

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 16th July 1975****The Council met at half past two o'clock****PRESENT**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR CRAWFORD MURRAY MACLEHOSE, KCMG, KCVO, MBE

THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)

MR MICHAEL DENYS ARTHUR CLINTON, CMG, GM, JP

THE HONOURABLE THE FINANCIAL SECRETARY

MR CHARLES PHILIP HADDON-CAVE, CMG, JP

THE HONOURABLE THE ATTORNEY GENERAL

MR JOHN WILLIAM DIXON HOBLEY, QC, JP

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*Acting*)

MR LI FOOK-KOW, CMG, JP

THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP

SECRETARY FOR THE ENVIRONMENT

DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE IAN MACDONALD LIGHTBODY, CMG, JP

SECRETARY FOR HOUSING

THE HONOURABLE DAVID AKERS-JONES, JP

SECRETARY FOR THE NEW TERRITORIES

THE HONOURABLE DAVID WYLIE MCDONALD, JP

DIRECTOR OF PUBLIC WORKS

THE HONOURABLE JAMES DAVID MCGREGOR, ISO, JP

DIRECTOR OF COMMERCE AND INDUSTRY (*Acting*)

THE HONOURABLE JAMES NEIL HENDERSON, JP

COMMISSIONER FOR LABOUR (*Acting*)

THE HONOURABLE PETER BARRY WILLIAMS, JP

SECRETARY FOR SOCIAL SERVICES (*Acting*)

THE HONOURABLE CHARLES JOHN GRAFTON LOWE, OBE, JP

DIRECTOR OF EDUCATION (*Acting*)

DR THE HONOURABLE CHUNG SZE-YUEN, CBE, JP

THE HONOURABLE LEE QUO-WEI, OBE, JP

THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP

THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP

THE HONOURABLE MRS CATHERINE JOYCE SYMONS, OBE, JP

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

THE HONOURABLE LI FOOK-WO, OBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, JP

DR THE HONOURABLE HARRY FANG SIN-YANG, OBE, JP

THE HONOURABLE LO TAK-SHING, JP

THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

ABSENT

THE HONOURABLE LEWIS MERVYN DAVIES, CMG, OBE, JP
SECRETARY FOR SECURITY

THE HONOURABLE PETER GORDON WILLIAMS, OBE, JP

THE HONOURABLE MRS KWAN KO SIU-WAH, MBE, JP

THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL

MR KENNETH HARRY WHEELER

Papers

The following papers were laid pursuant to Standing Order 14(2): —

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:	
Pharmacy and Poisons Ordinance.	
Pharmacy and Poisons Ordinance (Amendment of Schedule) Order 1975	160
Public Health and Urban Services Ordinance.	
Public Health and Urban Services (Designation of Museums) Order 1975	161

Oral answers to questions**Violence on television**

1. MR CHEONG-LEEN asked: —

Sir, will steps be taken to ensure that the level of violence depicted in films shown on TV in Hong Kong will not be higher than the existing level in films shown on TV in Britain?

SECRETARY FOR HOME AFFAIRS (ACTING): —Sir, programme standards on television are governed by the Television Code of Practice issued by the Television Authority to the licensees. This code is

intended to reflect what the Television Authority considers to be the standards of acceptability prevailing in Hong Kong. In this connection the Authority takes into account the advice of the Television Advisory Board and conducted a survey in April 1974 to ascertain the public's views on screened sex and violence both in the cinema and on television.

The Television Authority is very much concerned to ensure that the incidence of violence on television does not reach excessive proportions and, in particular, in the prime-time areas of the Chinese language programmes, which attract about 95% of all viewers, the amount of programmes portraying violence is kept at its present relatively low level.

It is not considered appropriate or realistic to make any useful comparison between Britain and Hong Kong on the level of violence described in films on television as the impact of different types of portrayed violence varies with the cultural and social background of the viewer. Indeed, some programmes which have been broadcast on the television in Britain, and which are subsequently submitted for approval for local screening, have been found to be unsuitable either in part or in whole.

MR CHEONG-LEEN: —Sir, with your permission, may I point out that my question related only to violence, not to screened sex as referred to in the first paragraph. Again, with your permission, may I ask a supplementary? Is the level of violence shown in films on TV in Hong Kong currently in accordance with the cultural and social background and traditions of Hong Kong people?

SECRETARY FOR HOME AFFAIRS (ACTING): —Sir, I believe it is not very far away from the cultural and social backgrounds of local viewers.

MR CHEONG-LEEN: —Sir, is my honourable Friend aware that recently there has been a certain amount of criticism as to the level of violence on TV and are active steps being taken to look into such comments and criticisms which had arisen in the recent past?

SECRETARY FOR HOME AFFAIRS (ACTING): —Sir, the Television Authority is always anxious to accept criticism and to take into account any comments made, but no matter what one does there will always be criticism one way or another.

Oral answers**Traffic flow**

2. MR LOBO asked: —

Sir, in order to improve the traffic flow and to avoid danger to motorists along the southbound lane of Canton Road, particularly in the stretch between Hanoi Road and Salisbury Road, will Government take immediate steps to enforce the no-waiting traffic signs in the area?

SECRETARY FOR THE ENVIRONMENT: —Sir, I take it that my honourable Friend is referring to the section of Canton Road between Haiphong Road and Salisbury Road—or, more particularly, to the section adjacent to the entrance to the Ocean Terminal. I base my reply on this assumption.

The Commissioner of Police informs me that he and his officers are well aware of the problems at this location, which, since the opening of the Ocean Terminal and the Hong Kong Hotel, never have been entirely resolved.

As my honourable Friend has observed, "no-waiting" signs have been erected along this stretch of road, but it has proved very difficult to strictly enforce these signs at all times. There is a great deal of tourist traffic in the area, in the form of coaches, taxis and hotel cars, and it is not easy to distinguish between drivers who legitimately pick up and set down passengers and those who are wilfully disobeying the "no-waiting" signs and causing an obstruction.

Since last October, policing of the "no-waiting" restrictions in this area has been carried out by traffic wardens and, last month, the size of each of their "beats" was reduced to concentrate more men on the ground. This step was taken because of increasing disregard of restrictions in Tsim Sha Tsui generally.

Unless there are serious obstructions to traffic flow, or specific complaints from members of the public, the traffic wardens try to execute their duties by earning the co-operation of the public, rather than by summarily issuing tickets. As a result of this approach, the wardens have been able to gain the respect of the public at large and there is now less antagonism between the motorist and the enforcement agency.

But while the particular difficulties at this location are acknowledged, the Commissioner of Police advises that generally in comparison with other areas in Kowloon, this stretch of road is not badly obstructed. Nor does he consider that it is particularly dangerous to motorists. Regular enforcement action against illegal parking is taken, and will continue to be taken, particularly in respect of serious breaches of the law, but I understand that there is not enough manpower to have a warden permanently stationed at this spot.

I hope, however, that with the opening of the final section of Kowloon Park Drive—that is the southbound carriageway between Peking Road and Salisbury Road—in September, conditions will improve as through traffic will be able to by-pass this section of Canton Road altogether.

Boating on reservoirs

3. MR BREMRIDGE asked: —

Sir, how far has Government progressed with its further considerations in the Council for Recreation and Sport about the provision of boating facilities on reservoirs?

SECRETARY FOR HOME AFFAIRS (ACTING): —Sir, the Secretary of the Council for Recreation and Sport has discussed the problems relating to the provision of boating facilities on reservoirs with the interested parties concerned. These parties include the Chairman of the Hong Kong Canoe Union, the Director of Water Supplies, the Chief Recreation and Sports Officer and individual canoeists.

Divergent views have been expressed by these parties and I will seek advice from the Council for Recreation and Sport at its next meeting. In this connection, the Council would have to consider priority for development of additional boating facilities on reservoirs and elsewhere and to take into account the views of the Water Authority.

MR BREMRIDGE: —Sir, when may we expect a decision?

SECRETARY FOR HOME AFFAIRS (ACTING): —Sir, no time has yet been fixed for the Council's next meeting, but I expect it should be in about August.

Oral answers**Rent control**

4. MR CHEUNG asked: —

Sir, will Government state its intentions regarding the control of rents of new premises completed after 14th December 1973?

SECRETARY FOR HOUSING: —Sir, Government is very conscious of the fact that the solution to housing shortages and high rents lies in the production of more housing, in which the private sector has a major part to play. Private sector decisions whether or not to make investments in new domestic development are obviously inhibited by the thought that tenancies will come under controls contained in the Landlord and Tenant Ordinance sooner rather than later. The present position is that developers are assured that all new domestic premises completed since 14th December 1973 will not be subject to these controls during the life of the present legislation which expires on 14th December 1976. They do not know what will happen after that, since the question whether the present legislation might be extended or replaced by fresh legislation cannot be decided at this stage.

To remove these uncertainties as far as possible Government has decided that buildings granted occupation permits since 14th December 1973 and before 1st January 1978 will be exempted from new or extended landlord and tenant-type controls for a period of five years from the date of the occupation permit.

This is the minimum period which would have practical value for developers, allowing for the time required to plan and complete buildings, without tying Government's hands for an unacceptably long period. It is hoped that this statement of policy will encourage developers to proceed now with building plans which they might otherwise have felt inclined to defer and will also remove some of the doubts owners may have in regard to the letting of vacant premises completed since 14th December 1973. The situation will be reviewed again next year to see whether or not any further extension of the 1977 deadline might be justified.

Water supply to Walled City

5. MR F. W. LI asked: —

Sir, will Government state whether, in view of the fire risk, proper provision will be made for a basic water supply in the Kowloon Walled City?

MR McDONALD: —Sir, there are no proposals for the provision of a basic water supply and hydrant system within the Kowloon Walled city.

In order to give full fire cover, it is necessary to locate fire hydrants where vehicular access is available so that pumping appliances can be quickly connected to the water source and the pressure and quantity of water delivered by the pumping appliances regulated to meet the fire fighting demand, the pressure in the water main being insufficient to reach the upper levels of multi-storied buildings. Owing to the congested layout of Kowloon Walled City, vehicular access by fire fighting appliances is not possible and there would therefore be little purpose in providing hydrants within the area.

There are however at present ten fresh water and two salt water pedestal hydrants located in Carpenter Road, Junction Road, Tung Tau Chuen Road and Tung Shing Road which encompass the Kowloon Walled City and the adjoining squatter area. No part of the area is more than 500 feet from a hydrant.

The hydrant installation programme includes provision for a further seven hydrants to be installed in the surrounding roads in locations determined by the Director of Fire Services. All seven additional hydrants will be installed during the current financial year thereby completing the programmed fire hydrant cover for this area.

MR F. W. LI: —Sir, does my honourable Friend consider that the proper provision of a basic water supply in the Kowloon Walled City is necessary?

MR McDONALD: —I take it that my honourable Friend is referring to water supply related to fire fighting. I am assured by the Director of Fire Services that the provisions at present and planned are quite sufficient to give adequate fire cover.

Open university

6. MR CHEONG-LEEN asked: —

Sir, what consideration has so far been given by Government towards the establishment of an open university for Hong Kong?

Oral answers

SECRETARY FOR SOCIAL SERVICES (ACTING): —Sir, the possible application to Hong Kong of what are known by the experts as "independent" or "distance learning" systems including the open university method, are under consideration by the Government.

The universities and the University and Polytechnic Grants Committee are also considering aspects of this question.

The Government has, during the past year or so, collected much information on the open university and on university extension systems in general. This includes a report by a senior officer of the Education Department who visited Australia and the United Kingdom to see a number of these higher learning systems at work.

Hong Kong offers considerable potential for the adoption of university extension techniques. Educational television is now well established here and it appears logical that this medium should in due course be applied to our higher education. In the near future an internal working party will be set up to assess all the material that is now available and to determine what methods, including those of the Open University, could contribute most profitably to the development of higher education in Hong Kong.

Government business

Motions

PHARMACY AND POISONS ORDINANCE

DR CHOA moved the following motion: —

- (a) That the Poisons List Regulations 1975, made by the Pharmacy and Poisons Board on the 4th July 1975 be approved; and
- (b) that the Pharmacy and Poisons Regulations 1975, made by the Pharmacy and Poisons Board on the 4th July 1975, as amended by this Council in accordance with the Schedule, be approved.

SCHEDULE

In Group IIA of the Second Schedule in the item headed "Androgenic, oestrogenic and progestational substances, the following—"

- (a) by inserting a semicolon at the end of the second column; and

(b) by inserting thereafter the following—

"preparations intended to be taken orally for contraceptive purposes only which contain not more than 50 micrograms of oestrogenic substance and not more than 5 milligrams of progestational substance".

He said: —Sir, I move the resolutions standing in my name on the Order Paper, in respect of the Pharmacy and Poisons Regulations 1975 and the Poisons List Regulations 1975.

Both these sets of regulations have been made by the Pharmacy and Poisons Board following a comprehensive review of the existing provisions. Their purpose is to enable more effective control to be exercised over the sale and manufacture of all pharmaceutical products in Hong Kong, and they include certain new provisions to this end. I emphasize at the outset that the Board's overriding concern has been to make adequate provision for the protection of the public as a whole.

Included in the new provisions is a requirement for all pharmaceutical products, whether they include poisons or not, imported into or manufactured in Hong Kong, to be registered before they can be offered for sale. The aim of this is to safeguard the public against counterfeit and sub-standard medicines which usually originate from unknown sources. Also all local pharmaceutical manufacturers will have to be licensed. This will enable the Board to exercise appropriate control and supervision and to ensure that all medicines manufactured locally are up to a recognised standard, and manufacturers will be required to have their products analysed. Provision has also been made for the details of the composition of medicines to be printed on their containers; this is to prohibit the sale of medicines of unspecified content and is an additional measure for the protection of the public. No change has been made regarding the sale or manufacture of traditional Chinese medicines as listed in the Chinese Herbal Materia Medica. If, however, a product contains any substance not listed therein it will then be subject to control under the new regulations, and it will be an offence for any person to sell or offer for sale such an unregistered product.

In the case of local pharmaceutical products a new provision introduces powers for the Board to issue certificates to the effect that these products are up to the World Health Organization's recommended standards. This will be a service to manufacturers which I hope will assist promoting and facilitating exports.

[DR CHOA] Motions

Honourable Members will have no doubt noted that a number of new fees and charges have been introduced in connection with the provisions in the regulations and the opportunity has also been taken to revise existing fees and charges which will show the increase.

The new regulations reflect views expressed by the pharmaceutical profession and industry and of the medical profession. In particular, the provision for the registrations of products, the licensing of manufacturers and testing of products followed representations made by the Pharmaceutical Society of Hong Kong at the time of the drafting of the present ordinance.

From my foregoing statements it will be understood that the Pharmacy and Poisons Regulations seek to control and to protect the public in regard to a very wide range and variety of substances by including these in the Poisons List. Among them is a group of potent therapeutic agents known as hormones, of which there are no less than six different categories. Suffice it to say that these hormonal substances by reason of their effects on the physiology of the human body could hardly be regarded as innocuous or be treated as such. Two of these hormones, that is estrogen and progesterone, are normally used in the contraceptive pill.

The Pharmacy and Poisons Board is aware of up to date changes of authoritative and professional opinion in both the United Kingdom and United States of America where the contraceptive pill is available only on a physician's prescription. The fact remains that risks in the form of complications and side effects do exist, particularly if these substances are taken in high dosages. When one considers further that the pill, in order to be effective, has to be taken regularly day after day on a long term basis, caution should be exercised; and I strongly counsel those who use or wish to use this very effective form of contraception to take advantage of the help and advice that is readily and very sympathetically available at any of the 65 family planning clinics run by the Medical and Health Department and the Family Planning Association, all of which provide professional advice on all forms of contraception at low cost. On the other hand, it is accepted on balance that, in the peculiar circumstances in Hong Kong, the usual low dosage contraceptive pills should continue to be available without the need for a prescription.

Thus, on the advice of Unofficial Members of this Council, I now propose an amendment which will place low dosage contraceptive

pills, that is, those with an estrogenic content of not more than 50 micrograms and progestational content of not more than 5 milligrams, on the Second Schedule to the Pharmacy and Poisons Regulations which will exempt such a preparation from prescription by medical practitioners and from all provisions of the ordinance as well as these regulations. This is acceptable to the Pharmacy and Poisons Board. However, as a safeguard the Board intends to consider introducing a requirement for suitable warning notices to be provided with every package of all contraceptive pills as is already the case with some preparations.

The Poisons List Regulations have been extended to cover a much wider range of substances and drugs as it has been necessary to include many substances and new drugs which are on the market and which may give rise to undesirable effects if used without proper safeguards. The Poisons List is not intended to be considered final as it is subject to revision and updating by the Poisons Committee from time to time.

MR CHEUNG: —Sir, the decision to take low dosage contraceptive pills off the List which would require a doctor's prescription will be widely welcomed. The experience gathered from quite widespread use of the pill in the last ten to fifteen years shows that it is safe, provided a certain number of elementary precautions are taken by women before they take the pill. To be fair I ought to add that authoritative medical opinion, which did feel apprehension in earlier years, has somewhat changed in the last two or three years.

My Unofficial colleagues think that this decision which is embodied in the amendment will be most beneficial. Statistics published by Government show that the birth-rate reached an apex of 37 per thousand in the years 1956 and 1958, a birth-rate about double that in developed countries, and one which must have given concern to all in this densely populated city. Had that birth-rate continued, the natural increase in population after allowing for deaths would be about 125,000 per year—that thought would give shudders to quite a number of people in Government. The birth-rate however has fallen since 1958 to just under 20 per thousand in the years 1970-74. But this rate, I believe, is still higher than that in the United Kingdom.

It may be a pure coincidence that the pill first became available in about 1958; more likely it is a direct consequence of the general use of the pill.

[MR CHEUNG] Motions

Any decision which would have resulted in less general use would have had serious sociological consequences, and put further strain upon Government in planning and in providing adequate social services.

I mentioned earlier that medical experience is that the pill is safe if certain elementary precautions are taken before it is used. We are advised that, basically, these precautions are of two kinds. One is a prominent warning on the package that, before taking them, a woman should ask herself a list of questions, which should be included inside the packet, and that only if she is able to answer every question in the negative that she should embark on taking the pills without medical advice. The second elementary precaution is an equally prominent warning on the package that the user should seek medical advice promptly if she experiences unusual symptoms. The good sense of Chinese women can be relied upon to heed these warnings.

This advice we have conveyed to Government, and I am very gratified to hear that the matter is now being actively considered by the Board, and Unofficial Members leave it to the Board and the Medical and Health Department to consider what steps should be taken to ensure, as far as possible, that these elementary precautions are taken.

Pills with a high content of oestrogenic and progestational substances, and contraceptives administered by injection, will continue to require a doctor's prescription, as medical experience with such pharmaceuticals is not as wide as with low dosage pills, and, as my honourable Friend said, they contain very potent substances; in respect of them it is right that they do not become available except through professional channels. My colleagues therefore fully support the amendment proposed by my honourable Friend.

Question put and agreed to.

**TEMPORARY RESTRICTION OF BUILDING DEVELOPMENT
(MID-LEVELS) ORDINANCE****Resumption of debate on motion (2nd July 1975)**

MR JAMES WU: —Sir, it is with regret that I hear that the temporary restrictions of the building development on Mid-levels are to be extended for a further two years to 31st July 1977.

It will be remembered that the original ordinance was introduced to this Council and passed on 1st August 1973 for a restriction of six months, then extended for another six months on 30th January 1974, and again extended for a further period of one year on the 31st July 1974. Although the restriction for the Pok Fu Lam area was lifted on 27th November 1974, there is no doubt that interested parties are greatly concerned that the extension of the restriction for the Mid-levels is now escalated to a period of two years, and that the name "Temporary Restriction" of the ordinance might even prove to be a misnomer.

Government had all along argued on the point of traffic congestion, and of the four Unofficial Members who spoke on the previous occasions, all expressed their reluctance to accept the ordinance. Two of the Members, Mr Wilfred WONG and Mr Wilson WANG, both of whom have since left the Council, queried whether the ordinance was justifiable on economic or environmental grounds, and pointed out that prolonged restriction was not the answer whilst there was room to be constructive. They also pointed out that by comparison, the traffic congestion in the Mid-levels was far less severe than in some other parts of Hong Kong and Kowloon like King's, Nathan and Chatham Roads, and compared favourably with main approaches to other big cities.

As one of the four, I had argued that: —

Firstly, as most parts of the Mid-levels were no more than 12 minutes by foot from the down-town area, the traffic congestion would tend to be self-regulating.

Secondly, use of an acceptable type of public transport providing comfort and dignity for the passengers plus effective traffic management, and appropriate and timely road improvements would provide much of the solution. In this last regard, I must say that I am grateful to my honourable Friend, the Director of Public Works, that he has taken into consideration the suggestion of an amateurish roads engineer like myself.

Thirdly, the Mid-levels had been and will always be a choice residential area for the higher and middle class because of its proximity to the business area, and that the development here, whilst not necessarily aggravating the traffic situation in the area for reasons I have just explained, would more than likely lessen the load on other arteries towards the down-town areas in both Hong Kong and Kowloon.

[MR WU] Motions

In his speech, my honourable Friend the Director of Public Works stated to the effect that with the increase in the population as a result of more buildings approved and completed during the last two and a half years, there had been a 30% increase in bus usage but no "marked" reduction in car use in this area. To put the matter in another way, it would be that with the increase in population in the area, there had actually been a reduction, albeit not marked, in car use. I like therefore to think that what I had said earlier had been proven right in that the traffic congestion in the area would tend to be self-regulating (or self-limiting), although I must give due credit to my honourable Friend the Financial Secretary for his effective and unselfish measures in discouraging car ownership that is having a devastating effect and increasing toll (of cars deregistered and reduced new registrations) as time goes on. All this would suggest that the attitude taken by my honourable Friend the Director of Public Works could be over-cautious.

There is one final, and in my own opinion, most important point which was made by my colleague the honourable O. V. CHEUNG in his speech on a previous occasion in January 1974. Mr CHEUNG said and I quote: "Let us be under no misapprehension about the gravity of imposing a moratorium. It delays the provision of much needed housing. It is nothing less than a derogation from grant: a derogation of the rights granted by the Crown lease to the private owner to build in accordance with the conditions of the lease. A moratorium, if it does nothing else, cuts down the number of years during which the private owner might enjoy the fruits of his land."

Sir, I read recently in major Chinese newspapers that the real-estate developers were getting increasingly vocal on what they considered to be an unduly restrictive attitude, and unenthusiastic if not inconsiderate response on private building development projects, in spite of what had been promised by recent Government statements and proposals to encourage private development. It is, in my humble opinion, high time for Government to show good-will and credibility by announcing that this would be the last extension, and to further show good faith by accepting submissions of building plans for approval pending consent to commence work at the expiry of the moratorium. Such a measure would in my opinion greatly contribute to the mutual trust and understanding between Government and the developers and to the best public interest, as it would result in increased investment, increased employment,

increased executive-type accommodation and increased public revenue.

Sir, with these words, I would say that I support the resolution, with reluctance, for the last time.

MR McDONALD: —Sir, I can give no absolute assurance at this time that further extensions of the period of restriction on building development in the Mid-levels area will not be required.

I can however say that if the works on the highways projects required to alleviate the traffic problem in the area proceed as currently programmed, sufficient progress will have been made by July 1977 to allow the easing of restrictions and controls, and only then can submissions of plans for development projects be accepted and construction works subsequently put in hand so that the completion and occupation of these projects will coincide approximately with the completion of the essential highways works.

Question put and agreed to.

First reading of bills

BIRTHS AND DEATHS REGISTRATION (AMENDMENT) BILL 1975

COMPANIES (AMENDMENT) (NO 2) BILL 1975

LOANS (GOVERNMENT BONDS) BILL 1975

BETTING DUTY (AMENDMENT) (NO 2) BILL 1975

**MULTI-STOREY BUILDINGS (OWNERS INCORPORATION)
(AMENDMENT) BILL 1975**

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) BILL 1975

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) BILL 1975

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills**BIRTHS AND DEATHS REGISTRATION
(AMENDMENT) BILL 1975**

THE FINANCIAL SECRETARY moved the second reading of:—"A bill to amend the Births and Deaths Registration Ordinance."

He said:—Sir, the bill before honourable Members is part of the general process of bringing cost-related fees and charges up to date, and keeping them up to date so as to minimise the burden on general revenue of the services concerned.

A recent cost study of the Births and Deaths Registry has shown that, despite an increase in the fees for copies of certificates in 1974, the Registry is running at a deficit of about \$3.2 million a year. As the registration of deaths and the initial registration of births within the statutory 42 days are free of charge, general revenue must bear a large share of the cost of the Registry. But the revenue in most cost centres in which fees are charged is inadequate to cover the relevant costs. These cost centres include registration of births after the statutory period, registration of alterations to the name of a child, issue of certified copies, searches and correction of errors.

The increases now proposed in respect of these cost centres should raise an additional \$509,000 a year to reduce the burden on general revenue to \$2.7 million a year. The fees for copies excepted, there have been no increases since 1965.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

COMPANIES (AMENDMENT) (NO 2) BILL 1975

THE FINANCIAL SECRETARY moved the second reading of:—"A bill to amend the Companies Ordinance."

He said:—Sir, in paragraphs 125-126 of this year's budget speech I announced the Government's intention to raise certain fees levied by the Companies Registry, particularly those relating to the capital of limited companies. These fees were raised by the passing of the Companies (Amendment) Ordinance 1975. I also said in passing that other fees chargeable under the Companies Ordinance were being revised, but

that this was simply designed to bring them up to date. The amendments now proposed in the Companies (Amendment) (No 2) Bill 1975 are part of this continuing exercise to increase fees payable under the Companies Ordinance, some of which have remained unchanged since the year 1934. In addition, clause 7 introduces a new item and fee of \$2,000 for the registration of a prospectus. This charge is towards recovering the cost of the senior staff of the Companies Registry who spend a considerable amount of time examining draft prospectuses and discussing in a helpful way with the companies concerned and their solicitors and underwriters.

We have also taken the opportunity to tidy up the ordinance. At present, there are two orders relating to companies fees: the Companies (Fees) Order, made under section 305 of the ordinance prescribes the fees for the inspection and certification of documents kept by the Registrar; and the Companies (Prescribed Fees) Order, made under section 2, prescribes fees for registering certain instruments and for inspecting the register of charges. Clauses 4 and 5 of the bill are designed to bring the two together into one order.

Finally, Sir, clause 6 of the bill amends section 306 of the ordinance to permit the Governor in Council to increase the fees in the Eighth Schedule and to add any further items for which a charge is considered necessary.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

LOANS (GOVERNMENT BONDS) BILL 1975

THE FINANCIAL SECRETARY moved the second reading of:—"A bill to make provisions for the raising of loans in Hong Kong by the issue of bonds and for matters connected therewith."

He said:—Sir, in paragraph 170* of this year's budget speech, I said we were actively considering various forms of borrowing. The bill now before Council will provide the legal authority for raising loan funds through the sale of medium term Hong Kong dollar denominated bonds and provides authority for a conversion offer to be made to the holders of Rehabilitation Loan bonds.

* see page 517.

[THE FINANCIAL SECRETARY] **Loans (Government Bonds) Bill—second reading**

In paragraph 171* of the budget speech, I described the several legislative authorities necessary to enable the Government to borrow in the forms and from the sources I outlined. The Loans Bill 1975 became law on 23rd May last and this bill, if passed, will complete the legislative programme I then had in mind. But I should take this opportunity to explain that although the Hong Kong Treasury Bill Ordinance 1926 will in its present form authorize the borrowing of money through the issue of Treasury bills, it will need to be amended to provide a wholly satisfactory vehicle for this purpose. Not that I am convinced by any means that Treasury bills are an appropriate debt instrument, at any rate at this time, and my purpose in introducing an amending bill will be simply to ensure that the legislation is complete and ready for use should the time come when this instrument is needed and is appropriate.

I need to mention, Sir, only two points on the bill now before Council. Clause 9 provides bond transactions to be exempt from stamp duty. The intention is also that interest on the bonds and profits from their sale should be free of tax. This exemption will be included in an amendment to the Inland Revenue Ordinance.

Clause 5(1)(b) of the bill will enable the Governor to determine the prices at which bonds may be issued. It will consequently be possible to sell the bonds at a fixed price or by offering the bonds for sale by tender. Under the particular tender system which we would probably adopt, applications would be arranged in order of decreasing prices and would-be borrowers would accept successively lower offers until the aggregate accepted equalled the amount of bonds on offer. I am well aware that there are strong arguments for and against the sale of bonds by tender, and naturally these will be carefully weighed before a decision is taken whether or not to issue at a fixed price.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

BETTING DUTY (AMENDMENT) (NO 2) BILL 1975

SECRETARY FOR HOME AFFAIRS (ACTING) moved the second reading of: —"A bill to amend the Betting Duty Ordinance and to make consequential amendments to the Gambling Ordinance."

* see page 517.

He said: —Sir, the purpose of this bill is to amend the Betting Duty Ordinance by creating a Hong Kong Lotteries Board to organize and conduct regular lotteries probably at weekly intervals. These lotteries will eventually replace all cash sweeps organized by the Royal Hong Kong Jockey Club during the racing season and all Government lotteries organized during the non-racing season. However, the remaining Government lotteries already planned for this year by the Lotteries Management Committee will not be affected.

This new board will comprise seven members appointed by the Governor of whom four shall be Stewards of the Royal Hong Kong Jockey Club nominated by the club and three other persons including two Government representatives.

The bill provides for the Lotteries Board to make use of the facilities of the Royal Hong Kong Jockey Club. In return, the board will reimburse the club such operating expenses and fees as may be approved by the Colonial Secretary, who, as licensing authority, may impose any necessary conditions concerning the frequency of lotteries, the type of lotteries, accounts and so on.

The bill stipulates that not less than 80% of the proceeds of a lottery, after deducting a betting duty of 25%, shall be allocated in prizes in that or any other lottery as the board may determine. This percentage return to punters is the same as the existing Government lotteries but is higher in comparison with cash sweeps.

After payment for prizes, betting duty and operating expenses, the surplus of the proceeds of a lottery will be paid into the Lotteries Fund which will continue to be used for social welfare projects. If the revenue of the Lotteries Fund declines as a result of the changes, I have just described, my honourable colleague, the Financial Secretary, has indicated that favourable consideration will be given to either adjusting the betting duty on lotteries or by appropriating a suitable sum to the fund from general revenue.

Motion made. That the debate on the second reading of the bill be adjourned—SECRETARY FOR HOME AFFAIRS (ACTING).

Question put and agreed to.

**MULTI-STOREY BUILDINGS (OWNERS INCORPORATION)
(AMENDMENT) BILL 1975**

SECRETARY FOR HOUSING moved the second reading of: —"A bill to amend the Multi-storey Buildings (Owners Incorporation) Ordinance."

[SECRETARY FOR HOUSING] **Multi-storey Buildings (Owners Incorporation) (Amendment) Bill—second reading**

He said: —Sir, since the principal ordinance came into force in June 1970 at least two corporations formed under it have expressed a desire to purchase premises in the buildings which they have been formed to manage. It is accepted that owners' corporations need such premises as offices or as a source of income to help meet management expenses for their buildings, and that it is in the public interest that they should be legally able to own them. It is considered, however, that the Ordinance as presently framed does not confer upon such a corporation the power to hold an interest in land.

To put this right, the bill amends section 8 of the principal ordinance, to enable such a corporation to become the owner of premises in the multi-storey building to which it relates.

The bill will also regularise assignments already made by deeming such corporations always to have had power to hold an interest in land.

Motion made. That the debate on the second reading of the bill be adjourned—SECRETARY FOR HOUSING.

Question put and agreed to.

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY)

BILL 1975

MR HENDERSON moved the second reading of: —"A bill to establish the Construction Industry Training Authority; to provide for facilities for the training of persons employed in the construction industry and for a levy to be paid by contractors in respect of construction works."

He said: —Sir, industrial training for the construction industry presents special problems because many workers in the industry are employed on a short-term basis by contractors or more frequently sub-contractors or simply as loosely knit groups of workers. Their mobility is high and there is recurring change as work on one site is completed and work on another begins. Regular craft apprenticeship schemes with a definite place of work focus therefore give rise to difficult if not insurmountable problems. To provide adequate training therefore requires a concerted and cohesive effort by all segments of the industry itself to come together and agree to formulate and

finance a comprehensive scheme. The nature of the contractor in this high-risk business leads to very competitive individuality, and it is a great tribute to the industry's discernment of their own common interests that I am able to bring this bill forward today.

The emergence of this co-operative spirit enabled, you, Sir, to appoint a Provisional Construction Industry Training Authority under the chairmanship of Mr WONG Tin-sung in June 1974.

This Authority was charged *inter alia* with the task of assisting the Government in preparing the legislation to establish a statutory Authority to provide for facilities for the training of persons employed in the construction industry. In this the Provisional Authority has largely both conceived and gestated the bill, with Government—perhaps the midwife—nodding approval at the delivery of a healthy infant.

It will be appropriate for me to place on record Government's appreciation of the work of the Provisional Authority on whose successor this bill will confer the longer-term responsibilities of parenthood whose immediate goal is to become a training school catering for 600 trainees a year in the various skills necessary for the continued development and sophistication of the construction industry. May I add, on a personal note, that I earnestly enjoin the future Authority to ensure that the training emphasises industrial safety and inculcates safety consciousness into its trainees.

The bill itself contains many clauses that are fairly standard with appropriate variations for the setting up of, the conduct of, and the financial control of a statutory Authority. These are very adequately covered by the explanatory memorandum accompanying the bill, and I will not dwell on them, except to analyse the body corporate to be created.

The heart of the bill is clause 5 which lays down the functions of the Authority—to provide training courses—to establish and maintain industrial training centres—to assist in the placement of persons completing such training courses and to recommend the rate of levy to support these activities.

The financial sinew of the bill lies in clause 21 which enables an industrial training levy to be imposed on the value of all construction works undertaken in Hong Kong and payable by the contractor. It is important to read this clause in relation to clause 2 sub-clauses (2), (3), (4) and (5) which together define "construction works", and clause 26 which elaborates on how the "value" of these works is to be ascertained.

[MR HENDERSON] **Industrial Training (Construction Industry) Bill—
second reading**

The control of the nervous system is contained in clause 22, which empowers this Council to set the rate of levy. Although the levy will not constitute part of the general revenue, it will be compulsory like taxation. Therefore it is proper that the power to fix the rate of levy should lie outside the statutory body which has limited objectives, and that the overall public interest should be protected by the procedure of resolution in Legislative Council. The levy proposed will probably be of the order of 0.2% of the value of construction works, but the newly created Authority will have to justify any particular level to this Council. Sub-clause (4) of this same clause contains the important provision that in effect a minimum value of construction works may be set below which the levy would not be exacted. This will both enable exemption to be given to contracts of low value, thereby perhaps not involving those contractors in business in a very small way, and also will relieve the Authority of the time-consuming and expensive procedure of pursuing small debts which may not be worth the administrative cost of collection. Quite what this minimum should be, the newly constituted Authority will have to consider and recommend.

The teeth of the bill are contained in clause 26(7) which enables the Authority to impose a surcharge for failure to give notice under clause 24 of commencement of works. Omission to pay the required levy shall constitute a recoverable debt under clause 28, and to protect the contractors from unreasonable snapping of teeth by the Authority, objections may be lodged with the Authority under clause 29 and if still dissatisfied to the District Court under clause 30.

The main structure of the Authority is set out in clause 7 and reflects the present constitution of the Provisional Authority, which seeks to ensure that the interested parties of the industry are represented—the contractors—the professional institutions—the workers—public officers from relevant departments and with one lay member not associated with the industry. And clause 9(6) specifically requires the declaration of pecuniary interests in contracts by members of the Authority.

The body of the industry which will ultimately benefit from the scheme has a number of responsibilities imposed in respect of reporting works and the payment for such works in clauses 24 and 25. While such reporting may be burdensome on contractors and authorized persons, it is vital that they play their part.

I should now make it clear that the bill also binds the Hong Kong Government and their contracts. It is right that this should be so since, as a major employer, they also benefit from improved industrial training. In overall terms for both the public and private sectors there may be a fractional rise in the construction work contract costs, but this falls equally on all contractors and through them to their wide variety of clients, so that all must take this levy into account when tendering. It is however an investment in our human resources, and in the long term will lead to more efficient performance in the industry to the benefit of all.

Motion made. That the debate on the second reading of the bill be adjourned—MR HENDERSON.

Question put and agreed to.

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) BILL 1975

MR HENDERSON moved the second reading of: —"A bill to establish the Clothing Industry Training Authority; to provide for facilities for the training of persons employed in the clothing industry and for a levy to be paid by exporters of clothing items."

He said: —Sir, I rise again with the rather difficult task of introducing a bill very similar to that which I have so recently moved. If I spend rather less time on this bill, I trust it will not be interpreted as a reflection on the relative importance of the two industries concerned. The two are quite different; whereas the construction field is probably our biggest internal industry, the clothing field is our biggest export-oriented industry, each equally vital in their own way to Hong Kong's well-being.

The fact is that the basic structure and principles of the two bills are similar, and further more my honourable but unfortunately absent Friend Mr Francis TIEN, who is Chairman of the Provisional Clothing Industry Training Authority, would no doubt have wished to speak for himself in this debate. I will therefore confine myself to the main points of difference in the industrial training schemes and their enabling bills. The training need in the clothing industry is at the operative level rather than that of craftsman. This will involve therefore the setting up of a training centre to run courses to train or re-train some 3,600 operatives a year, and this will be the major initial task of the Authority that this bill aims to set up.

[MR HENDERSON] **Industrial Training (Clothing Industry) Bill—second reading**

The composition of the proposed Authority as set out in clause 7 will reflect the varied interests of the clothing industry together with public officials in concerned departments, a trade union official and a lay member. The make-up of the Authority follows that of the Provisional Authority which you, Sir, appointed in July 1974. I would like to thank the members of the Provisional Authority for the time that they have so unstintingly given to bring this draft bill to fruition and to the preliminary planning of the training centre.

The basic functions of the Authority are outlined in clause 5 and are similar to those in the Construction Industry Bill. A number of clauses relate to the setting up, financial control of, the conduct of, and powers of the Authority. Again, many of these are fairly standard clauses for the legislative enshrinement of a body corporate, which are set out in the memorandum of objects and reasons, and I need not elaborate.

The core of the bill is contained in clause 21 which enables a levy to be imposed on the exporter of clothing items in accord with the F.O.B. value of clothing items exported. This requires to be read with clauses 2 and 3 which set out the definitions and general application of the ordinance with the necessary practical exclusions such as for example the personal effects of travellers. This will no doubt be a relief to honourable Members and for the travelling public alike; the mind would boggle at the chaos that would ensue at Kai Tak if the passenger having run the gauntlet of customs, immigration, port health and various metal detecting devices, then had to disrobe to have the value of his pants and undergarments assessed for levy.

However it is in respect of the levy that the main difference in this bill lies, because there is an existing system under the Import and Export (Registration) Regulations for the collection of an *ad valorem* charge on lodgement of declarations for exported goods. This levy is used to support the valuable activities of the Trade Development Council. I must emphasise that although the procedure and mechanics of collection will be similar, the training levy will be entirely separate and distinct from the *ad valorem* charges currently collected for the subvention of the Trade Development Council and, of course, will only be applied to exported clothing items.

This system will enable the training levy to be collected with the minimum inconvenience to exporters. It will however place an

extra burden on the resources of the Commerce and Industry Department. I am grateful to my honourable Friend, the Director of Commerce and Industry for his acceptance of these additional responsibilities. In recognition of this and to reduce administrative difficulty, the bill in clauses 23 and 26 has been designed to align as closely as possible with the powers of the Director in import and export legislation including the power of surcharge, since he, and not the Authority, will be the statutory authority for collection of the levy. The bill however requires the Director in clause 27 to pay to the Authority, not to general revenue, the proceeds of the levy and surcharges. It is recognised that additional expenses will be incurred by the Commerce and Industry Department, and since they will, in effect, be collecting the levy on an agency basis, public funds are entitled to reimbursement for these expenses, and provision is made for these to be deducted in such proportion as may be approved by the Financial Secretary.

The authority to set the rate of levy will be by resolution of this Council under clause 22, and is brought into effect 30 days after the publication of the resolution in the *Gazette*. It will be the responsibility of the Authority, when it is appointed, to recommend the rate of levy. Present indications are that something of the order of 0.03% will be proposed, but it will be up to the Authority to justify any particular rate of levy. While the levy will fall, for practical reasons, on to the exporters to pay, no doubt this will be passed back to the manufacturers who will ultimately be the beneficiaries of the scheme, which in the long run will help Hong Kong maintain its export competitiveness by ensuring the supply of trained operatives.

May I, Sir, in conclusion say how much I appreciate the efforts of the industry in launching this invaluable scheme of industrial training.

Motion made. That the debate on the second reading of the bill be adjourned—MR HENDERSON.

Question put and agreed to.

**MASS TRANSIT RAILWAY (LAND RESUMPTION AND
RELATED PROVISIONS) (AMENDMENT) BILL 1975**

Resumption of debate on second reading (2nd July 1975)

Question proposed.

Question put and agreed to.

**Mass Transit Railway (Land Resumption and Related Provisions)
(Amendment) Bill-resumption of debate on second reading (2.7.75)**

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

**LANDLORD AND TENANT (CONSOLIDATION)
(AMENDMENT) (NO 3) BILL 1975**

Resumption of debate on second reading (2nd July 1975)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

LABOUR RELATIONS BILL 1975

Resumption of debate on second reading (7th May 1975)

Question proposed.

DR CHUNG: —Your Excellency, since this bill was introduced in this Council on 7th May this year, the *ad hoc* group formed by the Unofficial Members of this Council to study its contents in detail has met with about ten groups of people either representing trade unions or having interests in labour matters. In addition, the Unofficial Members have also received a number of communications commenting on this bill.

These representations can generally be classified into three categories. The first is those who consider that the whole bill is designed to deprive workers or employees of their right to strike, to interfere in the affairs of labour unions, and to provide employers with more advantages in labour-management disputes. This category of representations ask that the whole bill should be withdrawn and are not prepared to make any compromise.

The second category is those who do not object to the whole bill but to the provision of a cooling-off period. They claim that whilst a cooling-off period is applicable to both labour strikes and management lockouts, there are more opportunities for applying cooling-off periods to labour strikes. Thus, the part dealing with a cooling-off period is, in effect, prejudiced against labour. They also claim that the provision of a cooling-off period will suppress or at least suspend the right of workers to take industrial action and hence will weaken their collective bargaining power.

The third and the last category is those who agree with and, in fact, welcome the legislative measure taken to improve the machinery for settlement of trade disputes. They, nevertheless, feel that in many respects the bill militates against workers in favour of employers and needs radical amendment in some of its clauses.

To put the matter in proper perspective I should mention that the Labour Advisory Board unanimously supported the general principles of the bill including the provision of a cooling-off period. As honourable Members are aware, the Labour Advisory Board consists of four representatives of labour and four representatives of employers. Among the representatives of labour, two are appointed by Your Excellency and two are elected by the labour unions.

On the one hand, it is recognised that an order by the Governor in Council for a cooling-off period would be made to safeguard the overall public interests and only in special circumstances when a strike or lock-out in a trade dispute might: firstly, be gravely injurious to the economy of Hong Kong; secondly, seriously affect the livelihood or endanger the lives of a substantial number of persons; thirdly, create a serious risk of public disorder; or fourthly, seriously jeopardize the internal security of Hong Kong. On the other hand, the Unofficial Members of the *ad hoc* group acknowledge the fear and apprehension expressed by many of the labour union representatives with regard to the application of a cooling-off period.

Some people argue that those special circumstances under which a cooling-off period could be applied are pretty near an emergency situation and that it is better for Government to declare a state of emergency than to impose a cooling-off period. Since Hong Kong depends heavily on its external trade for its living, it would certainly be advisable to avoid creating in the minds of our overseas buyers the impression that we are in a state of emergency.

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Others argue that the Government should uphold its traditional policy of minimal interference in commerce and industry and have its hands off any labour-management dispute. As honourable Members are fully aware, Hong Kong has no natural material resources at all and greatly depends on its export-oriented industries for its economic survival. It is therefore vital that no party in an essential service, whether labour or management, should be allowed to hold the community at large to ransom in order to pursue the interests of a minority at the expense of the majority.

After long periods of deliberations, the Unofficial Members of the *ad hoc* group, as well as my honourable colleagues Mr Q. W. LEE and Mr Roger LOBO, feel that the provision for a cooling-off period should remain in the bill *but* should not be brought into force unless and until it is necessary. Even then, such proclamation should only be made by the Governor in Council. However, my absent honourable colleague, Mr Francis TIEN, who is a member of the *ad hoc* group, has asked me to say on his behalf that he would prefer the order of the Governor in Council to invoke this provision be further subjected to the approval by a resolution of this Council and thereby making public the grounds on which the decision to invoke a cooling-off period is taken.

Sir, "since no one can really avoid industrial disputes, we have to find some means of solving a dispute once it has arisen, as quickly and as effectively as possible ... There are in general, three standard or established procedures for settling an industrial dispute between management and labour. Firstly, there is direct negotiation where labour and management representatives meet without the presence of a third party to solve their differences of opinion.

If direct negotiation fails, the next step is mediation or conciliation. This is the attempt of a third party to reconcile the differences between the disputing parties by finding a middle ground on which the controversy may be settled. In the process of mediation, either of the disputing parties can accept or refuse the recommendations of the mediator. Mediation can be either voluntary or compulsory...

When mediation fails, the third and final procedure to solve a dispute is arbitration. This is the settlement of a dispute between two disputing parties by an impartial third party whose decision is final and

binding . . . Like mediation, arbitration can be either voluntary or compulsory."

Sir, these words were part of my speech delivered to the Rotary Club of Hong Kong on 1st August in the stormy year of 1967. At that time, I further said that had we had efficient and effective machinery in helping both management and labour to solve disputes, the unfortunate incident on the 6th May, which led to the disturbances, might not have occurred. I therefore welcome the move by Government to formalize in this bill the procedures for the settlement of trade disputes between labour and management which are outside the jurisdiction of the Labour Tribunal.

Among the many representations for changes in some of the clauses of the bill, the Unofficial Members of the *ad hoc* group feel that the following ones deserve serious consideration by Government. First, conciliation. It is said that in the present situation of Hong Kong, conciliation can be and in fact is sometimes used by employers as a delaying tactic. In times of dispute, in the present circumstances of Hong Kong, time is on the side of the employers who can afford to ride out a storm better than the less financially viable workers. There is no provision in the bill to compel an employer in the dispute to attend a conciliation meeting or even have a dialogue with the conciliator. In the meantime, in the case of a strike or lockout, the employees concerned receive no wages or subsidies and every additional day of delay will further weaken the bargaining position of the workers.

The Unofficial Members of the *ad hoc* group were informed of a recent labour dispute in which a manager reminded Labour Department officials who were in the company office that they were trespassing. It is therefore suggested in many representations that power should be given to conciliators to compel the parties in dispute to meet with conciliators.

Some of the representations also object to the wording contained in clause 11(c), which reads, in part, "The Governor in Council may take such other action as he thinks fit". They consider that the frequent use of the phrase "as he thinks fit" as in clause 11(c) and several other clauses in the bill gives rise to misunderstanding and apprehension on the part of workers. It is claimed that without exception all the workers consulted have expressed grave misgivings. They believe that the power given to the Government is much too wide and in the reality of the power structure of Hong Kong is open to abuse. There is, as related to the Unofficials of the *ad hoc* group, a real fear of discrimination

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against workers in the wide discretion given to Government in the interpretation and application of the provisions of this bill as it stands.

The second representation which deserves serious consideration by Government concerns arbitration as contained in Part III of the bill. This part empowers the Governor in Council to refer a trade dispute to arbitration, should both ordinary conciliation and special conciliation fail to effect a settlement. The pre-condition is that both parties to the dispute agree to arbitration. However, there is a strong feeling, as expressed by the representatives during the various interviews, against the concept of a sole arbitrator. It is said that in the light of the situation in Hong Kong, it would be difficult to find a single person who is conversant with the life style of local industrial workers as well as legal, business and other aspects related to arbitration. It is therefore desirable in some instances to have more than one person as arbitrator.

Furthermore, they request that not only the procedure of arbitration but also the selection of arbitrators should be subject to the consent of the two parties concerned in the dispute. It is thought that the award of an arbitrator is more likely to be acceptable if the arbitrator himself commands the trust and respect of the disputing parties. This aspect is more important in this case as there will be no compulsion under the bill for the parties to abide by the award of an arbitrator.

Again, the representatives are worried about delays in the process of arbitration and suggest that a time limit for an arbitrator to submit his award should be set by the Governor in Council.

Another representation which the Unofficial Members of the *ad hoc* group would like Government to consider is in connection with the board of inquiry under Part IV of the bill. The representatives also request that the Governor in Council should specify a period within which the board of inquiry should submit its report.

The labour representatives, particularly those from labour unions, raise very strong objections to clause 33(2), especially the Chinese version of clause 33(2). If the board of inquiry is given the power to prohibit the publication and disclosure of and comment on its proceedings, they consider that a process of isolation could develop in which the workers are separated from the community and the trade union leaders from their rank and file. This will prevent the workers in dispute seeking

support from other workers and also forbid union officials communicating fully with their members during the period of the proceedings.

Apart from the general objection in principle to the cooling-off period, there are a few specific points raised by the representatives. The first concerns clause 35, in which an order for a cooling-off can be made for an initial period of 30 days and be extended up to a maximum of 60 days in the whole. The representatives seek confirmation from Government that a second order for cooling-off cannot be made in respect of the same trade dispute.

Secondly, the representatives express their concern that during a cooling-off period an employer may resort to other measures short of a lock-out (such as job reassignment or other punitive action on grounds of alleged negligence or incompetency) to victimize labour leaders. They consider that some effective means of protection of workers against such discrimination and victimization by employers should be written into the bill.

Thirdly, the representatives feel very strongly that paragraphs (i) and (ii) of clause 34(3)(a) will infringe on the rights of a trade union. They are afraid that members of another trade union cannot even pay sympathetic visits and publicly give encouragement to those workers in dispute.

Sir, I recognize that I have taken up much time of honourable Members and that the subject matter is very technical. I am now almost coming to the end and have only one more representation to deal with. This concerns Item 2 in the Schedule of the bill, in which it is proposed that Part VI of the Trade Unions Ordinance be amended by adding a section designed to protect trade union members refusing to take part in illegal strikes and lock-outs. The representatives of trade unions raise strong objections to this amendment which, they consider, would directly interfere with the internal affairs of a trade union and would indirectly give management more means to hamper the trade union movement in Hong Kong. They request that Item 2 in the Schedule be deleted.

With these comments, Sir, I support the motion before Council.

MR CHEONG-LEEN: —Sir, I rise to supplement the comments made by Dr the honourable S. Y. CHUNG.

First of all, I believe that Part V of the bill on the provision for a "cooling-off period" should remain in the bill but not to come into

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operation with the rest of the bill unless very special circumstances warrant it by proclamation of the Governor in Council.

These special circumstances could fall in three main categories:

- (a) circumstances which are most damaging to Hong Kong's economy or which affect the livelihood of a large number of Hong Kong people;
- (b) circumstances which could gravely affect internal security, or seriously endanger the safety of the Hong Kong community;
- (c) circumstances which would expose a large number of Hong Kong people to the risk of harmful disease or personal injuries.

The duty of any government anywhere in the world is to preserve law and order, and to ensure that there is peace, co-operation and harmony within the community.

It is fervently hoped that such "special circumstances" should never occur in Hong Kong, but if at all they should happen, the Government has to have the power to invoke such "cooling-off period" in the wider interests of the Hong Kong community, and for the general safety of Hong Kong's 4½ million people.

It must be understood however that the Government invokes any cooling-off period" only on the basis of the community interests as a whole, and not to give any impression that it is taking sides, either with the workers or the trade unions, or with the employers or the capitalists.

Secondly, from the point of view of the community interests as a whole, and not merely from either the workers' or the employers' point of view, I think it is of vital importance that in case of any major labour dispute, the Government should be seen to be taking necessary steps (in other words, making a positive contribution) which could help the disputing parties arrive at an early solution. Wisely the bill avoids the imposition of any compulsory solutions which cannot be implemented or enforced by law.

It is highly possible that many people who have not studied the bill are under the vague impression that it is designed to protect the interests of employers more than the workers.

It cannot be too forcefully stressed that the Government must at all times uphold an impartial and scrupulously fair position in regard to applying this bill to labour disputes in future, the over-riding factors being the political and social stability of Hong Kong, and the economic well-being of Hong Kong as a whole.

It may be that neither the trade unions nor employer interests are satisfied with the provisions of this bill, but since the bill with the amendments proposed is for the protection of Hong Kong's political and economic well-being and progress, I am prepared to support the bill with the amendments.

MR HENDERSON: —Sir, the Labour Relations Bill has occasioned considerable comment, some of it reasonably well informed, some rather less so. It is clear that many who have read the bill have not clearly understood its implications, and certainly have not read the substantive Commissioner's speech when introducing the bill to this Council on May 7th, which elucidated much that has been worrying some people about the intentions of Government in introducing this bill.

I think, therefore it necessary to take up a little time this afternoon in dealing with some of the fairly widespread misunderstandings about the bill, and taking up Unofficial Members points along the way.

Timing Attempts have been made to read deep and even sinister significance into bringing forward the bill at this time. The views have been expressed either that the Government is anticipating soon some marked deterioration in the labour relations situation or alternatively that since the labour relations scene has been reasonably quiet for some months that the bill should be postponed until some indefinite time in the future when the need for the procedures contained in the bill become overwhelmingly self-evident, due to a complete break-down in labour relations. The motivation in putting forward this bill now has nothing to do with such arguments. The plain and simple fact is that the need to have certain statutory procedures has been foreseen for some time past and work has proceeded on the bill for two years or so and it is now ready for presentation. If there is urgency it is only the Government's desire to get rid of archaic labour legislation such as the Illegal Strikes and Lock-outs Ordinance. It is a coincidence, perhaps a fortunate one—but no more than that—that the discussion of the bill is taking place in a period relatively free from major disputes. At least in such circumstances it cannot be said that the bill is being "rushed through" only to deal with a particular current strike.

[MR HENDERSON] **Labour Relations Bill—resumption of debate on second reading (7.5.75)**

Collective bargaining Some thoughtful comment has been provoked that the bill does not in any way take legal steps to promote collective bargaining. This seems to me, however well-intentioned, to miss the point. The process of collective bargaining depends upon the voluntary collective desire of the parties concerned to come to an agreement. All that legislation can be required to do is remove obstacles to collective bargaining. Currently there are no such obstacles which require legislative treatment in this bill. It has been argued that the bill should contain a positive statement of policy promoting good labour relations—to my mind the long title of the bill already does this. And if there should be any doubt about Government's policy on collective bargaining, I should place on record that this Government has made a declaration to the International Labour Organization that Convention 98 (that is application of the principles of the right to organize and bargain collectively) is applied to Hong Kong with modifications.

Delays A common thread running through many of the representations, and submissions made on the bill is the fear that delay in procedures will always act to the detriment of the workers. Thus many organizations have asked that time limits be imposed at various stages of the procedures. I would myself, and so would experienced officers in dealing with disputes, have considerable doubts about this thesis—delays in settlement can often be to the detriment of the employer. In any event, delay is a perfectly legitimate bargaining tactic used by both sides in industrial relations. I would therefore reject this suggestion of imposing time limits at least insofar as conciliation procedures are concerned. I should add that in practice the imposition of statutory time limits would act to the detriment of workers certainly in a non-unionized situation—that is where *ad hoc* groups of workers are involved. Our experience is that in these cases—which are common—it often takes a considerable period of time to identify workers and persuade them to take part in the conciliation process. In this event any time limit would severely handicap the workers. Another quite different situation arises in arbitration or a board of inquiry because there outsiders are being asked to make a decision or firm recommendation. Here it is reasonable to impose a time limit provided it is laid down in relation to the circumstances of the dispute at the time.

Trade Union Rights There has been much comment from unions about infringement of the right to strike. Some rather more by way of dogma than by argument. As those of you who know that readable

historian the late Philip Guedella will be aware "it takes a stigma to beat a dogma". Yes, there would be a temporary infringement of such right in the public interest, but what is the alternative—to retain the Illegal Strikes and Lock-outs Ordinance? This legislation which makes it a crime to strike in certain circumstances is abhorrent—and rightly so—to all responsible unionists. The balance between union rights and the rights of the public to be protected can surely be achieved in a better way—which is what the bill sets out to do. And I should emphasize as did my honourable Friend Dr S. Y. CHUNG that the proposed balance was unanimously supported by the Labour Advisory Board who sensibly realised that there are conflicting rights in such situations, and that a reasonable and pragmatic *improvement* in union rights could be achieved by accepting a temporary curtailment at times without infringing their principles.

Cooling-off Period This resulting solution to balance the rights of workers and of the public has not unnaturally caused the most comment since the concept is new to Hong Kong. What does not appear to have been generally appreciated is the extreme rarity with which such powers are likely to be used. Further, that the arbitration and board of inquiry procedures can and would often be activated without the cooling-off period. In many such cases I would suspect that there will be a voluntary return to work, or withdrawal of lock-out, during these hearings. In looking back over recent years, I cannot say that there has been any major dispute that had reached a stage where I would have considered it necessary to recommend to the Executive Council that a cooling-off period be imposed. This may help emphasise the exceptional nature of its imposition. For it to be imposed the exacting conditions of clauses 34(1)(b) and (c) must be fulfilled. Furthermore, as my honourable Friend Dr S. Y. CHUNG has wisely pointed out in discussion, it is even then unlikely that Executive Council would act upon the recommendation of the Commissioner unless there was clear indication that public opinion was gravely concerned that a dispute was seriously affecting the welfare and livelihood of the public far beyond the parties involved. This in itself will put tremendous pressure on the parties to abide by a cooling-off period if imposed. Furthermore, it enables workers to go on being paid while the dispute is being settled. However, despite the rarity of the event, there is this need to have in readiness some form of intervention for the protection of the public between the normal labour relations procedures and the imposition of Emergency Regulations, an action which is too drastic to contemplate for any genuine labour dispute however major. I strongly support the views of my honourable Friend Dr S. Y. CHUNG as to the detrimental

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effects of the imposition of a state of emergency on many fields of Hong Kong life and particularly its effect overseas. Therefore it has been decided that while Part V of the ordinance should be legislated it will not be brought into effect until such time as there is a clear and publicly recognised need. The bill therefore is proposed to be amended at the committee stage to enable Part V of the bill only to be brought into effect by the decision of the Governor in Council. I am sure we all hope, as does my honourable Friend Mr Hilton CHEONG-LEEN, that the necessity for Executive Council ever to take such a decision will be very far off. But it is essential in my view that these provisions should appear on the statute book as the visible tip of the iceberg, so that both management and labour can see that if ultimately a dispute is pushed too far to the detriment of the community, that there is the possibility of Government intervention. This is all part of the carefully graded approach to labour disputes inherent in the concepts of the bill.

I should also take this opportunity to clear up two rather important misconceptions about the cooling-off period as currently drafted. Firstly I can assure honourable Members and the public that the cooling-off period cannot be imposed twice for substantially the same dispute. In short it may not be re-imposed after the 60-day period. Secondly, clause 33 is certainly not intended to inhibit union leaders from communicating with members or management employees from communicating with their boards during the hearings of a board of inquiry. I am assured by my honourable Friend the Attorney General that this is not the effect of the clause as drafted.

I agree with much that my honourable Friend Dr S. Y. CHUNG has said, and there are a number of amendments to be proposed at the committee stage. Indeed I am most grateful to Unofficial Members for their long and very patient consideration of submissions made to them, from which useful points have emerged. However there is one point on which my honourable Friend and I perhaps agree to differ. He has noted with some favour the suggestion of the granting of compulsory powers to the special conciliator to call in either party to a dispute. I find myself in the rather odd position, wearing my executive hat, in fending off legislators who might wish to give my officers the legal power that I think it is undesirable and unproductive for them to have. A strange reversal from the more usual situation of the executive trying to wrest statutory powers from a reluctant legislature! More seriously, I doubt the effectiveness of such a power. The essence of

conciliation is voluntary; any form of compulsion in this field is to some extent a contradiction in terms. I realise that what has been suggested is only to summon parties separately not to compel them to meet, but in practice the recalcitrant employer has only to turn up say "good morning" and leave again—nothing can really compel him to discuss the situation if he does not want to and in the case where so often there is no union involved or it is doubtful that the union represents the workers, then who is to be "summoned" from the workers' side. Even if individuals are talking for the workers, they frequently deny that they are representatives and could justly evade being called in on these grounds. I think this power if invoked could neither be even-handedly applied nor effective even if so applied. I have discussed this at length with those who have longer personal experience of conciliation than I and they agree with this view. I would propose therefore to let the bill stand in this respect, but undertake to my honourable Friend Dr CHUNG to review the position after two years' working of the new procedures.

With this background, proposed committee stage amendments can be dealt with quite briefly. In clause 11(c) the Governor in Council may take such action as he thinks fit. This particularly in the Chinese translation I understand gives the impression of unfettered powers to do anything. Of course, such action was only intended to be within the context of the bill, including the important power of *positive inaction*. This clause will be modified to make this clearer.

It has been pressed on me that there could be cases where more than one arbitrator should be appointed. I think these cases will be rare but exceptional provision for this will be made in clause 12(1). I should add in connection with arbitration that the panel of arbitrators to be appointed under clause 12(2) will be published in the *Gazette* so that where there are reasonable objections to a particular arbitrator being appointed for a specific dispute, these objections can be made known to the Commissioner before Executive Council name an arbitrator. No amendment however is required to meet this point.

In order to enable the Governor in Council to set time limits for both arbitration and a board of inquiry appropriate amendments will be proposed to clauses 18 and 21.

The right of audience before arbitration and a board of inquiry was somewhat unclear in the original proposals, and at the request of the Executive Council, I discussed this aspect further with the Labour Advisory Board, and the matter has now been clarified. New clauses

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15A and 26 I propose to move at the committee stage which make clear the position of parties and their representatives in these proceedings.

Clause 1 will be amended to ensure that Part V of the ordinance concerning the cooling-off period only comes into operation on a day to be appointed by the Governor in Council by notice in the *Gazette*.

I very much take my honourable Friend Dr CHUNG's point about victimisation of employees during a cooling-off period, and an amendment to clause 34(3) to deal with this, insofar as it can be covered by legislative means, will be proposed.

Finally, a number of comments have been made on item 2 of the Schedule which concerned "illegal strikes" and transferring this particular relic of the Illegal Strikes and Lock-outs Ordinance into the Trade Unions Ordinance. Upon further reflection I agree it is undersirable to import this concept into the Trade Union Ordinance, and furthermore it would probably have no real meaning after the enactment of this bill since the concept of the illegal strike is abolished. It will be proposed at the committee stage that item 2 of the Schedule will be dropped.

Finally, in thanking honourable Members for their patient hearing this afternoon, I am grateful to my honourable Friend Mr Hilton CHEONG-LEEN'S remarks which stress the fundamental neutrality of the bill as between labour and management. It is not designed to protect employers at the expense of workers or *vice versa*; if it is pro anybody, I hope it is the public.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of bills

Council went into Committee.

**MASS TRANSIT RAILWAY (LAND RESUMPTION AND
RELATED PROVISIONS) (AMENDMENT) BILL 1975**

Clauses 1 and 2 were agreed to.

**LANDLORD AND TENANT (CONSOLIDATION)
(AMENDMENT) (NO 3) BILL 1975**

Clauses 1 and 2 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

Mass Transit Railway (Land Resumption and Related Provisions)
(Amendment) Bill and the

Landlord and Tenant (Consolidation) (Amendment) (No 3) Bill

had passed through Committee without amendment and moved the third reading
of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders I now
adjourn the Council until 2.30 p.m. on Wednesday the 30th of July.

Adjourned accordingly at twenty minutes past four o'clock.