is essential for the Government to maintain good partnership with service organizations. The Government should not isolate a certain sector as it will intensify the misunderstanding between them.

Actually, Members will not oppose the principle that those who have the means should pay more. However, the problem is that the implementation of the new fees and charges from 1 April, when the identification mechanism is still unclear and a consensus has not been reached, has given rise to disputes over the past several months. I hope that the Secretary can remedy the situation as soon as possible by means of administrative measures.

Madam President, a question was raised on the income and expenditure of the Hospital Authority during the question time this afternoon and I believe the problem will continue to cause the Secretary headaches in future. Even if the Government increases the fees and charges on elderly persons who can afford the medical expenses, I very much disapprove of the Hospital Authority handing over the income thus increased to the Treasury to make up for the fiscal deficit. Actually, the Secretary also disclosed this afternoon that the Hospital Authority would retain the income from the increased fees and charges in the next two years, but it would be handed over to the Treasury after the has become accustomed to this. If we move in this direction of using these fees and charges to make up for the fiscal deficit, by the same logic, I am worried that the fees and charges will become higher and higher in future. If the fiscal deficit is still not reduced, will the Government consider taking fuller advantage of the grass roots and the socially disadvantaged groups?

We have repeatedly discussed the causes of the increases in medical expenses in the past, be they new technologies or population ageing, so long as the Government promises that it is willing to continue to bear the existing recurrent expenditures and link it up with economic growth, we only need an annual economic growth of 2% and a small adjustment to the fees and charges to enable us to cope. Yet, the replies given by the Secretary and the Financial Secretary this afternoon have caused the public some new worries.

We hope that the Secretary, who is in charge of the policy, can play an active role in the Executive Council so that the Financial Secretary will share his understanding of the needs of patients. He should also remind the Financial

Secretary that he should not only bother about the books, but also care about the life and death of the people. Thank you, Madam President.

**MR ALBERT HO** (in Cantonese): Madam President, adversity gives one the best opportunity to demonstrate his morals and given a shortage of resources, it is time to test the community and the Government if the Government will stick to its principles and whether the community is really caring and loving. The Government had a generous surplus at the time of reunification and it did not matter even if it adopted many generous policies. I understand that there is a shortage of resources and we are facing a serious fiscal deficit. Although we are in straitened circumstances in many aspects, we can find out whether the community can still insist on taking care of the disadvantaged groups, especially whether we can enable elderly persons to enjoy a secure old age as the Chief Executive has repeatedly said. Elderly persons should not only have their living assured, but also be given adequate medical care, then, we can really find out if the policymakers are benevolent and whether they can build up a just and caring society.

The Government has recently adopted many policies to relieve the fiscal deficit, but it is a great pity that many of the expenditure cutting measures often make the elderly persons to bear the brunt. Elderly persons are most seriously affected by the reduction of CSSA payments and the increase in public health care charges, and the levy of new medical charges also affects elderly persons who have made great efforts in their contribution to Hong Kong. We think that the so-called fee waiver mechanism recently announced by the authorities has not cared for elderly persons adequately. The biggest problem with the fee waiver mechanism introduced by the Government is that, if an elderly person applies for waiver or remission of medical expenses, all of his family members may have to undergo a means test. I hope the Secretary will understand that it will very often touch some subtle, complicated and tensed family relationships.

When we work in the districts, many residents have complained to us that family relationship will become tensed or deteriorate whenever means tests are conducted, regardless of whether they are means tests on wealthy public housing tenants or other assets tests such as the assets test for CSSA. Therefore, the implementation of these fee waiver mechanisms for medical expenses incurs a lot

of administrative expenses and social costs, and the relationship between many elderly persons and their family members including their children who support them will deteriorate or the attachment among them would at least be eroded. In particular, under the adverse economic circumstances today, many children who have to support their parents are subject to the pressure of pay cuts and layoffs but they still have to shoulder the financial burden of supporting their parents and children. If social workers have to conduct assets and means tests on them in relation to the applications for waivers, we believe these children would not feel good and elderly persons would ultimately become the targets of spleen venting. Although many elderly persons live with their family members, more often than not their children do not give them enough pocket money. In order to apply for a waiver of dozens of dollars, elderly persons are forced to be subject to investigation by social workers and they have to ask their family members to undergo such tests together, which is really unreasonable.

Moreover, waiver systems introduced by the Government usually employ very complicated methods of calculation. Besides the incomes and assets of the family members of patients, the conditions of the patients and the relationship between the patients and their family members are also factors of consideration. Most of these factors are complicated and unclear and elderly persons can hardly grasp or understand whether they can be granted waivers. The systems would only scare off elderly persons and they might as well give up applications for waivers and cut back on other expenses, for instance, they may use the old age allowance to meet their medical expenses or try not to seek medical consultation. They would postpone seeking medical consultation as far as possible when they are sick, so their illnesses would finally become more serious and they may have to be sent to hospitals for treatment on ambulances. We do not want such things to happen. Therefore, elderly persons will not have to go through the complicated procedures of such tests if all of them can be granted half-fee concessions.

At present, most elderly persons do not enjoy retirement protection. So while some of them rely upon CSSA for a living, hundreds of thousands of others have not applied for CSSA. We estimate that approximately 200 000 of them rely on the old age allowance for a living. They do not want to beg the Government for compassion on them and they will try all means to meet the medical expenses. In a word, I hope that the Government will give elderly persons due dignity and refrain from being too particular with them under these unreasonable mechanisms just to avoid giving individual or a small number of

rich persons some small benefits or the so-called "unfair treatment". Thus, we support Dr LAW Chi-kwong's amendment. Thank you.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, you may now speak on the amendment and you have five minutes.

**MR FREDERICK FUNG** (in Cantonese): Madam President, there are one amendment to my motion and two amendments to the amendment. In Dr LAW Chi-kwong's amendment, he has made a very explicit proposal which is actually identical to that made by the Hong Kong Association for Democracy and People's Livelihood (ADPL), that is, providing half-fee concessions for all elderly persons and exempting patients drawing disability allowance from payment of medical fees and charges. Therefore, I support Dr LAW Chi-kwong's amendment and the amendment to the amendment. But while indicating my support, I wish to emphasize that my original motion has not set out any explicit proposals. In fact, I did consider whether I should set out some proposals at the beginning, but I did not do so at last because I wished to give Members more opportunities to make their proposals and allow the Government to listen to the views of other Members. Of course, all Members or political parties can fight for their own proposals, but since the ADPL shares the points espoused in Dr LAW Chi-kwong's amendment, I will certainly support his amendment.

As compared with the ADPL and I, Mr LEUNG Yiu-chung has adopted a more relaxed approach in his amendment and we are inclined towards supporting him. Members are also aware that since the economic situation is unsatisfactory and the Financial Secretary has recently made proposals to increase fees and charges, I am inclined towards a more relaxed approach. It is because people who did not have to pay taxes may have to pay taxes now and the lower fees and charges for services provided by the Government in the past may be increased, and the increases are not restricted to medical fees and charges. Therefore, I think that a more relaxed proposal is acceptable and I will support this amendment.

I do not agree with Mr YEUNG Yiu-chung's amendment because I think the two points raised in his amendment will make my original motion worse. First, he has particularly specified a certain category of people in the expression "including relaxing the asset-assessment criteria for unsupported elderly persons". In fact, the asset-assessment criteria should be relaxed not only for unsupported elderly persons but also for other people in need. If only unsupported elderly persons are specified, does it mean that other elderly persons, low-income earners, chronic patients and people with mental handicap do not have such needs? If not, why are other people in need not set out as well? It may give people an erroneous message that we are referring to unsupported elderly persons only. Second, there are only two types of unsupported elderly persons, namely single elderly persons and elderly couples. Why must the scope be so limited? I disagree with this point.

The existing medical fee waiver mechanism conducts assessment on incomes and assets, but Mr YEUNG Yiu-chung has chosen to mention the asset-assessment criteria only. Let me cite an extreme example to make it easier for Members to understand why I have to oppose this amendment. The Government's criteria for waiver set the ceiling of monthly income at \$3,000 and assets at \$80,000. If we agree with Mr YEUNG Yiu-chung's amendment to raise the assets ceiling to \$100,000 but maintain the ceiling of monthly income at \$3,000, is \$3,000 enough to meet the living expenses of a single elderly person in a month? \$3,000 will not be enough if the elderly person frequently seeks medical consultation. Actually, to meet his monthly medical expenses, the elderly person may have to spend some money out of the \$100,000 assets each month. However, as his income lies between \$3,001 and \$3,500, it has gone beyond the ceiling of \$3,000 and his assets are above the ceiling of \$100,000, so even if he does not have enough living expenses and has to seek medical consultation each week, he will not be granted a waiver. He can only use the \$100,000 he has, but even if he has used up the \$100,000, since the ceiling of income has not changed, his income of \$3,500 still exceeds the ceiling and he has to go on paying medical fees and charges. Therefore, the amendment will help him very little.

Conversely, the case will be very different if the income ceiling is raised from \$3,000 to \$6,000, but the assets ceiling is maintained at \$80,000. If the income ceiling is raised to \$6,000 from \$3,000, an elderly person can still have \$6,000 to meet living and medical expenses. Even if he seeks medical consultation once a week, his income of \$6,000 can still meet most of his medical expenses and he can keep his assets of \$80,000 for important events in future or



as his "funeral expenses". Therefore, Mr YEUNG Yiu-chung's amendment has only asked the Government to improve an area that has the least and most negligible effect, and I think that it is not good enough. Precisely because his amendment has explicitly set out this proposal, I will ask myself whether I agree with the proposal. I will only support the amendment if I fully agree with the proposal and I will not support the amendment if I do not agree with or have reservations about the proposal. That is why my original motion has not set out a proposal explicitly.

One of the important objectives of my original motion is to enable Members to make different proposals when they speak. However, if an amendment has explicitly set out a proposal, I will certainly weigh and compare the difference between my motion and the amendment and consider whether I can accept the difference. I will support the amendment if I can accept the difference and I can only oppose the amendment if I cannot accept the difference to avoid giving other people an erroneous message that we are only talking about unsupported elderly persons and that we are only seeking to improve the assets ceiling. Since the assets ceiling is only the most insignificant factor among many, if we only ask the Government to make improvement on this basis, I hope that Members will abstain from voting or vote against the amendment. Thank you.

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, first of all, I would like to thank Honourable Members for their views on the enhanced medical fee waiver mechanism. The enhanced mechanism is a key element of our fee restructuring exercise. Without this enhanced mechanism, we would not be able to achieve our policy objective of better targeting our subsidies to assist the most vulnerable and needy.

The fundamental objective of the public health care system is to improve health and to provide protection for the citizens from potentially high financial risks arising from catastrophic or prolonged illnesses. Given the finite resources, public funds should be channelled to assist lower-income groups and to services which carry major financial risks to patients.

As set out in the Health Care Reform Consultation Document published in December 2000, a revamp of the fee structure of our public health care sector is one of the strategic directions that must be pursued in ensuring the long-term sustainability of our health care financing. The objective of the revamp is to

enable subsidies to be targeted to areas of most needs and to minimize inappropriate use and misuse of services. We briefed Honourable Members on 5 November 2002 on the details of the revamp.

I would like to emphasize that if we do not revamp the fee structure as soon as possible, our public health care system will continue to face great financial pressure and suffer from undesirable utilization pattern due to inappropriate use and misuse. Moreover, the system's long-term financial sustainability will be highly questionable.

Except for the new charge for accident and emergency (A&E) service which has been effective since 29 November 2002, all revised charges will be effective after the current moratorium on public fees is lifted on 1 April 2003. The revised charges are modest and would continue to be affordable. I would like to highlight that even at the revised fee level, the overall government subsidy level on our public health care services will still be 96% of the full cost.

It has always been the Government's fundamental philosophy that no one will be denied adequate medical care due to lack of means. To ensure that this principle will be upheld after the fee revamp, recipients of Comprehensive Social Security Assistance (CSSA) will continue to be waived from payment of their medical expense. To assist the vulnerable groups in the community who are not CSSA recipients, we propose to enhance the existing medical fee waiver mechanism to provide effective protection from undue financial burden to them. The enhanced mechanism will be introduced in parallel with the revised fee structure of our public health care services on 1 April 2003.

At the special meeting of the Panel on Health Services held on 24 February 2003, we briefed the Panel on our proposals to enhance the existing medical fee waiver mechanism, which has already been handling more than 200 000 waiver cases per year, and with a total waived amount of about \$60 million. At the meeting, some elderly groups and patient organizations had also shared with us their expectation and views on the enhanced mechanism. Honourable Members have also stated their views today. Before I respond to these comments, I would like to briefly recapitulate the key features of the enhanced mechanism, as I believe many Honourable Members have expressed their opinions just because they are unfamiliar with the purposes of the enhanced mechanism, and also because they do not know too well how it will work as a mechanism and how it will function operationally.

In designing the enhanced waiver mechanism, we have taken into account a number of guiding principles. Firstly, public funds should be channelled to the vulnerable groups, in particular the low-income groups, chronic patients and elderly with little income and assets, and to services which carry major financial risks to patients.

Secondly, there should be a set of objective and transparent criteria to assess a patient's eligibility for exemption from payment of public medical fees under the enhanced mechanism. As at present, both financial and non-financial factors should be considered under this set of criteria.

Thirdly, the enhanced mechanism should facilitate accessibility to services, while maintaining the low administrative and operating cost of the existing mechanism. In line with this principle, we believe that it is the best for the enhanced mechanism to continue to be administered by the Medical Social Workers (MSWs) who have the professional knowledge and experience to handle waiver applications, with the support of clerical staff.

As a general rule under the enhanced mechanism, if a patient's monthly household income does not exceed 75% of the Median Monthly Domestic Household Income (MMDHI) applicable to the patient's household size, and the patient's household asset is within a stipulated limit, then the patient will be eligible to apply for a waiver for his medical expenditure at the public sector. We estimate that over half of the existing HA's in-patients will be able to meet this income criteria, and this should already cover most patients from the low-income group. Taking into account that the fact that most elderly citizens will no longer earn any income and have to depend on their personal savings, households with elderly members will enjoy a higher asset limit than those without. In addition, to protect those patients who have little asset except their residential property, the residential property owned and occupied by the patient's household will not count towards this asset limit.

For patients whose monthly household income does not exceed the average monthly CSSA payment applicable to their household size, which is approximately at the level of 50% of the MMDHI, and pass the asset limit test, they will be considered for full waiving of their medical fees at public clinics/hospitals. This would ensure that low-income households who are not CSSA recipients would not need to bear the cost of public medical fees.

For patients whose monthly household income is between 50% to 75% of the MMDHI applicable to their household size and pass the asset limit test, the MSWs will consider their application, as well as whether a waiver valid for a defined period of time or one-off, and whether full or partial waiver should be granted, on a case-by-case basis, making reference to a number of non-financial factors, including:

- (a) The patient's clinical condition as defined by the patient's frequency of use of the different public medical services, or whether the patient is suffering from terminal illness;
- (b) Whether the patient is a disabled person, single parent with dependent children, or from other vulnerable groups;
- (c) Whether a fee waiver could provide incentive and support to solve the patient's family problems;
- (d) Whether a patient has any special expenses that make it difficult to pay for his/her medical fees at public clinics/hospitals; or
- (e) Other justifiable social factors.

I would like to emphasize that all non-financial criteria are intended to ensure that the elderly and chronic patients who are frequent users of public medical services would be considered for a full waiver, even if his/her income is above the 50% MMDHI level. The MSWs will exercise their professional judgement and discretion in determining whether a waiver should be granted for patients with special difficulties but fail to meet the financial criteria.

There have been suggestions from the social service sector and from Honourable Members that the asset limit for elderly patients should be enhanced. We agree that this should be considered, so as to cater for the livelihood of families with elderly people.

There were also suggestions that all elderly patients aged 65 or above should be given automatic half- or full-fee waiver. In this aspect, I would ask Honourable Members to note that there are some elders who do not have any

difficulty in affording the revised fee level, and we cannot justify further subsidies to these better-off patients. Our limited resource should always be channelled to the most vulnerable. In addition, granting automatic waivers to all elderly patients would increase the pressure for fee increases and this would be borne by other group of users. We should also bear in mind that even without further waiver, the Government's subsidy to this group of patients would still be 96% after the fee revision. Given our ageing society, the waived amount would continue to rise in the future.

Some Honourable Members suggest that recipient of disability allowance should be given automatic half- or full-medical fee waiver. We think that, as the eligibility of applying for disability allowance only takes into account the degree of disability of the recipient concerned, but not the financial status or the actual medical needs of the recipients, so the automatic provision of a waiver to recipients of disability allowance is not in line with the principle of targeting public funds to assist the most needy patients. In fact, for disabled persons, the enhanced mechanism will ensure that they would be provided with necessary care when they are using the public health care system. They will be given a part or full fee waiver after their cases are processed by medical social workers.

As in the existing mechanism, a fee waiver granted by the MSWs under the enhanced mechanism would either be one-off or valid for a period of time. The MSWs have the discretion to decide the exact period based on a patient's actual needs and conditions.

We have earlier proposed that the valid period for all non-one-off waiver certificates could be up to six months. Honourable Members and patient organizations have suggested that this period could be extended. In response to this suggestion, we shall actively consider extending the valid period of waiver certificates granted to chronic patients. We shall announce the relevant details as soon as possible.

The fee waiver should also facilitate access to services. For example, the MSWs may in advance grant fee waiver to a chronically ill patient who frequently needs SOP service, under which the waiver will be valid for a defined period of time for the specific SOP service he/she needs.

To make the system more user-friendly, if a patient is granted a fee waiver valid for a defined period of time applicable to a certain public health care service, the waiver is not only applicable to the institution from which he/she attends or obtains the waiver, but is also applicable to other public institutions that provide the same service, including the HA and the Department of Health.

We believe that the enhanced waiver mechanism will effectively provide the protection that vulnerable groups need, without unduly assisting better-off patients who can afford the new fees. In particular, the enhanced waiver mechanism has the following merits:

- (a) Public subsidy is better targeted to the low income groups, chronic patients and elders with limited income and assets;
- (b) The enhanced mechanism has a higher degree of transparency; and
- (c) The enhanced mechanism is more accessible and user-friendly, as waivers will have across-the-board applicability to public hospitals or clinics that provide the same service, and the more common application of waiver with a defined period of time.

We will regularly review the operation of the enhanced mechanism after its implementation on 1 April 2003 to ensure smooth service delivery and that the administrative procedures are efficient and provide maximum convenience to the users.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Dr LAW Chi-kwong to move his amendment to Mr YEUNG Yiu-chung's amendment.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, I move that Mr YEUNG Yiu-chung's amendment be amended, as printed on the Agenda.

**Dr LAW Chi-kwong moved the following amendment to Mr YEUNG Yiu-chung's amendment: (Translation)**

"To add "providing half-fee concessions for all elderly persons, and" after "this Council urges the Government to relax the eligibility criteria under the mechanism, including"; to add "to apply for a higher fee waiver" after "relaxing the asset-assessment criteria for unsupported elderly persons"; to add "exempt patients on disability allowance from payment of medical fees and charges and" after ", and to"; and to add "other" after "extend the maximum fee-waiver period for". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr LAW Chi-kwong to Mr YEUNG Yiu-chung's amendment, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr YEUNG Yiu-chung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr YEUNG Yiu-chung has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mr CHEUNG Man-kwong, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK and Dr LO Wing-lok voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Mr Jasper TSANG, Mr LAU Kong-wah and Mr YEUNG Yiu-chung voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, eight were in favour of the amendment and 11 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, 16 were in favour of the amendment and three against it. Since the question was



not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**MRS SELINA CHOW** (in Cantonese): Madam President, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in respect of the motion on "medical fee waiver mechanism" in this meeting or any amendments thereto, the Council do proceed to such division immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Does any Member wish to speak?

(No Member responded)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

I order that if a Member claims a division in respect of the motion on "medical fee waiver mechanism" in this meeting or any amendments thereto, the

Council do proceed to such division immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now call upon Mr LEUNG Yiu-chung to move his amendment to Mr YEUNG Yiu-chung's amendment.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I move that Mr YEUNG Yiu-chung's amendment be amended, as printed on the Agenda.

**Mr LEUNG Yiu-chung moved the following amendment to Mr YEUNG Yiu-chung's amendment: (Translation)**

"To delete "relaxing the asset-assessment criteria for unsupported elderly persons and to extend the maximum fee-waiver period for chronic patients from six months to one year" after "this Council urges the Government to relax the eligibility criteria under the mechanism, including" and substitute with "fully waiving the new and increased fees and charges in respect of elderly persons and chronic patients"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEUNG Yiu-chung to Mr YEUNG Yiu-chung's amendment, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for one minute.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Ms Miriam LAU, Dr LAW Chi-kwong, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Mr Howard YOUNG, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Mr Jasper TSANG, Mr LAU Kong-wah, Dr TANG Siu-tong and Mr YEUNG Yiu-chung voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, five were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, 15 were in favour of the amendment and four against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr YEUNG Yiu-chung to Mr Frederick FUNG's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Frederick FUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG has claimed a division. The division bell will ring for one minute.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mrs Sophie

LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the amendment.

Miss Margaret NG voted against the amendment.

Mr CHEUNG Man-kwong, Dr LAW Chi-kwong, and Mr Michael MAK abstained.

Geographical Constituencies and Election Committee:

Mr Jasper TSANG, Mr LAU Kong-wah, Dr TANG Siu-tong and Mr YEUNG Yiu-chung voted for the amendment.

Mr Frederick FUNG and Ms Audrey EU voted against the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 15 were in favour of the amendment, one against it and three abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present, four were in favour of the amendment, two against it and 14 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, you may now reply and you still have three minutes nine seconds.

**MR FREDERICK FUNG** (in Cantonese): Madam Deputy, I would like to thank the 16 Honourable Members who have given their opinions on the motion and the amendments today. I believe all the Members who have spoken in fact hope that the Government will relax the waiver mechanism as proposed presently. However, since we have different views, some amendments have been negated. But our main direction is: We all hope that the Government will consider relaxing the existing mechanism.

I would like to use three examples to illustrate that the present mechanism of the Government is very harsh and unreasonable. It should be abolished or replaced by a new mechanism. For example, firstly, the present eligibility criteria for public housing have already been considered as the criteria for assessing whether a family is a needy one. Such families, once assessed as having met such criteria, would be considered as having the need to be assisted by the Government with the provision of rent assistance or public housing. Why does the Government not adopt the income limit and the assets limit in the eligibility criteria used in public housing application? Secondly, the Mandatory Provident Fund (MPF) schemes. In the past, it was stipulated that people earning not more than \$4,000 were not required to contribute to MPF schemes. Now the Government has raised the limit to \$5,000. This means that families earning \$4,000 or \$5,000 are already considered by the Government as low-income families. But why does the Health, Welfare and Food Bureau still adopt \$3,000 as the limit? The third example is about CSSA. Now the Government adopts the CSSA threshold to set the income limit for eligibility for a medical fee waiver. But I believe the Secretary must know that, even the CSSA recipients enjoy certain flexibility — that is, if they go out to work and earn a monthly income of \$1,805, they are still entitled to receiving the full amount of CSSA. In future, the amount of \$1,805 will increase to \$2,500. So why does the Government still set the income limit at \$3,000? Why do they not set it at \$5,500 or \$4,805? Therefore, I think the present mechanism adopted by the Government is too harsh.

The second point. The Secretary always emphasizes the role of social workers, stressing that social workers may help to handle medical fee problems

for families or individuals with monthly earnings between \$3,000 and \$4,500. I agree that social workers do possess the professional expertise to fulfil certain functions. But now, too much discretion is given to the social workers. And such discretion carries two kinds of flexibility, the first kind of flexibility being the rate of waiver. The social workers will decide the amount of fee to be waived, from \$0 to \$100, since the maximum fee is \$100. The second kind of flexibility is the period of validity, from one day to half a year, and if the Secretary would agree to amend, the half year would become one year. Under such circumstances, a certain social worker may waive \$10 for a patient for 10 day, or waive \$10 for 100 days; or waive \$100 for one day. Such a flexible approach will give rise to a lot of arguments between social workers and patients, social workers and patient organizations, or social workers and members of representative assemblies. Why is this patient waived one dollar more? Or why does the social worker of this hospital grant a validity period of 10 days to a patient, whereas another social worker at another hospital would only grant the patient a waiver for nine days? There can be no end to such arguments. Why should the Secretary create such arguments? If a set of clear policies is adopted, and a line is drawn, then everybody would know the reasons, and we will not pass such responsibilities and problems to the social workers. I think this point would eventually lead to a major controversy in the future.

There is another point that I would like to highlight, that is, many people have talked about "user pays", and "those who have the means pay more". But today, it appears I have heard not too much about all this. Instead, we want to emphasize and request the Government to think about the finance issue. Therefore, this issue cannot be solved simply by charging the public medical fees as the fees so collected can only increase the revenue by 1%.; The greatest problems in fact lie in the scope of medical treatment and charging of fees, not the medical fee waiver mechanism discussed today. Why can the Government not be a bit more generous to the elderly, the poor and the disabled? Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Frederick FUNG, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Frederick FUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG has claimed a division. The division bell will ring for one minute.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Dr LAW Chi-kwong, Ms LI Fung-ying, Mr Michael MAK, Dr LO Wing-lok and Mr IP Kwok-him voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr TANG Siu-tong, Mr Albert CHAN, Mr WONG Sing-chi,



Mr Frederick FUNG, Ms Audrey EU and Mr YEUNG Yiu-chung voted for the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 11 were in favour of the motion and eight against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present and 20 were in favour of the motion. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was carried.

**PRESIDENT** (in Cantonese): Second motion: Legislating against racial discrimination.

## **LEGISLATING AGAINST RACIAL DISCRIMINATION**

**MS AUDREY EU** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

I believe nobody will object to the general principle of racial equality. So, I would like to go straight to the reasons for opposing legislation. I understand that the business sector is concerned that this will push up the costs of doing business, and that legislation may aggravate the difficulties now faced by all trades and industries, especially in the present economic environment.

However, I hope Members can set their eyes further ahead. Legislation can actually generate benefits for the overall economy, particularly as the Government has recently introduced the investment migrant policy, under which a migrant who invests no less than \$6.5 million and has lived in Hong Kong for seven years can become a Hong Kong permanent resident. Recently, when explaining this scheme, Secretary Regina IP also mentioned that hopefully, people from Southeast Asia or South Asia could be attracted to live in Hong

Kong. So, if legislation against racial discrimination can be enacted at this time, I think it would be the best matching measure for the scheme.

The Civic Exchange, a policy research agency, published a report in 2001 and stated *inter alia* that according to a senior officer of a local company, many technology experts in India had refused to come to Hong Kong for fear of being discriminated against. As we all know, India is at the forefront of technological industries in the world. That experts in India refuse to come is a loss to Hong Kong. The report also cited a study conducted by the *American Journal of Economics*, pointing out that racial and sexual discrimination existed in recruitment by companies in the United States and this, in 1987 alone, already brought financial losses to the tune of US\$194 billion.

In all fairness, the business sector is actually open about the enactment of legislation against racial discrimination. In a survey conducted by the Government in 2001, among a total of 25 business organizations interviewed, only six opposed legislation and three were neutral. Of these 25 organizations, 16 supported legislation, including nine overseas and seven local trade associations. I understand that colleagues from the Hong Kong Progressive Alliance (HKPA) have said that they support legislation in principle, just that they do not wish to see the enactment of legislation now. So, I would like to tell colleagues from the HKPA in particular that of these 16 business organizations which support legislation, only one said that it supported legislation in principle but considered it best if legislation would be enacted only later. In other words, Madam President, a majority of the business organizations actually support legislation and do not oppose the making of legislation at any time.

Chambers of commerce supporting legislation considered that legislation could facilitate the intake of talents from all over the world and hence consolidate Hong Kong's status as a first-class metropolis in the world. Besides, legislation can provide a level playing field for businessmen. I wish to tell Mrs Selina CHOW, in particular, that this will benefit tourism and other relevant trades and industries as well.

Some in the business community are concerned that legislation will increase their operating costs. This concern is unwarranted. The business sector had also expressed similar concern during past discussions on legislation against sex discrimination and disability discrimination. But the reality has

proved that there has not been plenty of litigations involving violations of these anti-discrimination laws, since there are only eight such cases each year, and cases in which judicial proceedings were unreasonably invoked or abused are rare. Moreover, many corporations have already adopted procedures in compliance with legislation against discrimination on the ground of sex, disabilities and family status. Such procedures or frameworks are to a large extent applicable to the prevention of racial discrimination. Therefore, there is actually not much extra work for the corporations to do after the enactment of legislation.

In 1969, Hong Kong ratified the International Convention on the Elimination of All Forms of Racial Discrimination through its sovereign state then, the United Kingdom, which obliged Hong Kong to formulate legislation against racial discrimination or eliminate all forms of racial discrimination as soon as possible. In 1991, the Hong Kong Bill of Rights Ordinance (BORO) was enacted in Hong Kong. Articles 1 and 22 of the BORO stipulate in express terms the prohibition of any form of discrimination. However, the BORO is binding only on the Government and public bodies. The Hong Kong-British Government back then had all along refused to enact legislation against racial discrimination and extend it to the private sector. So has the existing Government of the Hong Kong Special Administrative Region (SAR). It was only in 2001 that statistics about ethnic minorities were collected in population census for the first time in Hong Kong. It was found that we have in Hong Kong a population of 350 000 people belonging to ethnic minorities. Together with about 340 000 new arrivals from the Mainland who have lived in the territory for less than seven years, they make up 10% of the total population, and they are the communities which are often subject to discrimination.

Last year, the Home Affairs Bureau set up the Race Relations Unit, which can be considered a good start. However, the Unit consists of four staff members only. While this Unit is responsible for handling complaints and also conducting public education, it is operating with an annual budget of \$1.3 million only. More importantly, this Unit does not have statutory powers to handle complaints and hence cannot provide effective remedial measures for subjects of discrimination. As for the Equal Opportunities Commission (EOC), given its limitations in terms of reference, the EOC, after receiving complaints involving racial discrimination, can only refer them to the Government or relevant service providers for follow-up actions.

The absence of large-scale surveys and studies has made it difficult to ascertain whether racial discrimination is serious in Hong Kong. But it is certain that discrimination does exist in Hong Kong. Apart from calling the Indians and Pakistanis "ah-cha" (亞差) and Filipino domestic helpers "ban-mui" (賓妹), Hong Kong people also use many epithets to describe new arrivals from the Mainland, such as "uncle" (表叔), "auntie" (表嬸), and so on. All these amount to superficial labelling. According to statistics of the EOC, the number of complaints involving racial discrimination received has drastically increased from six in 1996 to 203 last year, covering such areas as education, employment, shopping, immigration, police powers, and so on. If the EOC has statutory powers to handle such complaints, the relevant number may be even higher.

In fact, as revealed by front-line social workers and non-governmental organizations, and as we can see from reports in the media, discrimination exists everywhere. Let us start with education. The Government has claimed that the school attendance rate of children of ethnic minorities in Hong Kong is over 95%. But apart from the school attendance rate, consideration must also be given to the quality of education. According to front-line social workers, at present, no more than 20 primary and secondary schools are truly willing to enroll students of ethnic minorities and so these students only have limited choices. Some students who live in Tung Chung have to go to schools in Tin Shui Wai, and it is very common that students have to commute to schools in other districts.

A small number of students of ethnic minorities who are better-off or have a good English standard can study in international schools or abroad. But the problem is that the majority of students of ethnic minorities come from grass-roots families and as both their Chinese and English standards are poor, they have difficulties in learning. As they cannot catch up with the Chinese Language curriculum, their schools, therefore, arrange for them to study French in most cases, but this is of little help to their integration into society in future. In respect of vocational education, the Vocational Training Council or other training institutes offer courses that mostly use Chinese as the medium of instruction and so, these students cannot be admitted for these courses.

According to a survey conducted by Yang Memorial Methodist Social Services last year, 65% of the 359 students of ethnic minorities interviewed stated that they had limited choices in respect of learning. Besides, 50% of them complained about limited choices of vocational training. Moreover, many

of these students hoped that the Education Department could provide them with suitable Chinese Language courses, so that they can learn to read and write Chinese.

On the employment front, close to 30% of the complaints received by the EOC are related to racial discrimination. Of these complaints, many are about the complainants' applications being rejected because of their status being ethnic minorities or new arrivals from the Mainland, or about they being forced to accept less favourable treatment. Moreover, it was reported in a newspaper earlier that during the recruitment of Native English-speaking Teachers by a school, applicants other than those from European countries or the United States would not be employed even though they have an excellent standard of English.

Discrimination also exists in the social services sector, the mission of which is to help people. According to front-line social workers, there are cases in which South Asian children in youth centres were asked to leave by the supervisor of the centre who emphasized that their centre received Chinese only. Moreover, the social work programmes in universities now seldom touch on the concept of racial equality or discuss issues relating to racial discrimination. Given the lack of training in this regard, coupled with the language barrier, it is inevitable for front-line social workers to be hesitant or resistant when coming into contact with ethnic minorities.

Apart from education, employment and access to social services, discrimination also exists in other aspects. For example, it is reported in the press that an Indian or Pakistani national who worked as a senior staff of a multinational company was looking for an apartment to lease, but an estate agent told him candidly that many owners had given the instruction that Indians and dogs were not welcome, and to put it bluntly, it means "no Indians and dogs". There have also been complaints lodged by South Asian residents and tourists about immigration officers making things difficult for them when they departed from or arrived at the territory. Furthermore, many people who belong to ethnic minorities have complained that after they had been arrested, the police did not tell them their rights, such as the right to remain silent or request representation by a lawyer, and so on, and they have even complained about being beaten up into confession.

From these examples, we can see that racial discrimination exists everywhere. In the Chief Executive's Question and Answer Session in June last

year, I asked the Government when it would enact legislation against racial discrimination. Mr TUNG, the Chief Executive, replied at the time that such legislation was found in countries such as the United Kingdom, the United States, and so on, where the situation of racial discrimination was more serious than that in Hong Kong and so, he considered that legislation was not the best option and that education would be more effective. Madam President, let us not discuss whether Mr TUNG's observation was correct. But he had at least overlooked one point, that is, people who are discriminated against in those countries can do themselves justice through legal proceedings, and this is precisely what Hong Kong lacks.

As a matter of fact, over the past five years or so since the reunification, the Government has spent only \$12.5 million in total on education and publicity in relation to racial equality, which means that about \$2 million was spent each year. With an injection such limited resources, the result can hardly be satisfactory. I maintain that to improve the situation of racial discrimination, a two-pronged approach underpinned by education and legislation must be adopted. Apart from enacting legislation, the Government should also channel more resources into education.

Racial equality is a basic human right which is recognized internationally. Apart from the International Convention on the Elimination of All Forms of Racial Discrimination mentioned by me earlier on, two other international covenants, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also stipulate the protection of the people from discrimination by the law. In its report published in 2001, the United Nations Committee on Economic, Social and Cultural Rights stated that the provisions of the International Covenant are legally binding and that they are not only "aspirational" or "promotional" in nature as argued by the SAR Government. Therefore, the failure of the SAR Government to enact legislation against racial discrimination constitutes a breach of the covenant.

Whether from the perspective of absorbing overseas talents and capital or fulfilling international obligations and upholding our international image, the enactment of legislation against racial discrimination can brook no delay. Mr TUNG has vowed in his policy address to build a just and caring society. But it is inconceivable that a just and caring society would tolerate or condone racial discrimination. Hong Kong cannot cry out loudly that we aspire to becoming a

cosmopolitan on the one hand but refuses to be committed to upholding racial equality on the other.

With these remarks, Madam President, I urge the Government and Members to support my motion.

**Ms Audrey EU moved the following motion: (Translation)**

"That this Council urges the Government to adopt the recommendations of the relevant United Nations committees and expeditiously legislate against racial discrimination to ensure that new arrivals from the Mainland and ethnic minorities in Hong Kong can enjoy equal opportunities in such areas as education, employment and access to social services."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Audrey EU be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the original motion and that is, we support the making of legislation to protect the equal opportunities of people of all different races. Originally, the DAB intended to propose an amendment out of technical considerations. It is absolutely not our view that the rights of new arrivals from the Mainland should not be protected. Indeed, the DAB has all along been very concerned about the problems encountered by new arrivals from the Mainland, stressing that they should be respected and cared for and actively assisted in resolving the various practical difficulties. We consider that in delivering services, the Government basically will not accord different treatment to different service users because of their race.

However, given that "racial discrimination" is defined as discrimination based on race, colour, descent, or national or ethnic origin in the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, new arrivals from the Mainland, in our view, do not come under any of these categories. We are concerned that if new arrivals from the

Mainland are also covered by legislation against racial discrimination, it would create difficulties in terms of definition and would complicate the concept. For this reason, I had originally proposed an amendment to the motion on behalf of the DAB.

Yet, from a clear message that we got from the Government today, the various racial equality restrictions on the Government and public bodies now are also applicable to new arrivals from the Mainland. So, the Government does not envisage any difficulty in legislating to extend the relevant stipulations to the private sector. If new arrivals from the Mainland are handled separately, that will nonetheless lead to more complications. For this reason, I decided to withdraw my amendment.

The DAB supports Ms Audrey EU's motion. In fact, we all know that before the reunification, racial discrimination obviously existed in Hong Kong. The Hong Kong-British Government had apparently been partial to the British who were in the minority and discriminated against the wider public of ethnic Chinese. It was only after the reunification that there were significant changes in this situation.

Recently, in the latest report on its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights requested the Government of the Hong Kong Special Administrative Region (SAR) to impose restrictions on discriminatory acts in the private sector. In my view, although the relevant comments and suggestions are not particularly coercive, the SAR Government should still consider implementing them. It is because under Article 39 of the Basic Law, the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force after the reunification and shall be implemented through the laws of the SAR Government. The basic human rights of Hong Kong people are already protected in the Basic Law which has a constitutional status. To further protect human rights, the SAR Government enacted the Hong Kong Bill of Rights Ordinance. The DAB supports the making of legislation against racial discrimination, for we have to honour the two international covenants and provide the people with the protection in this regard as entrenched in the Basic Law.

In response to the concern of committees on international covenants over racial discrimination, the SAR Government has, in recent years, actively



consulted various sectors of the community on the making of legislation against discrimination in the private sector. During consultations with business organizations, six organizations considered that racial discrimination was not serious in Hong Kong and so, they did not see a pressing need for such legislation. However, the DAB considers that the making of legislation does not imply that racial discrimination is serious in Hong Kong. On the contrary, it demonstrates that the SAR Government is doing better than other countries in the West. After all, being an international city, Hong Kong has to meet higher standards indeed. So, I consider that the SAR Government is duty-bound to make improvements to laws and regulations on protection of human rights.

This is similar to the DAB supporting the SAR Government to enact legislation to implement Article 23 of the Basic Law. We support this not because we think that there are now acts seriously endangering national security. Rather, we hold that we have the duty to safeguard national security and take preventive measures before problems arise.

Finally, I wish to say a few words on the services provided for new arrivals to Hong Kong. The SAR Government has provided different kinds of induction programmes for new arrivals. Government subsidies are also provided for non-governmental organizations to organize training courses similar to the Youth Pre-employment Training Programme, in order to assist the new arrivals to integrate into the community and to seek employment. However, participation from non-Chinese speakers has not been enthusiastic. Perhaps it is because they do not know Chinese and English and so, they do not know that there are such services. I hope the SAR Government will step up its publicity efforts, with a view to facilitating access to the relevant services by non-Chinese speakers.

With these remarks, I support Ms Audrey EU's motion.

**DR YEUNG SUM** (in Cantonese): Madam President, "all human beings are born free and equal in dignity and rights". This is Article 1 of the Universal Declaration of Human Rights, and also a fundamental belief of the Democratic Party. The Democratic Party agrees that all members of the human kind should enjoy equal rights and no one can be deprived of such rights. All governments should make their utmost effort to fulfil their duties and obligations, and to

affirm and protect these rights, so that everyone can live harmoniously in society regardless of their race, sex, language or religion. Only in this way can the development of the human kind sustain.

Racial discrimination is an obstacle to the full realization of human rights. If a person is excluded, restricted or given special treatment based on his race, colour, descent, nationality or national origin, it will give rise to division and confrontation, which will in turn lead to endless sufferings and loss of human lives.

In 1963, the Declaration on the Elimination of All Forms of Racial Discrimination was endorsed at the General Assembly of the United Nations. In the Declaration, it is stated that racial discrimination constitutes a violation of basic human rights and jeopardizes friendly relations among people, co-operation among nations, and international peace and security. Two years later in 1965, the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) was proclaimed at the General Assembly of the United Nations. The Convention serves as a legal instrument to specifically stipulate that all State Parties to the Convention must agree to take measures to eliminate racial discrimination. This is the very United Nations human rights convention that has commanded the earliest and most extensive recognition.

The Convention provides for the obligations of State Parties. Paragraph 1(d) of Article 2 states that "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any person, group or organization".

In retrospect, even though the Convention has been applied to Hong Kong for over 30 years and a former Member of the Legislative Council once moved a Members' Bill to prohibit all forms of racial discrimination, the SAR still has not put in place legislation against discriminatory acts outside government bodies. Nor is there a statutory human rights commission or other statutory bodies to deal with complaints about violations of human rights. No wonder a number of United Nations committees, including the Committee on Human Rights, Committee on Economic, Social and Cultural Rights and Committee on the Elimination of Racial Discrimination have time and again urged the SAR Government to enact legislation as soon as possible.

The pre-1997 Hong Kong Government refused to legislate on the pretext that racial discrimination in Hong Kong was not serious. After the reunification, the SAR Government has indefinitely deferred legislation on the ground that education is more desirable than legislation and that a consensus has not yet been reached in society.

Insofar as the situation of racial discrimination is concerned, many surveys and consultations have already been conducted by the previous Hong Kong Government and the existing SAR Government. The latest consultation exercise was conducted in 2001 in two phases. In phase one, the Government distributed questionnaires to 34 business organizations. Of the 25 replies received, 16 or 60% supported legislation. In phase two, the Government distributed questionnaires to 55 non-governmental organizations, and of the 44 replies received, almost all were supportive of legislation. Obviously, there is a very strong consensus in society supporting legislation against racial discrimination. The Government has no reason at all to oppose legislation.

That said, however, there are still people in the community asking these questions: Does racial discrimination really exist in Hong Kong? Is legislation really warranted? Will normal business activities be affected after the enactment of legislation?

The Equal Opportunities Commission has since 1996 recorded the number of enquires about racial discrimination. The number of such enquiries has increased year after year. Most of the enquires were about legislation and labour relations, whereas the rest concerned differences in the quality of services provided, differential fees charged, and the use of abusive language.

For example, an Indian lady from the United Kingdom whose mother tongue is English telephoned a kindergarten enquiring about the application for the post of English teacher. But she was asked instead what colour her skin was, and then she was told that only Caucasians would be employed. In the construction industry, Nepalese workers are paid less and enjoy less perks than Chinese. In respect of education, Mr Albert HO of the Democratic Party will later on explain in detail the difficulties encountered by Nepalese children when they apply for school places. On housing, there was a case in which an Indian who was willing to pay a monthly rental of \$40,000 for a private apartment was refused thrice and was even insulted by the owner who said that he would never rent his flat to Indians.

At present, there are three anti-discrimination ordinances in Hong Kong, namely, the Sex Discrimination Ordinance, Family Status Discrimination Ordinance and Disability Discrimination Ordinance. Insofar as the implementation of discrimination-related legislation is concerned, we already have about six years of experience. Experience shows that normal business activities have not been adversely affected after such legislation has come into effect.

To end, Madam President, I wish to briefly conclude the reasons of the Democratic Party for supporting legislation against racial discrimination:

- (1) Legislating against racial discrimination is to fulfil an international obligation of the SAR Government under the Convention;
- (2) Legislation is a very good way of education. We will see that the community will be more concerned about equality after the enactment of legislation;
- (3) Legislation can provide channels for subjects of discrimination to lodge complaints, enabling them to seek redress through legal proceedings;
- (4) Legislation, if complemented by publicity and education, will encourage employers to choose candidates based on their capability rather than racial prejudice, and this will be conducive to enhancing the productivity of society; and
- (5) Legislation can upgrade the SAR's international image, demonstrating to the international community that the SAR is committed to combating racial discrimination and that people from all countries and of all races are welcome to live in Hong Kong.

Madam President, the Democratic Party supports the motion proposed by Ms Audrey EU and hopes that the Government will enact legislation against racial discrimination as soon as possible. Thank you.

**MR JAMES TIEN:** Madam President, 21 March is marked as "The International Day for the Elimination of Racial Discrimination". It aims at

raising public awareness of racism. Hong Kong as an Asian world city has many people from all over the world coming for visits, studying, working or residing. There is no doubt that we need to strive to maintain racial harmony.

The Liberal Party believes that equal opportunity is an indispensable precondition to a fair and level playing field in Hong Kong. This, as our manifesto stresses, allows people to achieve their goal regardless of their race. Indeed, eliminating racism can enhance the competitiveness of Hong Kong, uplift our international image and help demonstrate to the world that we are really a world cosmopolitan city.

We need to be concerned with the situation of racial discrimination in Hong Kong, although it is not serious by international standards and norms. As a step towards fulfilling our commitment to the International Convention on the Elimination of All Forms of Racial Discrimination, we were pleased to see the Race Relations Unit and the Committee on the Promotion of Racial Harmony being formed by the Government in June 2002 to promote racial harmony and anti-racial discrimination education among the public. Statistics show that racism enquiries were on the increase in recent years and had reached 203 cases in 2002. Of course, it might be due to the awareness of racism being enhanced, or perhaps the problem is worsening. Nevertheless, there is no room for complacency in our work against racism and its elimination.

Regarding the need for legislation against racism, the Home Affairs Bureau announced consultation findings in August last year, and it was found that the business sector was still divided on this matter. Some business organizations responded that the legislation would adversely affect their operations, while some responses from the business sector and non-governmental organizations were in favour of legislation.

Madam President, the Liberal Party today is not against the idea of legislation in Hong Kong. However, our concern lies with whether there might be any ill side effects on the business environment and whether there is any safeguard provision against abuse of the law. These were worries expressed by some business quarters. Indeed, according to some local chambers, business organizations fear that legislation might increase their cost of operation. Many small and medium enterprises (SMEs) worry that their employment policy could be adversely affected if the provisions are not clear and that changing policy would induce administration cost. The burden could be heavy, as we do not

really know whether and when the Hong Kong economy will improve in the coming years.

However, we think that the fears expressed by some of the local business organizations can be alleviated if we proceed with legislation carefully with widespread consultation among the public and the business community. Hong Kong's economy and success are much related to a free market, which should provide equal opportunity to each member of our society regardless of his race.

Finally, I would like to point out that we think the motion has some conceptual errors. The "new arrivals from the Mainland" share the same roots with most of us — they are ethnic Chinese, and by no means a minority race. I think that we should better distinguish between ethnic groups and ethnic minorities.

However, as I have said, the Liberal Party is against any form of discrimination against any sector, including new arrivals from the Mainland, or part of our society. Therefore, we urge the Government to adopt the recommendation of the relevant United Nations committees and introduce legislation against racial discrimination in order to safeguard the interests of all ethnic minorities as well as ethnic groups.

Madam President, with these remarks, the Liberal Party supports the motion.

**MR LAU CHIN-SHEK** (in Cantonese): Madam President, on the issue of legislating to prohibit racial discrimination, there were two occasions before 1997 in this Chamber on which Honourable Members proposed private bills to outlaw discrimination. On one occasion, it was proposed by Ms Anna WU who is now the Chairman of the Equal Opportunities Commission. On the other occasion, it was proposed by Mrs Elizabeth WONG who used to be a top government official. Unfortunately, both bills were not passed.

After the establishment of the SAR, Members of this Council, being subject to the constraints of Article 74 of the Basic Law, can hardly promote further legislation on equal opportunities by way of private bills. I tried to propose a bill to prohibit age discrimination during the 1998 to 1999 Session but

was impeded by the restrictions under Article 74 of the Basic Law. It would be hard to see another attempt nowadays like the one made by Ms Anna WU who spent both time and money on promoting anti-discrimination legislation. It is because of this that the position and attitude of the Government against discrimination would appear to be more important. If the Government continues to adopt such a nonchalant attitude and delays making legislation against discrimination, then discrimination will only continue.

Madam President, Hong Kong claims itself to be a cosmopolitan city and stresses that different races, new immigrants and locals should live in peace and equality, free from discrimination. However, while our Government always asserts that racial discrimination is unacceptable, it is reluctant to prohibit racial discrimination by way of legislation. How can the people be convinced that the Government sincerely respects equal opportunities?

All along the Government has not made any decision to make further legislation against discrimination. As other Members have said, the argument which has often been advanced is that education is more effective than legislation. I do not think anyone will oppose to making more education and publicity efforts, and I would also urge the Government to do so. But in any case, education cannot replace legislation. And with regard to this point, I hope the Secretary, Dr Patrick HO, will make a clarification later. Now in the existing laws of Hong Kong, sex discrimination, discrimination against the disabled, discrimination on grounds of family status and discrimination against those who take part in trade union activities are outlawed. I hope the Government will understand that if it continues to oppose legislating against racial discrimination and other forms of discrimination, then this very act of opposition would amount to discrimination *per se*.

Madam President, I would like to make use of this debate to talk about the issue of new arrivals to Hong Kong.

Hong Kong has been for a long time a community formed by immigrants. I am one of them. I came to Hong Kong alone from mainland China. Over the past decades of economic prosperity, and especially in the 1960s and 1970s when our manufacturing industries were at their heyday, the contribution made by immigrants from mainland China should undoubtedly not be denied. I believe if our society has legislation expressly prohibiting discrimination against

new arrivals to Hong Kong, then it will certainly further promote social harmony and create more favourable conditions which will enable these new arrivals to make greater contribution to Hong Kong.

As compared to groups of ethnic minorities, new arrivals from the Mainland are a more scattered group and hence there is a greater need for equal allocation of resources in society so that they can reasonably enjoy them. I therefore believe that when we make legislation against racial discrimination, it is absolutely necessary to provide protection to new arrivals to Hong Kong.

Madam President, I so submit. Both Mr LEE Cheuk-yan and I are in full support of the motion moved by Ms Audrey EU. Thank you.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, I have been in the import and export trade for over 30 years and often times I would fly to different countries in the world. I have been to dozens of countries and I have contact with people of different races, some of whom have become my good friends. After all these years of travelling around the world, I have come to realize that Hong Kong is the best place in the world. One major reason is that Hong Kong, as a Chinese society, has inherited the Chinese tradition of tolerance. We cherish the values of freedom and openness, our community is a melting pot of people of different races and cultures. This serves to shape Hong Kong into what it is: A place with a way of life blending the East and the West while it is not entirely East or West. Countries and peoples all over the world do have different views on other races and beliefs, and Hong Kong is no exception. But despite this, up to the present moment, and I stress, up to the present moment, I do not see any need to resort to a legislative approach to address the issue of racial discrimination in Hong Kong. There are four reasons.

First, there is no substantial evidence, such as demonstrations and violence to show that racial discrimination in Hong Kong *per se* is more serious than the time when Hong Kong was under British colonial rule.

Second, even if racial discrimination does exist here, that does not mean that the Government must deal with it immediately. If we are to stay being a free and open society, the less legal restrictions are imposed on the people the better. People do not want to see their government resort to making of various



laws whenever a problem crops up, for with one more piece of legislation, people will have one less bit of freedom.

Third, legislation against racial discrimination does not mean that racial discrimination is effectively eliminated, for after all, racial discrimination hinges on beliefs and values. The Government should start with education and foster a sense of tolerance among the people, encourage acceptance and respect for people of other races. Mandatory and punitive laws should be seen as the last resort, and I stress, the last resort. Legislation against racial discrimination may serve to ameliorate the situation on the surface, but education will rid the problem at its roots.

Fourth, from the perspective of the business sector, since there is a common understanding that the Government should be a small government, what it should do is to reduce instead of adding to the numerous rules and regulations in place. This will serve to reduce the operating costs of employers. We should bear in mind that while it is not difficult to legislate, we should watch out for any undesirable consequences that may take us by surprise. So we should be wary of actually doing something bad despite our good intentions. One just has to learn a lesson from the Copyright (Amendment) Ordinance. Both the Government and the Legislative Council should be mindful of that.

Hong Kong is a free commercial society and those who do business will not mind with whom they are doing business, whether they belong to another race or whether they are new arrivals to Hong Kong. As long as they can be good partners in business, and as long as both parties will stand to gain, there is no such problem as racial discrimination or discrimination against new arrivals.

Madam President, I so submit.

**DR RAYMOND HO** (in Cantonese): Madam President, I think the problem of racial discrimination has been in existence since the earliest of times as people will cast a curious look at people whose skin and appearance are different from theirs. They may even hold some sort of bias against one another. With the passage of time, this problem should have disappeared in theory, but in actual practice it has not. In many places around the world, the problem of racial discrimination still exists, and Hong Kong is no exception.

Hong Kong is a cosmopolitan city and most of the population is Chinese. But as many families here employ foreign domestic helpers and since the Government adopts an importation of labour policy, plus the fact that many companies from all over the world have set up offices here, so there are many foreign nationals and new arrivals living in Hong Kong. It is unfortunate that these people, especially those of South Asian origin, do not enjoy the same kind of treatment in education, employment and social services as the locals. Even for new arrivals from the Mainland, it is worrying to see that they are also subject to discrimination.

Apart from causing racial conflicts and other social problems, racial discrimination may also affect the development of a country or a place. For this reason, we must be concerned about this problem. The United States is a multiracial country and despite its short history of about 200 years, it has managed to grow into a superpower and the reason is that it can overcome the problem of races and absorb talents of different races into its service. The remarkable achievements of the United States in aerospace technology, medicine, business and sports are not merely owed to people of Caucasian origin but other ethnic minorities as well. Hong Kong is moving towards a knowledge-based economy and if we are to secure a footing in the global economy, we have to take in talents from all over the world and make us more competitive. To achieve this aim, we must eliminate racial discrimination. In addition, with the existence of a severe deficit problem, we need to adopt various means of internal adjustment as well as attracting foreign investments in order to increase revenue. In view of this, we must eliminate all forms of racial discrimination and the discrimination against new arrivals, in order to foster a favourable business environment and build up an admirable international image.

With the emergence of the globalization trend, countries will engage in closer business contact and the chances of people coming into contact with those of other races and societies are becoming greater and greater. As Hong Kong is a city which thrives on international trade, we have to learn how to be tolerant of the ways of life and cultures of people from different places or races before we can steer out of the economic doldrums. For the Government, apart from inculcating the right ideas in the people, it should put such ideas in practice and proceed with legislative efforts as soon as possible. If the problem of racial discrimination can be solved, I believe Hong Kong will definitely have a brighter future.

With these remarks, Madam President, I support the motion.

**MS LI FUNG-YING** (in Cantonese): Madam President, the world would be a much more beautiful place if there is no racial discrimination. However, it is disappointing to note that the SAR Government is proceeding only at a snail's pace in the elimination of racial discrimination. On the one hand, we see officials very anxious about the ratings given by international institutions. Our Financial Secretary vows to eradicate the deficit problem by the year 2006-07 despite the lurking uncertainties in the world economy. And one of the reasons offered by him is his worries about the fall in our international credit ratings. But on the other hand, we see that the United Nations Committee on Civil and Political Rights made a criticism in May 2001 that the SAR Government had not fulfilled its responsibilities with respect to the elimination of racial discrimination in private sector organizations and urged the SAR Government to extend the scope of its efforts in the elimination of racial discrimination to private sector organizations. In August 2001, the United Nations Committee on Elimination of Racial Discrimination also made an express demand to the SAR Government to make legislation to prohibit discrimination on grounds of race, colour, heredity and people. The matter is presently being studied by the SAR Government, and that is all. I hope that our Government can attach the same kind of importance to credit rating institutions to United Nations committees.

Does racial discrimination exist in Hong Kong? Figures from the Equal Opportunities Commission (EOC) on discrimination enquiries show that from September 1996 to January this year, the EOC has received a total of 644 cases of enquiries and complaints on discrimination, of which 129 cases are related to employment relations. This kind of cases rank the second greatest in number. They include ethnic minorities and new arrivals being discriminated by their employers, and even cases of discrimination reported by people whose spouses are ethnic minorities. We should not dismiss the 129 cases received by the EOC over a period of seven years as a small number, for such cases of enquiries and complaints do not actually fall in the scope of work of the EOC. The number may then only be the tip of the iceberg. In last year alone, the enquiries and complaints lodged with the EOC regarding racial discrimination number 203 and the number of complaints has been increasing over the years.

The trade union to which I belong, that is, the Federation of Hong Kong & Kowloon Labour Unions, is located in Sham Shui Po District. I often meet

people of other races and I find that they have great difficulties in finding a job and renting a flat. Many of these people are casual workers in piece goods companies. They are manual labourers earning a meagre income. They face the problems of equal work but unequal pay and they often encounter problems in renting a flat. Their children also have difficulties in enrollment at schools. All these difficulties stem from the discrimination of some people in Hong Kong against them. Likewise, there are many new arrivals in the area and they are often looked down upon by locals in job seeking or in other aspects of their life because of their language barrier. Since there is not enough support for these people in government policies, they have become marginalized groups in society.

Should legislation be enacted in Hong Kong to prohibit racial discrimination? Mr TUNG Chee-hwa, the Chief Executive, proposed in the policy address early this year that economic integration with the Pearl River Delta should be expedited and that the contact between mainland residents and the people of Hong Kong should be further enhanced. The Chief Secretary for Administration announced a population policy last month in which he stressed that talents from all directions should be attracted to come to Hong Kong. The question of whether or not talents can converge in Hong Kong will depend on whether or not people who come here from different places to live and work can receive equal treatment and not be discriminated on grounds of their race, colour and accent.

Madam President, on the question of equal opportunities, doubtless education is important in changing the conventional beliefs of people. But the question is education is not the only solution to this social problem and it is not the most effective option available. On this issue of prohibiting racial discrimination, the SAR Government cannot use education as a pretext for not legislating against racial discrimination. From the perspectives of social reality and prospects of our development, I think legislation to prohibit racial discrimination should brook no more delay. By a similar token, the vital role played by the EOC in the elimination of discrimination and the protection of equal opportunities is unequivocal and should never be blurred and get out of focus.

Madam President, I speak in support of the motion moved by Ms Audrey EU.

**MISS MARGARET NG:** Madam President, I support the motion of the Honourable Audrey EU. It is undisputed that if Hong Kong wants to be regarded as a world-class city, it must make convincing efforts to safeguard against racial discrimination. Hong Kong has an international obligation under several human rights covenants to legislate against racial discrimination. Studies all over the world has shown that an effective safeguard against racial discrimination is conducive to good corporate environment, enhances productivity and is economically beneficial. It is also incumbent upon every civilized man and woman to defend the right of everyone to be given equal treatment in the society they live in.

It is difficult to come up with any respectable reason against legislation. Yet the Government is resisting the increasing call for anti-racial discrimination law to be enacted.

I collect that the Government has at different times put forward the following reasons. First, racial discrimination is not or is not a serious problem in Hong Kong. But the evidence is otherwise. Moreover, even if this is true, it does not absolve the Government from its obligations. One could even argue that it is better to legislate in an environment where racial discrimination has not yet reached violent levels, because it is much less divisive.

Then the Government argues that education is a better way of promoting racial equality. But no one is against education. On the contrary, the criticism is that the Government is not doing enough to educate the public on this important issue, and the consensus is that legislation must be supplemented by education and the widest publicity.

Finally, the Government takes refuge in timing. But the consultation that the Government considered necessary has already been carried out last year. The report on consultation has been presented to this Council in August 2002. The results were unequivocal. Of the 34 business organizations invited, 25 responded, 16 supported legislation and only six opposed. Forty-four non-governmental organizations were consulted, and every single one supported legislation. What can be more plain?

Not only is the support plainly there, but there is remarkable consensus as to the aim and contents of the legislation to be introduced. It is the broad consensus that the law should provide a clear definition of racial discrimination

and legal remedy for it. It is agreed that the law will express effectively this community's commitment to uphold racial equality. There is near consensus that the law should not contain affirmative action provisions, and should be clearly drafted to prevent abuse. People expressing support are content for the legislation to follow closely existing anti-discrimination law. They also have faith in the Equal Opportunities Commission based on its past performance.

Madam President, there is no downside to such legislation. The Government has tried very hard indeed and has failed to come up with anything remotely looking like a disadvantage. Does it really want us to suspect that, deep down, the Government believes that prosperity in Hong Kong hangs on sheltering racial discrimination and exploitation? Really, I think we should put aside excuses and get on with the job.

I want particularly to address the question of "new" immigrants from the Mainland. The original motion very properly referred to this group in our community as new "arrivals", because a great many of them have come as permanent residents exercising their right of abode, not as immigrants under an immigration policy.

They are nevertheless called 新移民, "new immigrants", even though some of them have lived in Hong Kong as residents for more than 20 years. This group must not be excluded from the protection of anti-racial discrimination law.

Madam President, as a matter of interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), "racial discrimination" includes the discrimination of any distinct group which can be distinguished from the majority by language and culture. Although ethnically, mainland arrivals are Han Chinese, they fit into this description. As a matter of practice in the Hong Kong context, it is now long established, and accepted, that new arrivals from the Mainland are included in the question of racial discrimination. I am glad to know that the Honourable YEUNG Yiu-chung has withdrawn his amendment.

It makes sense to ensure that this group is firmly included for all the reasons I have already listed for safeguarding against racial discrimination. One example is economic benefits. In recent debates in this House on various

questions relating to Hong Kong's economic revival, time and again, Members have emphasized the need to remove discrimination against mainland talents, and the need to encourage more integration with the Mainland, encourage mainland tourists and business enterprises to come to Hong Kong more often. In this context, it is all the more imperative to send out the message, and backed up with action, that any mainland arrival coming into our community can be confident of being treated with the equal dignity and respect to which everyone is entitled.

Thank you, Madam President.

**MR ALBERT HO:** Madam President, the Chief Executive has repeatedly proclaimed that his government is committed to building a just and fair society. To that end, we envisage that our Government should not only respect and treasure the richness of the cultural diversity within our community, but should also take positive and effective measures to promote understanding, tolerance and friendship among different social and ethnic groups.

The Government should also take effective measures to ensure that all members of the ethnic minority groups do enjoy equal opportunities or access to public services and are free from all forms of discrimination on account of race, colour and social origin.

Although in its report submitted to the United Nations Committee in respect of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the International Convention on the Elimination of All Forms of Racial Discrimination, the Hong Kong Government has stated that comprehensive measures have been taken to ensure elimination of racial discrimination and afford equal opportunities to different ethnic groups, but obviously, these measures are far from being sufficient to accomplish the objectives enshrined in the two international covenants. One glaring deficiency is the persistent failure or refusal of the Hong Kong Government to enact laws to prohibit racial discrimination in the private sector. The Committee on the ICESCR, in its latest concluding observations and recommendations made with regard to the report from Hong Kong, criticized the Hong Kong Government for its failure to legislate to prohibit racial discrimination as having committed a breach of Article 2 of the Covenant — one of the strongest possible terms of criticism rarely used by the Committee. The international reputation of Hong Kong as a treaty-abiding member will be further tarnished if immediate

legislative measures are not put in place to prohibit racial discrimination in Hong Kong.

As time does not allow me to cover in this speech all the inadequacies and deficiencies of the Hong Kong Government in eliminating racial discrimination, I would today focus mainly on the question of education of the children of the ethnic minority groups.

Madam President, according to government statistics, there are about 10 000 South and Southeast Asian children aged between six and 15 in Hong Kong. They are mainly children from Nepal, India, Pakistan, Sri Lanka and other places in South and Southeast Asia. Under our current compulsory education system, all these children need to go to school for formal education. However, most of these students come from poor families. They speak little English and do not understand the Chinese language in written form, except speaking the local Cantonese dialect. Because of the language barrier, it is extremely difficult for them to get admitted into our mainstream schools, which require students to study the Chinese language as a mandatory subject, and also use the Chinese language as a medium of teaching in most other subjects.

In another survey, it is indicated that about 15% of the respondents, who are mainly South Asian ethnic children, have to spend more than one year to find a school. This may not be due to direct racial discrimination. But as most of these children are burdened by the language barrier and therefore understandably have poor academic records, they would naturally encounter difficulties in finding schools for admission. Although those children can go to private international schools which use English as the medium of teaching, the school fees of these international schools are always beyond the affordability of the families of these children.

At present, the Government does provide subsidies to some non-governmental organizations to provide adaptation courses to enhance the Chinese language ability of these Southeast Asian children, and also provide extra allowances to those schools which have admitted these children. However, with the limited allowances granted by the Government, the schools still find it difficult to design and run special courses effective enough to integrate these Southeast Asian children into the mainstream classes. In the end, these minority children are either left out from formal schooling, or are left helplessly unattended to in the schools until they attain the age of 16.



In Yuen Long, there is an abandoned village school which was turned into a school specially designed and run for Southeast Asian ethnic minority children. This school teaches mainly in English and offers courses in various other languages. However, the school is at all times under financial deficit because it does not receive any government subsidy and the families of the children cannot afford to pay the school fees even charged at a modest level. I propose that the Government should consider providing financial subsidies to these kinds of schools which are designed specially for these ethnic minority children.

Moreover, the Government should consider setting up a direct subsidy scheme for these kinds of schools so as to enable them to provide specially adapted or tailor-made courses by using English and other ethnic languages as the teaching media for the education of these ethnic minority groups in Hong Kong.

Madam President, I have heard the arguments from the Honourable James TIEN and Mr HUI Cheung-ching opposing the motion mainly on economic considerations. I would refrain myself from countering the arguments on economic considerations, because I think that human rights are sacred and should not be subject to compromise, and hence I would not like to use economic arguments. I think our Government is simply obligated to conform to the international covenants.

**MR JASPER TSANG** (in Cantonese): Madam President, a vast majority of Members who have spoken tonight said that they supported legislation, and they also requested the Government not to drag its feet. If we are debating another piece of legislation tonight, and if those who are sitting over there are officials of the Security Bureau, I think the Government would certainly be very happy.

Many colleagues have made reference to the International Convention on the Elimination of All Forms of Racial Discrimination. In fact, the British Government ratified the Convention in 1969 and since then, the Convention has been applied to Hong Kong. The situation has remained unchanged after the reunification of Hong Kong in 1997, for China is also a State Party to the Convention. Article 2 of the Convention provides that "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.....".

Article 5 provides that "In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms.....". The reference to State Parties undertaking to eliminate racial discrimination by all appropriate means in Article 2 may not necessarily mean the enactment of legislation, for legislation may not be the most appropriate means. Article 5 mentions "prohibiting" racial discrimination in all its forms. This, however, makes it difficult for us to cast aside our obligation to legislate, because no acts can be prohibited without legislation.

Although the Convention has been applied to Hong Kong for a long time, the Government, before the '90s in the last century, had never seriously studied how best to legislate against racial discrimination, and there had been little discussion in the community about legislation on racial equality. It was only when Hong Kong entered the transitional period before reunification that human rights issues, including racial equality, became a topic of frequent discussions in the community. In 1991, the Hong Kong Bill of Rights Ordinance was enacted in Hong Kong to prohibit the Hong Kong Government and all public authorities from engaging in activities that would lead to racial discrimination. This can be said as the first time in Hong Kong that legislation relating to racial equality was enacted to bind the Government and public bodies.

As for legislation against racial discrimination in the private sector, it has all along met resistance in the community. Recently, I have heard some views opposing legislation, arguing that there is no pressing need for legislation, or asking why legislation must be enacted now when racial discrimination is not serious. It is also argued that an additional piece of legislation will only mean more restrictions. Earlier on many colleagues have refuted these opposition views, so I am not going to repeat them here. The plainest reason is that whatever the situation in Hong Kong, it is true that racial discrimination in Hong Kong is not too bad when compared to places where the situation is deplorable, but we cannot discard our international obligation. We cannot discard the obligation required of Hong Kong as stipulated in the international covenants. So, I think it is very difficult to find reasons to evade legislation.

Furthermore, as pointed out by some colleagues, Hong Kong must maintain its status as a cosmopolitan, and legislation against racial discrimination can actually help us maintain a better international reputation. In the meantime, this will make Hong Kong more attractive to people who wish to come here as

tourists, and for work and business, and this will also afford greater protection to them. Therefore, while we have to pay a price for legislation, we still consider it worthwhile to do so.

Certainly, we agree that legislation is not the only way to eliminate all racial discrimination. This is also pointed out by a colleague earlier in the debate. What is more, with regard to certain acts of racial discrimination, legislation may not necessarily be the most effective way to combat and eliminate racial discrimination. Ms Audrey EU and Mr Albert HO cited some examples earlier on, and I am afraid many of these cases may not be resolved through legislation. For instance, in respect of education, the existing laws on racial equality are already binding on the Government and public bodies. If these laws can prevent injustice or prejudice against the ethnic minorities in respect of education, then the existing laws can already prohibit discrimination against them. Obviously, in respect of the proposal made by Mr Albert HO just now, namely the Government should grant some special allowances or make special arrangement for schools run by ethnic minorities, I am afraid it cannot be achieved simply by enacting legislation to eliminate racial discrimination. In fact, we can see that many people who belong to ethnic minorities, particularly those from South Asia as mentioned by some colleagues earlier, have encountered specific difficulties not only in education and employment, but even in finding a dwelling place. These difficulties may not be resolved completely even through legislation. Given that their language, religion and living habits are different from other residents, they will therefore face some particular difficulties.

We certainly consider education very important. But the Government should also formulate a comprehensive policy on racial equality, with a view to drawing up measures to take care of the special needs of different ethnic minorities whose numbers are increasing in Hong Kong and to resolve the problems they face. Education initiatives and measures are not in conflict with legislation. Nor can they replace each other. Therefore, while education is necessary, a comprehensive range of measures is also required, and we also consider it necessary to enact legislation on racial equality.

**MS EMILY LAU:** Madam President, I rise to speak in support of the motion moved by the Honourable Audrey EU. I am very pleased to see that the Democratic Alliance for Betterment of Hong Kong (DAB) have not only withdrawn their amendment, but that they have also supported the motion. And

I am even more pleased to see that the Liberal Party supports the motion, so I think Mr Albert HO got it a bit wrong when he said Mr James TIEN revealed that he did not support the motion, when he did. So, in fact, most of the Members who have spoken this evening, Madam President, as you would have noticed, actually support the motion.

And, we have come a long way. I remember six, seven, or eight years ago, when we first started talking about this in this Council, at least in my experience, some of the ethnic minorities who came here were very shy, and they were very reluctant to say that there was racial discrimination. We actually asked them point-blank, and they did not want to say it. I could understand it because they felt quite vulnerable. In a city which is full of Chinese, and the Chinese, I must say, are among one of the most racist people in the world, if these ethnic minorities felt a bit intimidated, I do not think we should be surprised. But, as I said, we have come a long way.

In recent years, when we have meetings and panel meetings, many ethnic minorities have sent representatives to this Council. They have spoken out loudly, clearly and very eloquently, giving us many examples of discriminations, which Ms EU, Mr HO and others have cited. That is why I was shocked and very disturbed to hear what Mr HUI Cheung-ching had said. He recited four reasons, many of which were shared by the Administration. I do not know whether they are shared by Dr Patrick HO tonight.

The first reason he said was that there are no evidences of racial discrimination. If Mr HUI would have only bothered to hang around a bit longer and listen to what Members have said, or listen to all the examples that the ethnic minorities have given us in terms of employment, accommodation, schooling and even getting a taxi, in regard to their having been discriminated against.

His next reason for saying there is no need for it is that, even if racial discrimination does exist, it does not mean we have to legislate. He said we are living in a free society, there should be as few restrictions on us as possible, because as you have more laws, you will have more restrictions. So, why then legislate on Article 23? I am sorry that he has packed up and left. But at least he would not be around to vote against the motion. I just cannot understand it. By all means, I respect all people's freedoms, but do not build your pleasure, the

pleasure of enjoying your freedom, on the suffering of people who are being discriminated against.

His third reason is that legislation is not effective in eliminating racial discrimination. How does he know? We have not got it yet. And he said that we should be concerned with education. Oh, I am all in favour. And he said legislation should be the last resort. I think after fighting for so many, many years, this should be the last resort. And I must tell him, although I am sorry he is not here, that legislation can be an exceedingly effective form of education.

The last excuse or reason that he gave is that, to the business community, they believe in a small government. So, a small government should not go around and legislate on all sorts of things, and as Mr TIEN has also pointed out, he fears that if we have such a legislation, it would increase the cost of operation for the business community. Well, we have got certain legislation to prohibit discrimination on the grounds of gender, family status and disability. If such legislation has actually placed a heavy burden on the business community, I think that the chambers of commerce would have come out, they would have done surveys to find out how burdensome these laws are. I have not seen such statistics. I do not know whether Dr Patrick HO has any to share with us.

And as Ms EU said, on average, every year there are about eight cases in court, thus it is not such an onerous thing. So, Madam President, I think that most Members who have spoken, and those who will speak, would support the motion. We have waited for far too long. In fact, in January this year, Madam President, we should have presented our report to the United Nations Committee on the Elimination of Racial Discrimination. But sadly, the Central Government has not called on the Hong Kong Special Administrative Region (SAR) to submit a report. Why? I do not know. Maybe Dr HO can tell us, because the Central Government is of course a party to the Convention. But they have not seemed fit to submit a report on time, and not doing it on time is grave disrespect to the Committee. I certainly hope that we can submit our report this year. Talking about report, we are about to submit a report on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and also on the International Covenant on Civil and Political Rights (ICCPR). All these covenants and conventions are related to racial discrimination, and if we do not try to, or do not declare that we are going to, legislate to prohibit racial

discrimination, I do not know what the SAR Government is going to say to these various UN bodies.

So, Madam President, I think time is running out and we have waited for too long, not just we in the community, but particularly the ethnic minorities, the people who have suffered, many of them silently for so many years. I think we owe it to them, in this Council this evening. We all give resounding support to Ms EU and hope that Dr HO would deliver some good news.

With these remarks, I support the motion.

**MRS SELINA CHOW** (in Cantonese): Madam President, I would like to thank Ms Emily LAU for clarifying the position of the Liberal Party. We can hardly blame Mr Albert HO for misunderstanding our position, because in fact we did raise opposition in this Chamber before. But we did not oppose taking actions to address discrimination. What we opposed was legislation. In fact, we expressed concern over legislation then, for we were worried that suppressing or controlling culture or thoughts by means of law might give rise to other problems. But insofar as we can see it, nothing serious has happened since the enactment of legislation against discrimination on other grounds. Moreover, I personally have changed my view over this issue in recent years and now, I do consider such legislation necessary. On the one hand, as Ms Audrey EU has said, perhaps I am now engaged in tourism and so, I feel that being an international city, Hong Kong must give the impression that we are very open. On the other hand, I have collected some cases, although they are not in a large number. In 2002, five complaints were lodged by tourists, two of which being against hotels, two against catering establishments and one against impolite treatment on entry into the territory.

I would like to speak with reference to the Government, and as the Secretary is here in the Chamber, perhaps he can consider my views. While officers of the Immigration Department have been working very competently and efficiently, I am sorry to say that they have nevertheless treated some inbound visitors from foreign countries rather impolitely, making these visitors feel that they are not welcome here. Recently, the Consul General of Malaysia told me in person that Malaysians whose names bear the word "bin" are subject to stringent interrogation when they come to Hong Kong. Besides, a number of colleagues also said earlier that Indians often encounter difficulties when they

arrive. This is so even for people who are famous, and Members may have read reports about their cases in *South China Morning Post*. Even though they made it clear that they come here to attend meetings, they still encountered problems. Why did the immigration officers not make phone calls to verify their claims? Why must they interrogate these visitors for an hour or two? Such cases may be few and far between. But this is simply unnecessary, because by doing a little bit more, we can clear ourselves of the impression of being racist.

When Ms Audrey EU first proposed this motion, and as soon as we read that it was about racial discrimination, a consensus was already reached within my Party that we need to participate in this debate. I would like to talk about my personal experience. My daughter told me that when she was in Singapore, she found that Hong Kong was in fact very backward. In Singapore, she did not feel any racial discrimination at all, because in Singapore, even one single sentence can be expressed in four languages. Perhaps we may sneer at them, but this actually shows that they are very open, and this also demonstrates the determination of the Singaporean Government. Whether it be the media, television stations or other broadcasting media, all use several languages. The Singaporean Government uses the languages of different ethnic groups, regardless of the population share of each ethnic group (the Chinese should be the largest ethnic community) and attaches equal importance to all of these languages. Policy-wise, they are able to avoid ill feelings among different races. Hong Kong has always claimed to be an international metropolis and vowed to compete with others, seeing Singapore as our strongest rival. Singapore gives the impression that racial discrimination does not exist at all. In Hong Kong, however, we are unable to remove the ill feelings and barriers that exist among different races. Let us not talk about the new arrivals. Even foreigners who have lived here for a long time still have this feeling. I believe Hong Kong, being an advanced city, must really do something about this.

In the past, we hoped to achieve the objective through publicity or education which are more moderate in nature. But now, it seems that they have not been very effective, for they have failed to bring about any changes over the years. Hong Kong people are very interesting people who are law-abiding. If the law stipulates that something should not be done or if it disallows certain acts, the thinking of the people will naturally change. Now, we may really have to tell society very clearly that this cannot and should not be done and so, this should be clearly written in law.

Finally, I wish to add a couple of points to Mr James TIEN's remarks earlier. In fact, it is not the case that the business sector has no worries. But it is not true that the business sector does not wish to combat racial discrimination. They are worried about whether the legal provisions are written clearly and whether they are open to abuses. We must pay attention to these concerns. This will be our duty after the bill is tabled at the Legislative Council, but during the stage when the bill is being drafted, this will be the job of the Government. Even after the enactment of the legislation, the Government must still do something for education purposes, similar to "giving out orders" to require front-line workers to adopt a certain kind of attitude in their work. In so doing, the Government can take on a leading role in society. In any case, if there are complaints against government departments, that is, if there are already complaints against the first line, then it would cause confidence in the Government to further diminish or make people think that the Government has failed to play its part properly. If such being the case, I think Hong Kong's status as an international city will be tarnished. Therefore, we very much support Ms Audrey EU's motion today, and we hope that the Government can do better and work faster in the drafting of the bill for follow-up discussions by this Council. Thank you, Madam President.

**DR DAVID LI:** Madam President, we in Hong Kong can no longer afford to ignore the issue of racial discrimination. We can no longer push this issue aside, saying that it is not a serious problem.

Last month, the Government announced a new population policy for Hong Kong. Are we ready for the impact of this new policy on our society?

Each and every day, people from both the majority and minority communities in Hong Kong face overt or covert racial discrimination. This discrimination affects people's lives, harms the opportunities for their children, and tarnishes Hong Kong's international reputation.

The population policy announced last month will open our borders to a more diverse mix of immigrants than ever before. The policy declares that Hong Kong must attract people of talent and wealth in order to compete in the global marketplace, and to help us build a new Hong Kong. The policy places no restrictions on ethnic origin or country of birth. But what welcome will



these new immigrants receive? Will they feel at home in Hong Kong? Will they want to stay here to contribute to our community?

To ensure a warm welcome, we must take proactive action now. First and foremost, we must raise awareness within our community of the harm that racial discrimination causes to individuals and to our society at large. First and foremost, a change of attitude is required.

But what of those who, despite all our efforts, find themselves the victims of racial discrimination? Do we shake our heads and say tut-tut? Or do we as a community show that we care?

By implementing anti-racial discrimination legislation, we provide a course of action that will allow individuals to seek redress. We will show all people who come to Hong Kong that we value their decisions. We value their contributions. Certainly, we owe all those who choose Hong Kong this measure of respect.

I am pleased to support the original motion put forward by the Honourable Audrey EU. Thank you.

**MR BERNARD CHAN:** Madam President, as the Nobel Prize-winning novelist William FAULKNER said, "To live anywhere in the world today and be against equality because of race or colour is like living in Alaska and being against snow."

The chance to see snowing in Hong Kong, a subtropical city, is certainly thin, if not logically impossible. But, I am afraid we have to confess that inequality because of race is not a rarity in Hong Kong.

It helps nothing by pretending that racial discrimination does not exist in Hong Kong. Racial discrimination is uncivilized. It erodes Hong Kong's success and damages Hong Kong's status as an open and international metropolitan.

Madam President, I think I must declare my interest first. As you know, my family is from Thailand, my in-laws are from Singapore, and my two brothers-in-law are from Indonesia and Malaysia.

In some sense, Hong Kong is a multi-racial society. According to a March 2001 report by the Census and Statistics Department on Ethnic Minorities, more than 343 000 ethnic minorities are living in Hong Kong. They represented slightly over 5% of the whole population.

Many of these foreigners are usual residents of Hong Kong, who spend most of the time here and treat Hong Kong as their second home, if not the only home. Some 260 000 of them are the working population, constituting 8% of Hong Kong's working population. They work as hard as the local Hong Kong Chinese, and have contributed to the success of the city.

This racial diversity also provides a unique value to Hong Kong. It is our link to our trading partners and strengthens Hong Kong as a global trader.

But unfortunately, our foreigner friends are not always treated the same as the rest of their fellow Hong Kong Chinese, just because their skin colour is different from ours.

The International Convention on the Elimination of All Forms of Racial Discrimination was extended to Hong Kong in 1969. Article 5 of the Convention provides that "States undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone without distinction as to race, colour or national or ethnic origin, to equality before the law....."

Thanks to the hard work by human rights groups and many other advocates of equal opportunities over the years, now we do have three anti-discrimination laws. They outlaw discrimination on grounds of sex, disabilities, and family status.

It only seems natural that we should have a law to deal with racial discrimination. The law will not only protect the ethnic minorities, but also the new arrivals from the Mainland. Despite having the same colour with us, the new arrivals from the Mainland are often being discriminated against. Some of the Hong Kong Chinese who look down on the new arrivals may forget that they themselves actually came from the Mainland. They held the status of new arrivals decades ago.

It is the Government's obligation to protect individuals in the community. Education is important but education by itself is not enough. Legislation is needed because we are obliged to protect individual and minority rights.

Madam President, the International Day for the Elimination of Racial Discrimination falls on 21 March. Taking this opportunity, I urge the Government to review our work in this aspect. This is not only a matter for the ethnic minority groups, but also a matter for every Hong Kong resident.

**MR LAU PING-CHEUNG** (in Cantonese): Madam President, let me state at the outset that I do not oppose legislating against racial discrimination. As an international city, Hong Kong received 16.56 million visitors last year. If it is said that racial discrimination is serious and hence we should make legislation to prohibit racial discrimination expeditiously, I do not see that there is such urgency. Even if we look at the statistics of the Equal Opportunities Commission, some 40 cases were received on average each year between 1998 and 2002. Compared to a total population of 6.77 million in Hong Kong and 16.56 million inbound visitors, this number is not serious by any standard.

However, as I have just pointed out, being an international city, Hong Kong must give due attention to our good international reputation. Besides, as racial discrimination is indeed not serious in Hong Kong at present, even if the Government embarks on making legislation to prohibit racial discrimination, I cannot see that it will meet great difficulties or provoke immense resistance.

In fact, Hong Kong has always been a multi-racial city. As pointed out by some sociologists, when we look into ethnic issues, we should not make assessments by just looking at the number of people in an ethnic group. Rather, consideration should be given to their social status and the general treatment that they are given in society. For example, 95% of the Hong Kong residents are Chinese, and during the Hong Kong-British rule before the reunification, the number of British in Hong Kong accounted for a mere 2% of the population (0.3% in 2001). But not only were they not put in a disadvantaged position or discriminated against because they were in the minority, they were on the contrary treated even more favourably than the Chinese were for various reasons. Even after the reunification, we can still see some vestiges of that sort of favouritism nowadays. An example is that in some high-class private clubs which are exempted from paying the land premium or enjoy a nominal land

premium, their Chinese members do not constitute 95% of their membership in terms of the ethnic composition. From this perspective, we can see that Hong Kong is absolutely treating the ethnic minorities extremely well.

Similarly, in the existing Chinese community of Hong Kong, there is actually a very large number of new arrivals. According to the consultation document on the population policy published by the Chief Secretary for Administration early this month, a total of 720 000 new arrivals from the Mainland came to Hong Kong in the period between 1983 and 2001, which is equivalent to about 11% of the current population. They are of the same race and use the same language as ours, but given that they have different education background, accent, and so on, they sometimes have some unpleasant experiences in respect of education, employment, housing, and even in access to various social services. They will have to go through a period of adaptation anyway before they can gradually integrate into the Hong Kong community and become part of us.

All in all, in this multi-racial community of Hong Kong, some ethnic minorities, including the Filipinos, Indonesians, Indians, Pakistani, Nepalese and Thais, together with the new arrivals, who add up to a total of seven communities, are considered the disadvantaged groups. They must be provided with more assistance before they can integrate into the community of Hong Kong. So, I personally think that what they need is a diversity of social services, rather than the protection by an additional piece of legislation. To make the kinds of social services that the ethnic minorities need, we certainly have to draw reference from the experience of the Western countries. We should also make reference to the views of the leaders of ethnic minorities in Hong Kong.

Madam President, the Government conducted a survey on the profile of the ethnic minorities in 2000. The Committee on Promotion of Racial Harmony was also set up in June last year. People who belong to ethnic minorities have been invited to sit on this Committee to advise on the provision of services to ethnic minorities, so that these disadvantaged groups can have access to the services they need. I think the direction is correct.

Local Chinese may not have a good understanding of the ethnic minorities. It is difficult for us to distinguish between Indians and Pakistani simply from their skin colour. According to the survey in 2000, Indians were found to have a far better command of English than Pakistani, and the situation of the Indians

was also better than that of the Pakistani in terms of employment. Therefore, in committing resources to the ethnic minorities, we should incorporate their views to ensure that the injection of resources are more appropriately focused.

With these remarks, I support Ms Audrey EU's motion.

**MR ALBERT CHAN** (in Cantonese): Madam President, when I first saw that Ms Audrey EU's motion was about making legislation to prohibit racial discrimination, I thought that there would surely be a heated debate in this Chamber today. I was also prepared to "roll up my sleeves" and see who would fall prey to my strictures. I wonder if it is Ms EU's charisma or her eloquence as a barrister that has enabled this debate today to be conducted in such a harmonious atmosphere. Madam President, this is very rare indeed in this Chamber, particularly when it comes to human rights issues. It is indeed rare that we see no opposition from any of the parties, even the Breakfast Group. I think this is something that merits a good celebration. I believe this may not be due to Ms EU's charisma. Rather, it is because of the recent changes in the attitude of the Government, as a result of which many Members and political parties have changed their attitudes and positions accordingly. This is worthy of congratulation and celebration.

With regard to ethnic issues in Hong Kong, I hope the Secretary can later on tell us the future direction. On a multitude of issues relating to races, culture, and so on, the United States have in place a very clear policy underpinned by the concept of a melting pot, which means harmonious integration of all races. Canada is a multi-culture country. It is also a bilingual country, and their Government has very clear policies too. Even in our country, China, it is very clear that the Han race plays a dominant role, with more than 50 ethnic minorities co-existing, and there are established national policies on culture and races. However, I still do not know what the policy of the Hong Kong Government is. What exactly is our policy on culture and races? I hope the Secretary can tell us later.

Generally speaking, in respect of culture, I think Hong Kong features a blend of Chinese and Western elements, and I do not know which is dominant and which is secondary. I wonder if we fundamentally use the Chinese culture as a base and blend it some of the Western cultures, or if we actually pursue a fusion of the Chinese and Western cultures? What exactly is our position?

Our cultural policy is unclear. For the Chinese elements, what sort of "Chinese" elements are they? Is it the Cantonese opera or the Shaoxing opera? What exactly is representative of Hong Kong? In terms of the number of people here, the Cantonese stream is, of course, more representative of us.

In respect of the ethnic groups here, as some Members have said, the population census showed that there are over 300 000 people who belong to ethnic minorities. A great majority or some 90% of the population is made up of the Han race. What exactly is our policy on ethnic groups? Does the Government have concrete measures or policies to safeguard or protect certain ethnic minorities to ensure their continued existence, and to promote and sustain their cultures? Such policies can be found in other countries or territories. But I see none in Hong Kong. Although their continued existence is said to be allowed here, has the Government taken any proactive measures? I see none.

Hong Kong is basically a place full of differences and discrimination. Differences exist in many aspects, such as wealth, employment, ethnic origin, geographical origin, and so on, not to mention politics. Discrimination precipitated by differences among different races is very strong in Hong Kong. I do not wish to discuss the Cantonese expressions commonly used in daily life, which are full of discrimination, negative discrimination. The epithets used on certain races are sometimes used in newspapers and even on the television. This shows that the common terms and expressions used by the Cantonese in casual conversations are actually full of discrimination. As Ms Emily LAU has said earlier, Chinese from Hong Kong who have emigrated often complain about their being discriminated against in other countries. But the fact is that Chinese from Hong Kong in other places are actually the most discriminatory. This attitude must change gradually. This debate on legislation against racial discrimination may perhaps rectify their attitude.

In fact, I also have this inclination subconsciously. I remember that some 10 years ago, I made home calls on households in Fuk Loi Estate. One of the households that I visited was Caucasians whose hair was reddish and blonde. As soon as I noticed that he was a Caucasian, I immediately talked to him in English, but he talked to me in Chinese instead, and I found out that he was actually born in Hong Kong. This is actually indicative of a kind of subconscious or habitual discrimination. That is, when we see that the skin colour of a person is not yellow, we will have the feeling that this person may not

be a Hong Kong local. In fact, their command of Chinese may even be better than many people who study in English schools. I wonder if their Chinese is even better than those people who have received education in English, including the Financial Secretary. So, this kind of subconscious discrimination must be corrected.

On the question of racial discrimination in Hong Kong, I would like to cite a number of examples. I found that town planning in Hong Kong is also full of discrimination. Recently, I tried to identify a site measuring some 2 000 sq ft in Tin Shui Wai for the Pakistani to organize religious activities but in vain. Town planning in Tin Shui Wai is based on a population of 300 000. But we had discussed with the Housing Department, the Lands Department and the Planning Department about the possibility of providing a site for the purpose of religious activities, and it was found that such possibility is entirely out of the question under the relevant town planning. The reality is that there is not even a place available for Muslim activities in this town planning for a population of 300 000. What is it if not discrimination? If it is for the location of a club, it may be very easy to identify a site for it. A site is always available for building clubs for the rich, but not for Muslim activities. Moreover, about a year or two ago, it was proposed that a mosque be built in the North District, but the proposal met with opposition and approval has not yet been granted. I hope the Secretary will follow up this issue. I think this is a kind of discrimination. It involves religion and is certainly related to race, for we can see that race and religion are inseparable, as people who belong to a certain race often believe in a certain religion.

Madam President, there are also many problems in respect of education, and I have personally come across many such cases. There are many Pakistani living in Tin Shui Wai and Tsuen Wan, and they wish to study in Islamic schools. But their wish to speak in their own language is already difficult to be realized. For those who are recipients of Comprehensive Social Security Assistance, their chances are even slimmer, for additional school fees are required to study in these schools. So, due to financial reasons, they are deprived of the opportunity to receive the kind of education for which they aspire. This is a kind of discrimination caused by financial reasons.

I hope that through this debate on legislation against racial discrimination, some problems can be rectified and improved in the short run. In the long run,

I hope that discrimination caused by town planning and financial reasons can be eliminated as soon as possible.

Thank you, Madam President.

**MR ABRAHAM SHEK** (in Cantonese): Madam President, on the one hand, I am very glad to have heard Mr Albert CHAN say that he has made a lot of efforts in fighting against discrimination for he has described himself to be an unbiased person. On the other hand, he is biased against members of the Breakfast Group. (*Laughter*) I think it will be much better if Mr CHAN can spend more time gaining an understanding of the efforts made by colleagues of the Breakfast Group in fighting against discrimination and other aspects of work.

**MR ABRAHAM SHEK:** Madam President, since March 1969, Hong Kong has been complying with the International Convention on the Elimination of All Forms of Racial Discrimination. For over 30 years, Hong Kong — through the British Government and the Government of the People's Republic of China — has submitted reports to the United Nations Committee on the Elimination of Racial Discrimination with regard to its obligation under international human rights treaties to eradicate racial discrimination. In return, the United Nations has expressed concerns on the lack of anti-racism laws here. Despite continued calls from legislators, human rights groups and the legal sector to introduce such legislation, the Government in response has turned a deaf ear to all these pleas and simply repeated its assertion that Hong Kong is a harmonious society where the problems of racial discrimination are not serious. It also contends that there are already adequate provisions in our domestic law prohibiting racially motivated acts of violence and activities. It might be true that there is no urgent need to legislate against racial discrimination. But I would like to ask, what is the harm in enacting legislation anyway? This is not a law that restricts freedom in anyway, instead it promotes social equality and racial harmony. This is a good act, a good law and there should be legislation as such.

The Government last consulted the public on this matter in June 2001. Supporters argue that Hong Kong should follow the international lead of other countries and legislate against racial discrimination. They also believe that it would enhance Hong Kong's identity as "Asia's world city" and help attract the best talents from all corners of the world.



But some in the business sector fear that an anti-racial discrimination legislation will have a negative effect on the local business environment. They are worried that it would cause a breach of legislation in some recruitment processes and personnel management. They are also afraid that the legislation could be abused leading to a surge of unnecessary prosecutions, and would thus increase business costs. I personally do not accept these types of arguments for not legislating. If there is no discrimination, there should be no increase in business costs, nor would there be any prosecutions.

The majority of those surveyed in the public consultations, especially foreign business groups, supported introducing legislation on anti-racial discrimination. But some local businesses, on the other hand, had divergent views. Small and medium enterprises expressed strong reservations on the subject, worrying that the legislation would affect their business environment and weaken their competitiveness. I think these concerns are understandable, but the fears are more imagined than real. It is up to all of us in society to educate and eliminate such blind ideas.

Madam President, the true scope and extent of racial discrimination problems here cannot be accurately assessed based on the two public consultations. In enacting a law banning racism, the Government needs to carefully examine the issue and consider the long-term implication of such legislation and its effects on Hong Kong — for after all, we are recognized as a city of opportunities for everybody regardless of colour, race or religion. Furthermore, it is worth noting that racism in Hong Kong is not considered as serious a problem compared even to other countries which have anti-racism laws. We can be proud of the fact that there have never been any major racially motivated acts of violence or other actions here, nor have there been serious incidents or speeches promoting hate and racial conflict in Hong Kong. Indeed, one of our greatest assets is the ethnic and cultural diversity and harmony that exist among the people of Hong Kong. Over the past 150 years, we have fostered a culture of mutual tolerance and acceptance. We welcome talented people from all corners of the world to join our community and this is what makes Hong Kong an international city.

Nevertheless, there exists some bias against mainland immigrants and ethnic minorities in Hong Kong. Whether it is because of language barrier, cultural or education differences, some citizens unconsciously develop discriminatory attitudes towards certain minority groups. To score some

political points with the public for their caring attitude, the Government has introduced certain high-profile policy measures to help secure rights, benefits and welfare for mainland immigrants and ethnic minorities. But that is not enough, the Government should legislate. For this, the Government has a responsibility to these people.

Madam President, eliminating all forms of racial discrimination requires the long-term commitment of everyone in society. It is high time that the Government should think carefully on this subject and legislate against racism. With these words, I support the motion.

**MS CYD HO** (in Cantonese): Madam President, I have a wonderful feeling in this Chamber today because different political parties, including the Breakfast Group, the Liberal Party, the Democratic Alliance for Betterment of Hong Kong and other Honourable Members, have agreed in one voice that human rights must be protected. In particular, we are not merely talking about principles this time, nor are we merely indicating support in principle and suggesting that the proposal be implemented later. Instead, we are discussing ways to expedite the enactment of legislation. I am really extremely delighted and excited. The task not yet accomplished by Ms Anna WU during her term in this Council has gained support from the majority of Members today. I believe she will be quite pleased today. Thanks to the joint efforts made by people of different ethnic groups, whether the majority or subjects of discrimination, we have been able to witness the progress today and the fact that a number of Members have eliminated their long-held fears. I hope the same degree of tolerance and respect can also be manifested in other subjects, such as diverse sexual inclinations and age discrimination. What is more, I hope we can find the same degree of mutual respect, diversity and openness in our future discussions on democratic reforms to the political system.

Amid the optimistic and exciting voices of support and the overwhelmingly harmonious discussions, however, I have some worries, though small. I hope Members can maintain some measure of cautious optimism, because even though the Government can now have more room to manoeuvre as a result of the more liberal attitude taken by the Government or the new Bureau Directors, I am worried that the Government will not necessarily accede to the consensus reached by Members of this Council and expedite the enactment of legislation. I hold this view because the report on the population policy

published recently has made it clear that, from the very beginning, the relevant problems have been examined from the economic angle, or from the financial implication of the ageing population. Even the Chief Secretary for Administration has admitted that the population policy is conceived to tie in with efforts of resolving the deficit problem. However, the scope of the policy should really cover such problems as racial harmony, social harmony, and so on. We have also stated on different occasions that the policy will be gravely deficient should problems related to equal opportunities among different races and anti-discrimination be excluded. However, the report published has merely described in equivocal terms in its introduction that the population policy is very complicated, that a study will be conducted every two or three years to deal with issues of a more complex and in-depth nature. I am very worried indeed. Will "expeditiously" mean several years at the earliest? The Chief Secretary for Administration is the highest-ranking official under the Chief Executive. Although we hope a more liberal Bureau Director can take charge of this policy, nothing can be done unless there is a consensus within the Government. This is of great importance, whether before or after the enactment of legislation.

We were recently shocked by the concept of equal opportunities held by some government officials. According to these officials, equality can be achieved by simply allowing everyone to gain access to the same thing. As such, if a notice posted by the Social Welfare Department (SWD) for public inspection is written entirely in Chinese and ethnic Indians or people from ethnic South Asian groups are not prohibited from reading it, the Government can already say that equality is achieved. Furthermore, some children of ethnic minority groups, most of them from South Asia, are brought up in a non-Cantonese-speaking environment. We hope the Government can provide them with a more generous amount of kindergarten allowance with less stringent criteria. However, officials of the SWD have indicated that they cannot do so on grounds of equality because residents of ethnic minority groups should be treated in the same way as other residents in Hong Kong. I hope the Government can appreciate the fact that special measures should be allowed under the concept of equality, evident in one of the provisions of the Family Status Discrimination Ordinance. It is provided that actions taken against persons who might be subject to discrimination are not unlawful if the actions are reasonably intended to ensure equal employment opportunities or, if the provision of goods, services, grants, benefits, or programmes is intended to meet their special needs in relation to their employment. I earnestly hope that this position of the Government can be maintained, whether or not legislation is to be enacted.

The relevant details must be examined very carefully even if legislation is to be enacted. While devils are hidden in the details, the existence of angels is dependent on the details as well. Who will be responsible for implementing the law after its enactment? We have recently heard a lot of rumours concerning a possible revision of the role played by the Equal Opportunities Commission, though the Government is reluctant to admit it. Should this really happen, who will be responsible for enforcing the law? After the enactment of the law, will the Government just keep it in the inventory, as predicted by certain officials, or will it be taken as a homework to be handed to the United Nations Commission on Human Rights? If the person given the task really enforce the law in good faith and expend all resources in taking prosecution action in pursuit of justice notwithstanding that the defendant is the Government, will he be penalized by, for example, being notified of the renewal of his agreement for another year just two days before the expiry of the agreement? Madam President, even if legislation is truly enacted, we have to look at the candidates, the appointment procedures and the independence of the responsible authority. Even if legislation is enacted, we must constantly monitor the situation and promote fundamental changes in culture to enable education to keep pace with law enforcement.

I am very pleased that Mr YEUNG Yiu-chung has withdrawn his amendment so that Members can concentrate all their efforts on supporting Ms Audrey EU's motion. I will give my full support to Ms EU's motion. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR MARTIN LEE** (in Cantonese): Madam President, I got a nice gift on my 53rd birthday, because the Hong Kong Bill of Rights Ordinance (BORO) was passed on that day. Had the British Hong Kong Government known it was my birthday, the BORO would not have been passed on that particular day.

The BORO is certainly not perfect. However, it can at least give the people of Hong Kong the hope that human rights are protected. I find it very regrettable that section 7 of the Ordinance provides that the relevant measures are binding only on the Government and public bodies, but not on private organizations. It took us nearly two years to finish studying the issue because our discussion had already been started during the consultation period. At the

end, the vast majority, or nearly all, of the members of the Bills Committee agreed that the law should be binding on private organizations as well. However, the Government harped on its usual tune, saying that the new law had to be implemented progressively — it should be implemented on the Government and public bodies first and reviewed one year after its promulgation.

Actually, a number of members of the Bills Committee, including Mrs Selina CHOW, Mr Ronald ARCULLI and I, shared the view that a human rights commission should be set up in Hong Kong expeditiously. In response, the Government said it would be more logical for the Government to set up the human rights commission before extending the BORO to private organizations. It was under such circumstances that we fell into the Government's trap. Since 1991, the ridiculous fact that human rights protection cannot be extended to private organizations in Hong Kong as an international city has brought great shame to the people of Hong Kong. Gender equality, which was absent in private organizations at that time, was promoted at a snail's pace afterwards. Had the Government truly lived up to its promise, the BORO initiatives should have been extended to private organizations in 1992, or 1993 at the latest. The actions taken by the Government now are indeed overdue.

Mr Albert CHAN is very pleased today with the marked change, though he has no idea why there is such a change. The reason is indeed very simple. It is because the "royalists" will "fall in line" when the Government supports Ms Audrey EU's motion. It is just as simple as that. It has nothing to do with charisma. In overseas countries, a person praising another person for having charisma will be scolded because women nowadays dislike being praised for their beauty and charisma. Instead, they prefer being praised for their wisdom. Mr Albert CHAN must be careful because he would get a good dressing down for making such remarks.

Madam President, I still feel concerned about the handling of the issue of new arrivals from the Mainland. Mr YEUNG Yiu-chung did moot an amendment with a view to excluding new arrivals. We should indeed treat new arrivals from the Mainland as Hong Kong people and our children. Sadly, the Government employed some intimidation tactics to induce the people of Hong Kong to support the proposal of seeking an interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC). We were told by the Government that, should we fail to do so, things would turn really bad with 1.67 million new arrivals flooding into Hong Kong very soon. For

instance, the unemployment rate would surge 10%; four communities as large as Tseung Kwan O would be required to build public housing to accommodate all the new arrivals; and a great many schools and hospitals would have to be built. Every one of us was scared to death. Although it was clearly indicated by the opinion poll that the public supported the proposal of seeking an interpretation by the NPCSC, most people shared the view that the rule of law would thus be injured.

Under the existing population policy, new arrivals from the Mainland (they should be treated as our children) must reside in Hong Kong for at least seven years before they are eligible to apply for Comprehensive Social Security Assistance. I think this policy is extremely dangerous because it will divide the community. This is not what a responsible government should do. The Government should indeed implement a greater number of policies to expedite the integration of new arrivals into Hong Kong society, instead of promoting a policy of polarization. Although the Government supports Ms Audrey EU's motion today, I hope follow-up actions can be taken immediately. I also hope the Government can promptly stop Hong Kong people from dividing into them and us.

I recall I was told this incident by a member of the Democratic Party who was also a District Board member at the time when the Government predicted the imminent arrival of 1.67 million people in Hong Kong. He was approached by a mother living in the neighbourhood for assistance because she had been told by her son, who was a youngster studying in a secondary school, that he was expecting the new arrivals and that he would beat them up one by one. His mother was terrified on hearing his remark. But how can we blame him as a student? The Government's policy essentially seeks to intimidate Hong Kong people not to accept new arrivals. Many of the people in Hong Kong have come from the Mainland, only that they have stayed in Hong Kong for numerous years. Some of us were born here after our parents' arrival in Hong Kong. So, why should we distinguish them and us?

Mr YEUNG Yiu-chung has withdrawn his amendment. This means all Members will support Ms Audrey EU's motion today. I hope the Government can truly reflect on what it has done and refrain from dividing the children of Hong Kong people into two separate camps. Instead, it should exert its utmost to help them integrate into our community and lend a helping hand to those who are found to have lagged behind in their studies. I remember I was 11 when I arrived in Hong Kong from Guangzhou. I attended school without any

knowledge of English except "dog", "cat", "boy" and "girl". I was always expecting the four words to appear during dictation tests, though they seldom did (*laughter*). I immediately fixed some tutorials and finally managed to catch up with the others. No one discriminated against me because the community at that time was in perfect harmony. Early comers would not discriminate against late comers. But things have changed now. I very much hope the Government can lead the people of Hong Kong not to distinguish themselves from others. It should also stop implementing policies that will divide the people. Thank you, Madam President.

**DR LO WING-LOK** (in Cantonese): Madam President, if we ever visit a bookstore and look at the books on the shelves, we will easily find some books with titles like *A Tragic History of the Chinese People*. In modern history the Chinese people have indeed experienced a life of homelessness and being uprooted from their homeland. They have had many tragic experiences on migrating to another place for resettlement. Some of these books on the tragic history of the Chinese people have even become best-sellers.

Talking about more recent history, there are numerous xenophobic incidents pinpointing the Chinese people in Southeast Asia during the past decades. Many of these overseas Chinese people would choose to take refuge in Hong Kong. Some Honourable colleagues mentioned earlier that Singapore had done a rather good job in this respect and people of different races there could live in harmony. That is in fact the outcome of much hard work done over the years. With such a history of sorrows, it is inconceivable that any Chinese or overseas Chinese would not oppose racial discrimination, nor would they not learn lessons from history. For our grandfathers or great-grandfathers might actually be victims of such discrimination. I would think that it is only natural that we in Hong Kong should maintain a higher degree of vigilance against this and we should demand that laws be enacted to protect the ethnic minorities. This should be the common wish of all the people of Hong Kong and Chinese all over the world.

In fact, many people who have been to another country or who have lived in one for some time would feel all the inconveniences of being a minority people there. Some may even have had the experience of being discriminated against. That is certainly an unpleasant experience. I recall about two decades ago when I went to Britain for training, it was just before Christmas when people could

expect a long vacation, the hospital in which I was working held a small party to celebrate the occasion. There was a matron who gave every doctor a kiss, but except me. That was really an unpleasant experience. Perhaps I was partly to blame, for I hid myself behind the throng when she was about to kiss me. I was thinking why she did not kiss me. So I was not very happy that Christmas because of this. I also recall when I went to some groceries operated by some Chinese, it might be because I looked somewhat different from them, and so they spoke to me in English. That made me feel very bad too.

When I started working, as I am a Chinese, and as the hospital had many patients of South Asian origin, so I was given the care of all these people. That might be a special arrangement they made so that I could learn how to take care of patients from South Asia. But I did not think that was a good arrangement after all, for I was not able to integrate into that society completely. Despite the fact that I could manage as a doctor to solve the problems that might come my way by myself, I did not feel good about it.

It is because of such experiences that when I started my practice in Hong Kong, I would treat patients from different races. One day there were many patients of South Asian origin waiting in my clinic. There was this Chinese patient who said to me during the consultation that he wondered why I would treat these people. That was certainly a racist view. So I think racial discrimination does exist in Hong Kong. Admittedly, legislation will not eliminate the problem, it would have to depend on the hard work done on the part of the minorities themselves, and the public will have to be educated too, but at least, legislation will serve to strike home a clear message to the people of Hong Kong, that we should have some proper mentality for ethnic and other minorities. Legislation will serve as a basis on which improvement can be made so that the ethnic minorities will feel that they are given equal opportunities and that in actual practice there are equal opportunities for them to give full play to their abilities. Therefore, I am in complete support of the motion proposed by Ms Audrey EU. Thank you, Madam President.

**MR MICHAEL MAK:** Madam President, I wonder if I will be labelled for having some sort of discriminatory behaviour by speaking in English. Anyway, I now deliver my speech in English because I cannot type Chinese characters well in the computer.



I must say that there exists apparent racial discrimination in this cosmopolitan city. Hardly can we fail to see people looking down on people of different races, especially those of the minority groups, say the Filipinos, Indonesians, Pakistanis, Indians, and so on. I am more sad to see that a lot of people do discriminate against our brothers and sisters from mainland China as well. Discrimination would be further complicated, so to speak, if they are not wealthy. People tend to use discriminatory titles to address them so that one can easily identify "us" from "them".

How would our citizens develop such attitudes? It should be the culture of our region in which children stick to their inherited thinking, perception, judgement and inclination from their parents, relatives, friends, neighbours and others.

My occupation is to deal with human beings from different walks of life, and our codes of professional conduct advocate equality to everybody regardless of their skin colour, race, religious inclination, and so on. As a person with training and studies in human behaviour, I really wonder if one's behaviour can be easily changed by mere legislating. A person's attitude cannot be changed at once so easily, and it definitely needs school and public education to augment. Would everybody of us show our total respect to another human being? Please act and introspect one's behaviour. When one has strange and distant feelings towards someone else of a different race, he needs to be careful and mindful.

In short, I fully support the motion of the Honourable Audrey EU, and wish the Government could proceed promptly with the legislation, not to mention education.

Thank you.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR HOWARD YOUNG** (in Cantonese): Madam President, it was pointed out by a number of Honourable Members in their speeches today that racial discrimination was not serious in Hong Kong. In my opinion, however, we should not merely look at the gravity of the problem to determine the necessity of

enacting legislation. Instead, we should look at whether Hong Kong will be greatly benefited if legislation is enacted to prevent racial discrimination and promote racial harmony.

It is often said that Hong Kong is determined to attract people from all over the world to visit the city for sightseeing. An academic study was conducted recently to examine the appeal of Hong Kong in addition to its scenic and shopping attractions. It was found that Hong Kong is quite appealing as a pluralistic city. Mainland visitors have recently become our most important source of tourists. I was told by many people in the trade who receive mainland tourists as their job that there is one thing mainland tourists are unable to see in other cities in China — 5% of the population in Hong Kong belongs to non-Chinese ethnic groups. Although this ratio is not high, I believe no city in China can boast this ratio, or even 1%, of non-Chinese ethnic people. The presence of such a great number of non-Chinese ethnic people in Hong Kong has enhanced the territory's diversity. The Islamic Centre, Lan Kwai Fong, and so on, are places where a lot of foreigners and people of other ethnic groups love to gather. There is also a large concentration of foreigners in Stanley in weekend evenings. These places have become favourite scenic spots for mainland visitors because they can experience a new culture there.

Many of the people in the trade find Malaysia quite impressive on their overseas vacation trips. This is because the country has been advertising itself as a multi-racial and cultural country to enhance its competitive edge and attractiveness. Some companies in Hong Kong also give publicity to this. There are at least two airline companies in Hong Kong which not only employ local or Chinese cabin attendants, but also publicize the diversity of their cabin attendants, who were drawn from nine ethnic groups. We understand that this is also meant to be a selling point to lure foreign travellers and a means to enhance Hong Kong's competitive edge. As such, I think that the competitive edge brought about by enhancing Hong Kong's diversity is already a good reason to justify legislation. In particular, even Dr David LI stated earlier that it is the Government's current population policy to lure people from overseas to invest in Hong Kong. This policy may also help attract people from South Asia, Middle East or other parts of the world to Hong Kong too. We will not be able to achieve the ideal targets of our population policy should we fail to let them see that our community welcomes people from all parts of the world, irrespective of language, colour or origin, to build their homes here.

The Liberal Party has originally intended to support the original motion and its amendment. Given that the amendment has been withdrawn, we will continue to support the original motion.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**SECRETARY FOR HOME AFFAIRS:** Madam President, the comments made by Honourable Members have made for the most fruitful exchange of ideas on this important subject. And I am grateful for having this opportunity to affirm the Government's commitment to the promotion of equal opportunities for all, irrespective of race, nationality, colour or origin.

Our desire is to build a community where the ethnic minorities and the local majority live in mutual respect and harmony. With that in view, the Government's policy is to encourage the minorities to integrate into our wider society while retaining their cultural identity. Our strategy for achieving that goal comprises two elements, namely to extend practical assistance to the ethnic minorities in order to facilitate the settlement process, and to address discriminatory attitudes that may impede that process.

I must stress from the outset that Hong Kong does have legislation against racial discrimination. In 1991, the Hong Kong Bill of Rights Ordinance (BORO), which incorporated into Hong Kong law the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong, proscribes all forms of discrimination on the part of the Government and public bodies. Specifically, Article 22 of the Bill of Rights prohibits the Government and all public authorities, and any person acting on behalf of the Government or a public authority, from engaging in practices that entail racial discrimination. In other words, the BORO eliminates discrimination in the public sector. However, section 7 of the BORO restricts the application of the Bill of Rights to the Government and public bodies, which means that it does not apply to actions between private parties. We do not yet have specific legislation against racial discrimination in the private sector. But we are actively considering the matter and intend to announce a decision on the way forward as soon as possible.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has applied to Hong Kong since 1969, initially by extension of the United Kingdom's ratification and, since the reunification, by that of the People's Republic of China. Article 5 of the ICERD provides that "States undertake to prohibit and to eliminate racial discrimination in all its forms.....". The ICERD reporting cycle is every two years. Before 1997, the United Kingdom incorporated inputs from the independent territories, including Hong Kong. A total of 14 reports were submitted by the United Kingdom under the ICERD prior to June 1997, the last of which (the fourteenth report) was submitted in 1996. Since the reunification, the Hong Kong Special Administrative Region (SAR) has followed China's reporting cycle, and its first report formed part of China's combined eighth and ninth report, which was submitted in 2000.

Before 1997, the Committee on the Elimination of Racial Discrimination (CERD), the treaty monitoring body for the ICERD, has noted with concern that the BORO, while a welcome measure, "does not protect persons in Hong Kong from racial discrimination to which they may be subjected by private persons, groups or organizations". In 2001, at the hearing of China's combined eighth and ninth report under the ICERD, of which the SAR's initial report formed a part, the CERD reiterated "its concern about the continuous absence of legal provisions protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations".

Similar concerns have been expressed by other United Nations treaty monitoring bodies. In 1999, in its concluding observations on our current report under the ICCPR, the United Nations Human Rights Committee, the treaty monitoring body for the ICCPR, remained concerned that no legislative remedies were available to individuals in respect of discrimination on the grounds of race. It further stated that necessary legislation should be enacted in order to ensure full compliance with Article 26 of the ICCPR, which provides that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race .....". In 2001, in its Concluding Observations of our initial report under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Committee on Economic, Social and Cultural Rights, the treaty body for the ICESCR, stated that the absence of such legislation was a breach of our obligations under that Covenant.

With these things in mind, the Administration conducted a study in 1996 and consultations in 1997 on the need for legislation against racial discrimination. There was almost universal support for the use of education as a means to address racial discrimination, but 80% of respondents were opposed to legislation in this area. This indicated that the Government could not look for the level of public support that is necessary when introducing a relatively new form of legislation that, by its nature, could impinge on the everyday lives of ordinary people. For this reason, the Administration decided to address the issues through public education and practical assistance to help the ethnic minorities adapt to life in Hong Kong and to integrate into the wider community. The legislative route was not to be pursued at that time. But the Administration should monitor developments with a view to considering a change of approach should circumstances so warrant. On 27 June 1997, a private member's bill on racial discrimination was not passed in the then Legislative Council.

Since 1997, we have pursued programmes designed to foster mutual tolerance, respect and understanding within the community. An important vehicle for this has been the Equal Opportunities Funding Scheme, an annual exercise whereby we sponsor non-governmental organizations (NGOs) and grass-roots organizations to disseminate the message through community projects. Other vehicles have included a code of practice, leaflets, announcement in the public interest, poster campaigns and school talks. We have made similar efforts to promote community acceptance of new arrivals from the Mainland.

More recently, we established the Committee on the Promotion of Racial Harmony, the members of which include representatives of the minorities, NGOs and government departments, to advise us on public education strategies and to propose specific programmes. The Committee's secretariat, the Race Relations Unit, formulates proposals for the Committee's consideration and puts its direction into action. The Unit also maintains a hotline to handle enquiries and complaints.

Practical assistance for the minorities has included such things as language classes and our service guidebooks (which have been commended by the United Nations Development Programme). Another important initiative is the mobile information service, the "information ambassadors" of which, managed by the International Social Service, provide key information and assistance to migrant workers and non-Chinese entering for settlement on first arrival at the airport.

Additionally, my Permanent Secretary chairs a Steering Committee on New Arrival Services, which seeks to ensure that the new arrivals of all origins are aware of the services available to them, know how to assess them, and that those services remain appropriate to their needs. The Committee covers both overseas and mainland new arrivals.

We believe that these measures have been broadly effective, but we recognize that circumstances may change and have closely monitored developments. Calls have continued for legislation against racial discrimination in the private sector. We most recently revisited the question in 2001-02. The exercise included consultations with the business sector and NGOs with an interest in the issue. We are now assessing the findings.

In so doing, we are carefully weighing the arguments for and against legislation. Certainly by legislating, we would be honouring an international obligation and making a positive response to the human rights treaties bodies. But there are competing claims that we need to balance, and that is why it has taken us longer than originally envisaged to arrive at a decision.

To illustrate this, I take the opportunity to share with Members some examples of the views received during the consultations. A concern among some of our business sector respondents was that additional regulation of business practices could be unhelpful in the current economic climate. Others believed that, on the contrary, legislation would make for a level playing field, promote meritocracy and would, therefore, be pro-business. Some expressed the fear that the introduction of such legislation could engender resentment on the part of the majority to the detriment of the minorities for whose benefit it was intended. Others argue that there is no evidence to support this view. But if the assertion were demonstrated to be true, it would indicate that discrimination in Hong Kong was extremely serious and that legislation was urgently needed. It was also argued that legislation is punitive and not an effective means to change attitudes. Against this, respondents said that legislation could modify behaviour, and that was more important to the victims of discrimination than attitudes are. In the longer term, by obliging people to think about and modify their behaviour, legislation was itself a powerful educational tool.

A common fear was that legislation would engender vexatious litigation, overwhelming the Courts and wasting public money. Other respondents pointed out that the existing three anti-discrimination ordinances (that is, the Sex

Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance) have engendered an average of only eight cases a year, or less than three per year per ordinance. Vexatious cases have been screened out by the Equal Opportunities Commission and the Legal Aid Department.

Staying with the theme of pros and cons, another argument that has been adduced against legislation is that racial discrimination is not serious in Hong Kong. The minorities disputed this and pointed out that complaints have been increasing, at least some of which cannot be dismissed as mere "misunderstandings". Commentators also pointed out that, in any case, the ICERD obligation is not contingent on the question of "seriousness": It is mandatory and absolute. It has been argued, too, that many countries that have legislation in this area still suffer from serious and blatant racial discrimination. Members of the minorities say that, notwithstanding the continued prevalence of discrimination, the overall situation in those countries has improved. And again, the ICERD obligation is an absolute one.

Clearly, therefore, it is a sensitive issue, and it is important that, in weighing the pros and cons, we take the utmost care to ensure that the decision we reach is the right one. That is why we have been taking a long, hard look at this question. I hope that those of you who are anxious for a decision will appreciate this concern and will bear with us just a little longer. We have the matter very much in hand and will announce the way forward as soon as possible.

Turning to the three specific areas mentioned in the motion, namely education, employment and social services, I wish to assure Members that we are taking proactive steps to ensure that the minorities and mainland new arrivals receive the benefits and assistance to which they are entitled. I shall take a little more of your time briefly to explain these steps.

As education in Hong Kong is to a large extent provided by the public sector, the Bill of Rights provides adequate legal safeguards for equal opportunities in that sector. Additionally, the Education Ordinance provides that all children resident in Hong Kong and who are aged between six and 15 must attend school. The Government is legally obliged to enforce the provision without discrimination of any kind. In 1999, in accordance with that principle and to ensure that the schools remain mindful of their role in ensuring equal

opportunities for all students, the Education Department issued a circular to all schools on the "Elimination of All Forms of Discrimination". This reminded them of that role and of their duty to eliminate all forms of discrimination, whether in regard to race or on any other ground.

We are aware of the difficulties that children from different places may face in adapting to a school environment where the language, culture and school traditions may differ significantly from those to which they are accustomed. The challenge that Hong Kong faces in that regard concerns the placement and subsequent education of newly-arrived children. To that end, the Education and Manpower Bureau has introduced support services to help such children adapt to the local school system. Those services include an induction programme and a school-based support scheme. Additionally, a six-month full-time integrated programme, known as the Initiation Programme, has been introduced to better prepare newly-arrived children before they are formally placed in mainstream schools.

Employment rights are protected by statute without distinction as to race, colour or national or ethnic origin. The minorities and mainland new arrivals enjoy the same rights and benefits under the labour laws, such as the Employment Ordinance, as do all other workers. They enjoy the same access to the Labour Department's conciliation services, the Minor Employment Claims Adjudication Board and the Labour Tribunal.

The Labour Department scrutinizes all vacancy orders that it receives to ensure that they contain no discriminatory requirements, such as restrictions on the race of prospective applicants. And in 1998, we issued the Code of Practice Against Discrimination in Employment on the Ground of Race, to encourage employers to apply consistent criteria throughout their employment process.

Understandably, in the present economic climate, all sectors of the community are finding it difficult to secure and remain in employment. But we realize that the minorities may face greater difficulty in this regard. In 2002, with that concern in mind, the Vocational Training Council (VTC) organized three courses for the Nepalese and is considering the provision of two courses this year. We recognize that language difficulties are a major factor in this context, and the VTC will continue to explore ways to organize suitable training courses which meet the market demand to non-Chinese speaking trainees. In addition, we work with three well-respected NGOs — Caritas, Christian Action



and the International Social Service — to devise and deliver Cantonese and English courses that are practical, flexible and progressive.

All eligible Hong Kong residents have access to welfare benefits. The provision of welfare by the Government or a public body is subject to the Bill of Rights, and discrimination in such provision is therefore prohibited. The right to welfare under the law is additionally guaranteed at the constitutional level under Article 36 of the Basic Law. The ethnic minorities and new arrivals are entitled to a full range of welfare services provided by the Social Welfare Department and NGOs. Such services include child care, community support and so forth.

Madam President, I have outlined the Government initiatives to ensure equal opportunities for all races. We believe that a good start has been made and that we are heading in the right direction. We are confident that, by continuing to work closely with NGOs and the community representatives, we will continue to make progress in the years to come. To reiterate what I have said at the beginning of my speech, we are actively considering legislation against racial discrimination and we intend to announce the way forward as soon as possible.

Thank you.

**PRESIDENT** (in Cantonese): Ms Audrey EU, good morning. You may now reply, and you have up to two minutes eight seconds.

**MS AUDREY EU** (in Cantonese): Good morning, Madam President. First of all, I wish to thank the 22 Members who have spoken on the motion. With the exception of one Member who supported the enactment of legislation in principle but argued against doing so at this stage, all the rest of the Members said that they would support the motion. Some Members have in fact described this situation as very encouraging. Ms Cyd HO even described the situation as wonderful, for many Members had reversed their stances. Madam President, indeed, Members are not only supportive but are also enthusiastically, vigorously and wholeheartedly supportive. Mr Jasper TSANG even said that the Government must enact legislation and must not evade the issue.

Madam President, I guess all this should have nothing to do with whether I am charismatic. Some Members said that it may probably due to the Chief Executive having changed his stance over the issue, or because we now have a more enlightened Bureau Director. Madam President, I am not sure whether these are the reasons. But I can only comment that the Government's attitude towards this issue has all along been very disappointing. The Government has recently announced a policy agenda, saying that this issue would be considered within 18 months. But the Government has never answered our questions on the relevant progress, the considerations involved, how much longer we still have to wait, its position, whether legislation will be enacted and so on, looking as though we wanted to extract its teeth. Therefore, I hope that the Government, after listening to Members' remarks today, can act more positively and give us some good news as soon as possible.

Madam President, I wish to respond briefly to Mr James TIEN's remarks. According to him, there is a conceptual error in my motion — it should not include new arrivals from the Mainland. I wish to point out that the legislation eventually enacted will not make any specific reference to any ethnic groups but we must also note that new arrivals from the Mainland have always been covered by the Government's policies on racial equality. This is in line with the definitions set down by the United Nations Organization. Besides, we must not forget that many complaints are about the discrimination faced by new arrivals from the Mainland.

As for Mr HUI Cheung-ching's questions, Ms Emily LAU has already responded to them, so I shall make no repetition here. But I still wish to say that I am rather surprised by his argument that since there have been no processions, demonstrations and violent incidents, there are no practical justifications for legislation. Madam President, by the same token, I mean, since there has been no act of violence against national security, there should be no need for the Government to enact any laws to implement Article 23 of the Basic Law.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Audrey EU, as printed on the Agenda, be passed.

**PRESIDENT** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 19 March 2003.

*Adjourned accordingly at seventeen minutes past Midnight.*

**Annex I****JUVENILE OFFENDERS (AMENDMENT) BILL 2001****COMMITTEE STAGE**Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

New By adding before the heading "**Consequential Amendments**" -

**"2A. Section added**

The following is added -

**"23. Transitional provisions**

As from the commencement of the Juvenile Offenders (Amendment) Ordinance 2003 ( of 2003), no proceedings shall lie against a child in respect of an offence committed by him before that commencement if at the time the offence was committed the child was of an age that, had the offence been committed after that commencement, he would not be liable to proceedings for that offence by virtue of section 3."."

New By adding -

**"3A. Duties and powers of manager**

Section 19(2) is repealed."

## JUVENILE OFFENDERS (AMENDMENT) BILL 2001

**COMMITTEE STAGE**Amendments to be moved by the Honourable Margaret NG

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "10" and substituting "12".
3	By deleting "10" and substituting "12".
4	By deleting "10" and substituting "12".

## Annex II

## FIRE SERVICES (AMENDMENT) BILL 2001

## COMMITTEE STAGE

Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

- 3 In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".

## New

By adding -

**"3A. General powers of entry**

Section 8(3) is amended by repealing everything after "該處所" and substituting "在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。".

## 4

(a) In the proposed section 8A -

- (i) in subsection (3), by deleting everything after "compel" and substituting "a person to disclose any information or produce any document that the person would on grounds of legal professional privilege be entitled to refuse to disclose or produce.";
- (ii) in subsection (4), by deleting everything after "該處所" and substituting "在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。";
- (iii) in subsection (5) -

ClauseAmendment Proposed

(A) in paragraph (a), by deleting everything after "given" and substituting "or document obtained under subsection (2)(f) or (g), as the case may be ; or";

(B) by adding "or (g)" before "or in the factory".

(b) In the proposed section 8B, by deleting everything after "但" and substituting "就該答案而對《刑事罪行條例》(第200章)第36條所訂罪行進行的法律程序除外。".

5

In the proposed section 9(f) -

(a) by deleting "具有以下效力的";

(b) in subparagraph (i), by deleting "to close" and substituting "that closes";

(c) in subparagraph (ii), by deleting "to prohibit" and substituting "that prohibits";

(d) in subparagraph (iv), by deleting "any means" and substituting "the means".

10(b)

(a) In the proposed section 25(1)(hb) -

(i) by deleting "，飭令";

(ii) in subparagraph (i), by adding "規定" before "任何";

(iii) in subparagraph (v), by deleting "any means" and substituting "the means".

ClauseAmendment Proposed

- (b) In the proposed section 25(1)(hd), by deleting "any means" and substituting "the means".
  - (c) In the proposed section 25(1)(he) and (hf), by deleting "a motor vehicle or a part of a motor vehicle, which" and substituting "a part of a motor vehicle that".
  - (d) In the proposed section 25(1)(hg) -
    - (i) by adding "or enter and search a container" after "search a vehicle";
    - (ii) by adding "or contained in the container" after "by the vehicle".
  - (e) In the proposed section 25(1)(hi), by deleting "某" and substituting "任何".
- 20 In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".
- 21(b) (a) In the proposed paragraph (d) of the definition of "fire service installations and equipment", by adding "or place" after "premises".
- (b) In the proposed paragraph (e) of the definition of "fire service installations and equipment", by deleting "under" and substituting "the purposes of which are mentioned in".
- 22(b) (a) In the proposed paragraph (d) of the definition of "fire service installation or equipment", by adding "or place" after "premises".



ClauseAmendment Proposed

- (b) In the proposed paragraph (e) of the definition of "fire service installation or equipment", by deleting "under" and substituting "the purposes of which are mentioned in".

## New

By adding before Part III -

**"Fire Safety (Buildings) Ordinance****22A. Interpretation**

Section 3(1) of the Fire Safety (Buildings) Ordinance (21 of 2002) is amended in the definition of "fire service installation or equipment" -

- (a) in paragraph (b), by repealing "or";
- (b) in the Chinese text, in paragraph (c), by repealing the comma and substituting a semicolon;
- (c) by adding -
  - "(d) facilitating the evacuation from any premises or place in case of fire; or
  - (e) providing a stand-by power supply to an installation or equipment the purposes of which are mentioned in paragraphs (a) to (d) in the event of the loss of normal power supply;".

**Appendix****WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Mr Jasper TSANG's supplementary question to Question 1**

The MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC) have gathered information relating to the subway fire in South Korea in February this year. According to the information, the factors below are relevant to the high death toll of the incident:

- (a) train design and the use of flammable materials;
- (b) fire protection systems in stations;
- (c) operation of the control centre under emergency situations, including its communication with station staff and train drivers;
- (d) train drivers' ability to handle emergencies; and
- (e) passengers' knowledge about fire fighting provisions on trains.

The MTRCL and the KCRC have reviewed the relevant design and features of their railway systems and conducted special drills in light of the subway fire in South Korea. They have confirmed that their emergency procedures are adequate, and staff are well trained to handle fire at stations and trains. Regular exercises are conducted for staff to practise the emergency procedures as well as their co-ordination with the emergency services including the Hong Kong Police Force and the Fire Services Department. As an ongoing process, emergency procedures are refined in light of operational experience and lessons learnt in exercises and from other operators.

The Hong Kong Railway Inspectorate has noted the reviews by the corporations and is satisfied that fire hazard of our railways is low due to the factors below:

**WRITTEN ANSWER** — *Continued*

- (a) quality station and train design to avoid fire ignition and propagation;
- (b) adequate fire services installations;
- (c) adequate procedures, staff training and emergency drills and exercises; and
- (d) efficient support by emergency services.

The MTRCL and the KCRC will continue their endeavours to maintain the safe, efficient and reliable operations of the railways.