

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 22nd October 1969****The Council met at half past Two o'clock**

[Mr PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR HUGH (SELBY) NORMAN-WALKER, KCMG, ODE, JP
THE HONOURABLE THE COLONIAL SECRETARY (*ACTING*)
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS (*ACTING*)
MR PAUL TSUI KA-CHEUNG, OBE, JP
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN (JAMES) COWPERTHWAIT, KBE, CMG, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
THE HONOURABLE KAN YUET-KEUNG, CBE, JP
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHUPUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

ABSENT

THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE FUNG HON-CHU, OBE, JP

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

PAPERS

The following papers were laid pursuant to Standing Order No 14(2): —

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
Merchant Shipping Ordinance.	
Merchant Shipping (Control of Ports) (Amendment) (No 2) Regulations 1969	152
Training Centres Ordinance.	
Tai Lam Training Centre Declaration 1969	153
Drug Addiction Treatment Centres Ordinance.	
Tai Lam Drug Addiction Treatment Centre for Women Order 1969	154
Prisons Ordinance.	
Tai Lam Women's Prison Order 1969	155

Sessional Papers 1969-70: —

- No 12—Annual Report by the Postmaster General for the year 1968-69
(published 3.10.69).
- No 13—Annual Report by the Commissioner for Census and Statistics for
the year 1968-69 (published 22.10.69).
- No 14—Annual Report of the Hong Kong Trade Development Council for
the year 1967-68 (published 22.10.69).
- No 15—Annual Report by the Director of Civil Aviation for the year 1968-
69 (published 10.10.69).

ORAL ANSWER TO QUESTION**Electronic Technician Course**

1. MR S. Y. CHUNG asked: —

Is it true that an electronic technician course, which 36 students had already been enrolled for and which was due to commence in September this year at the new Morrison Hill Technical Institute, has been postponed indefinitely and that the reason for the postponement was due to lack of teaching staff?

MR J. CANNING: —The short answer to the question, Sir, is "yes" but I should like to inform Members that the public announcement inviting applications for the course and the individual notifications to elected applicants made it clear that the operation of the course was dependent on suitable staff being recruited.

I very much regret that it has not proved possible yet to find the staff required. The posts were advertised in June of this year and the most satisfactory candidates were serving officers who cannot be released from their present duties. Every effort is being made to recruit replacements for these officers as rapidly as possible but no assurance can be given that appointments will be possible by any particular date. Electronics is a rapidly developing and highly specialized field and there is a general shortage of qualified people.

DR CHUNG: —Will my honourable Friend give this Council some indication when he would be able to solve this staff problem and to have this electronic technician course implemented?

MR CANNING: —I tried to indicate in my reply, Sir, that I could not give an assurance because I cannot tell whether we will have satisfactory candidates or not. We are trying, we have advertised, the process of interview is going on, and I cannot yet say if we will have suitable people or not, nor, I am afraid, can I give an assurance that it will be possible by any particular date.

DR CHUNG: —Sir, will it be two years or 5 years or 10 years?

MR CANNING: —I hope, Sir, it might be this year.

DR CHUNG: —Thank you, Sir.

WORKMEN'S COMPENSATION (AMENDMENT) BILL 1969

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1969

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

WORKMEN'S COMPENSATION (AMENDMENT) BILL 1969

MR R. M. HETHERINGTON moved the second reading of: —"A bill to amend the Workmen's Compensation Ordinance."

He said: —Sir, the Workmen's Compensation Ordinance was originally enacted in 1953*. Since then it has been well tested and, I

* 1953 Hansard, pages 253, 276 and 285.

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believe, the soundness of its foundations confirmed. Minor alterations have been made from time to time in the structure of its provisions but, basically, these have remained unchanged. It was realized some time ago that, with the development of the economy during the last decade and a half, a comprehensive re-examination of the Ordinance would be appropriate. The amending bill now before Council is the result of this review. While it maintains the two main underlying principles of the existing Ordinance that, firstly, employers are required to pay compensation for loss of earning capacity suffered by their employees as a consequence of injury by accident arising out of and in the course of employment and, secondly, that the risks of liability for such compensation should be readily insurable, it extends the scope of protection, provides for better benefits, and makes some desirable procedural changes.

The most important changes concern periodical payments. These are the amounts payable by way of compensation during the temporary incapacity of an employee while unable to work because of injury.

At present, periodical payments are calculated at a rate of one half of the workmen's earnings at the time of the accident. Clause 10(a)(ii) of the bill increases the rate to two thirds. This is the minimum rate recommended by the International Labour Organization for territories complying with the ILO convention concerning workmen's compensation which was adopted in 1925. Most of the injured workmen covered by the Ordinance and those additional workers to be protected by the bill will directly benefit from this higher rate which will enable them better to meet their financial commitments while they are compelled to be absent from work.

It has been found that, under present legislation, a workman, whose injuries have involved fairly lengthy but successful treatment and whose permanent incapacity is assessed at a low rate, may have received, by way of periodical payments during treatment, an amount which has absorbed most or all of the compensation ultimately assessed. So, the workman leaves hospital with a significant disability but little, if any, cash. Clause 10(b) inserts a new subsection whereby compensation by way of periodical payments for temporary incapacity shall not be deductible from any lump sum payable for permanent incapacity or, where it occurs, subsequent death.

In some cases treatment for injury may be exceptionally prolonged. Clause 10(b) also inserts another new subsection the effect of which is that, if a temporary incapacity lasts for more than twenty-four months, the injured workman is to be regarded as having suffered

permanent incapacity and qualified to have compensation assessed accordingly.

The minimum rate of earnings for the purpose of calculating compensation for temporary incapacity is at present \$50 a Month. Clause 11(*b*) amends the relevant section to increase this minimum rate to \$100. This may seem unduly low but, because the ordinance covers a wide range of workers, there are some part-time and medically sub-normal employees for whom earnings at this level are appropriate.

Under the existing Ordinance, an injured workman is not entitled to receive a periodical payment for the first three days of incapacity unless that incapacity lasts for more than fourteen days. The administrative difficulties of setting the machinery of the Ordinance in motion for very small sums justify the retention of the principle that no compensation under the Ordinance should be payable in respect of incapacity lasting not more than three days. I have no doubt that good employers will voluntarily pay for this period notwithstanding the provisions of the Ordinance. It is considered that there is no good reason for not giving a workman who is incapacitated for more than three days an entitlement for the full period including the first three days. Clause 10(*a*)(iii) deletes the existing proviso of a qualifying period of fourteen days for compensation for the first three days of incapacity.

Experience has shown that there is frequently delay in the payment of periodical payments. The existing provisions are strengthened by clause 10(*b*) which introduces a new subsection to provide that the injured worker should receive these payments as far as possible on normal pay-days. Shorter intervals may be agreed on or ordered by the courts but, in any case, the interval must not exceed one month.

Another group of important changes in the bill concerns lump-sum payments of compensation for permanent incapacity.

For permanent total incapacity, compensation is at present limited to earnings of 48 months or a sum of \$24,000, whichever is the less. It is proposed to retain the limit of 48 months but to increase the maximum to \$60,000. Proportionate increases are payable to workmen who suffer permanent partial incapacity. Clause 7 amends the Ordinance accordingly for accidents which happen on or after 1st January 1970. This change will not affect workers whose earnings do not exceed \$500 a month but the increasing number of industrial and other workers earning more than this amount will qualify for higher compensation. It has been argued that there should be no limits on the amount payable for permanent total incapacity. On the other hand, to maintain the basic principle of easy insurability, it is considered that the limits proposed are realistic with regard to employment conditions

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at present existing in Hong Kong. The minimum amount of compensation for permanent total incapacity is at present fixed at \$2,400. This figure is based on assumed earnings of only \$50 a month. Analysis of past cases shows that only very small numbers of cases arise in respect of workers whose earnings are less than \$200 a month. It is considered that a realistic minimum figure should be \$200 a month, thus giving a new minimum amount of compensation, based on forty-eight months' earnings, of \$9,600. Clause 7 provides for this new minimum for accidents which happen on or after 1st January 1970 and will ensure that, in the few cases of workmen whose earnings are low, there will be reasonable lump-sum compensation for them.

Clause 8 introduces a new category of compensation in cases of permanent total incapacity of such a serious nature that a workman requires the constant attendance of another person for the essential actions of life. These cases are rare but, when they arise, it usually means that somebody must be employed to look after the injured workman at all times. Payment of such compensation will be at the discretion of the courts. The amount is to be sufficient to meet the cost of constant attention but, for reasons of insurability, a maximum of \$24,000 is fixed. The court may make an order for periodical payments for a period not exceeding two years before making a final award. During this time the court should be able, without prejudice to insurability, to reach a final decision in cases where there may be some doubt about the time during which constant attendance will be necessary.

The third major group of changes concerns compensation payable on death.

As for inter-related cases of permanent total incapacity and for similar reasons, the maximum amount payable is increased from \$18,000 to \$45,000 and the minimum amount raised from \$1,800 to \$7,200 by clause 6. The rates are lower than those for permanent total incapacity because the compensation does not have to provide for the maintenance of a permanently incapacitated workman in addition to his or her dependants.

It has been found that the present definition of a member of a family is too restrictive in determining whether or not a person is a dependant of a deceased workman. Cases have occurred where an aunt or other person unrelated by blood have brought up children who have later maintained their foster parents. It seems reasonable that, if such persons and other members of a workman's household can prove dependency to the satisfaction of the courts, they should be

eligible for compensation as dependants of the deceased. Clause 3(f) accordingly widens the definition of a member of the family.

In some cases a deceased worker has no dependants. The existing ordinance requires the employer to meet reasonable expenses of medical attendance and of burial up to a maximum of \$400. This figure is now too low and a new maximum of \$800 is introduced by clause 6(b).

The fourth major group of changes relates to the procedure in assessing partial incapacity.

The first schedule of the Ordinance lays down the percentage loss of capacity in a number of specific cases. Clause 28 increases these percentages by varying small amounts in conformity with practice elsewhere, based on experience. The second schedule specifies several occupational diseases for which compensation may be payable if they manifest themselves within a period of twelve months of the workman having been employed in an occupation involving risk of the related occupational disease. The limit of twelve months is inappropriate to some occupational diseases which may not manifest themselves for periods longer than one year. In a few cases, for example, for anthrax and some ulcerations, a period of twelve months is too long. Clause 29 amends the schedule so that appropriate and varying periods, based on medical experience of these diseases, are prescribed.

It is believed that, under existing legislation, medical practitioners who assess percentage losses of earning capacity normally take into account any disfigurement which may affect earning capacity. The opportunity is taken to draw attention to this possibility in clause 3(g) which appropriately amends the definition of partial incapacity.

The fifth group of important changes extends the scope of the Ordinance. This, at present, covers in general all workmen employed by way of manual labour without any limitation of wages and those who are employed otherwise if their earnings do not exceed \$700 a month. Since 1953, when this limit was introduced, wage rates have increased considerably and, in the course of time, many employees have fallen outside the protection of the Ordinance. A new ceiling of \$1,500 a month for non-manual workers is introduced by clause 2(a). As a result, the Ordinance would cover the same range of employees as those protected by the Employment Ordinance. It is intended to follow the same course in other items of legislation which are in the course of preparation.

Three groups of workers are at present specifically excluded from the benefits of the Ordinance. These are members of the Royal Hong Kong Defence Force, the Royal Hong Kong Police Force, the Royal

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Hong Kong Auxiliary Police Force, and the Essential Service Corps, agricultural workers, and domestic servants. It is considered that there are no logical grounds for their continued exclusion. Clause 2(c) and 4(c) have the effect of bringing them within the scope of the Ordinance. It has been found in practice that Government employees nearly always opt for lump-sum benefits under the Ordinance rather than take relevant pensions under other legislation and members of the forces referred to earlier and their dependants will now have a similar option between workmen's compensation and the benefits under the provisions of the relevant Ordinances dealing with their particular service.

Finally, Sir, there is a group of miscellaneous changes, some of principle and some of procedure.

It is considered that the present Ordinance does not adequately protect apprentices and other workmen under the age of 18 years who may suffer permanent incapacity. Their earnings are relatively low and yet they probably have to live with their incapacities for much longer periods than older workmen suffering the same degree of incapacity. Clause 11(b) introduces a new subsection requiring that the earnings of a workman under the age of 18 years should be assessed for the purposes of calculating compensation for permanent incapacity as if the young workman were an adult workman or, in the case of an apprentice, a qualified craftsman.

Under existing legislation, a workman, who may have suffered injury through the negligence or default of his employer, is required to elect either to take compensation under the Ordinance or to sue for common-law damages. In practice, the injured workman invariably feels obliged to elect for compensation and to forego any claim which he may have for damages at a higher rate in cases where it is clear that the employer was negligent. Clause 20 now permits the workman to recover compensation and also to sue for damages but provides that, if damages are awarded, the amount of compensation received is to be deducted. Clause 19 introduces a similar amendment in respect of claims for damages against third parties.

The present Ordinance provides that, where the injury to a workman is attributable to serious and wilful misconduct, the court may nevertheless award compensation which might not otherwise be payable. This discretion is available only when the injury results in death or serious and permanent incapacity. It is considered that this discretion should be extended to cases where serious incapacity, although not of a permanent nature, results. Clause 5(a)(ii) extends the discretion accordingly.

Many employers are now required to provide first aid for their employees under the Factories and Industrial Undertakings (First Aid in Registrable Workplaces) Regulations. Clause 5(b) introduces a new subsection to provide for the payment of compensation where injuries are suffered by accidents in the course of first aid training, competition, and exercise, or in actual rescue work during employment. Employees are deemed to be within the scope of the Ordinance even although they may, in such circumstances, be acting contrary to the law or to orders or instructions of employers or without instructions from employers in order to prevent or deal with personal injury or damage to the employer's property.

It is reasonable that a workman, who has suffered injury by accident and becomes fit, after treatment, to resume his employment, should not be liable to have his employment terminated during treatment. Clause 26 introduces a new section to maintain the continuity of an injured workman's employment until found either fit to resume work or to have suffered permanent incapacity. The provision does not impose any obligation on the employer to pay wages during absence from work on account of industrial injury.

It is unlawful under the existing ordinance to contract out of rights to compensation except where the workman has already received compensation for permanent incapacity. Without this exception such a worker might find it difficult to find employment because employers are likely to regard him or her as a greater accident risk. It is proposed to extend the same principle for contracting out under the control of the Commissioner of Labour to handicapped persons generally. Clause 22 accordingly provides for an appropriate new subsection.

At present, notice of an accident must be given to the Commissioner of Labour as soon as practicable. This requirement has been found to be insufficiently definite. Clause 14 amends the Ordinance to require notice of an accident or subsequent death of the injured workman to be given not later than seven days after the occurrence.

Clause 1(1) of the bill proposes that it should come into operation on 1st January 1970 except for clause 25, which is separately dealt with under clause 1(2). Clause 25 introduces a comprehensive new part to the Ordinance dealing with compulsory insurance. Under it, the Governor in Council is enabled, by notice in the *Government Gazette*, to declare employments for which compulsory insurance is to be imposed. It also provides machinery for enforcing such declarations. It is not considered that there is at present any necessity to impose compulsory insurance generally or for any particular employment. Nonetheless, the situation will be continuously kept under

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review and the powers invoked if such action should ever become necessary.

Sir, I have already taxed the attention of honourable Members in outlining the principal features. Consequently, I do not intend to deal with a number of other less important changes proposed by the bill. These are, I consider, adequately dealt with by the explanatory memorandum attached to the bill and require no further elaboration by me.

The bill has been considered by the Labour Advisory Board which unanimously endorsed it. The draft text has, for some time, been widely distributed to all organizations and persons expressing an interest in it and I am grateful to all those who have contributed towards its present form. I am pleased to be able to say that the provisions have a wide measure of support.

An estimate of the effects of the proposals on the basis of records in the Labour Department indicates that the total amount of benefits payable will increase by about 50%. Benefits under the existing Ordinance run at an annual level of about \$5 millions at present. The insurance companies engaged in providing cover for workmen's compensation risks were informed of the proposals to be incorporated in the bill and they came to the same conclusion regarding the increase in benefits. I hope that, when the companies revise their tariffs, they will find that it is not necessary to raise all rates by 50%. Many employers, in any case, enjoy rebates based on the total numbers covered. It is thought that smaller employers should not find the increased cost of insurance a significant additional burden.

Some concern has been expressed that the revised scheme may prove impracticable because of ignorance of both employers and employees of their statutory rights and obligations. The Labour Department will, as it always does for new legislation, prepare a guide and will endeavour to give it the widest publicity. It may not be generally known that industrial health nurses serve in all hospitals to which injured cases are brought and report all relevant cases to the Workmen's Compensation Unit of the Labour Department. I believe that this unit becomes aware of nearly all serious cases and most other cases. To improve further this system of surveillance, steps have recently been taken, with the co-operation of the Medical and Health Department, to ensure that cases involving patients dealt with at clinics or injured in traffic accidents or cases which are taken direct to public mortuaries are also reported where there is some indication that they may be connected with industrial accidents. This system

will, I feel sure, assist the Workmen's Compensation Unit to protect the right of all injured workmen to obtain appropriate compensation for which, on investigation, they are found to be eligible.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE ACTING COLONIAL SECRETARY (MR D. R. HOLMES).

Question put and agreed to.

Explanatory Memorandum

The Bill seeks to amend the Workmen's Compensation Ordinance (hereinafter referred to as the Ordinance) in a number of respects.

Clause 2. The amendment in paragraph (a) of this clause widens the application of the Ordinance in the case of non-manual employees. This is effected by raising the ceiling of the salary limit in paragraph (a) of the proviso to section 2(1) of the Ordinance from \$700 to \$1,500 a month. There is no change in the case of manual labourers. The Ordinance covers every manual labourer with the few exceptions set out in the proviso to section 2(1). The deletion of paragraph (e) of the proviso to section 2(1) brings domestic servants within the provisions of the Ordinance.

Clause 3. This clause makes necessary amendments to the definition section of the Ordinance. The amendment of the definition of "member of the family" includes as dependants of an injured workman persons not related to him by blood or adoption who live as members of his household.

Clause 4. The amendment in paragraph (c) of this clause brings within the provisions of the Ordinance members of the various Hong Kong civil defence forces.

Clause 5. The amendments in paragraph (a) of this clause give a discretion to the Court to award compensation where a workman, who is injured due to his serious and wilful misconduct or who deliberately aggravates an injury, dies or suffers serious incapacity. At present this discretion applies only where the injury results in death or serious and permanent incapacity. Paragraph (a) of the proposed proviso provides that an employer is liable where an injury results in partial incapacity of a permanent nature even though the injured workman is not incapacitated from earning full wages for a period of more than three days.

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The proposed subsections in paragraph (b) of this clause entitle a workman to compensation if he is injured in the course of first aid training or rescue work. This provision is necessary because many employers are required by law to provide first aid for their employees.

Clause 6. The amendment in paragraph (a) of this clause (proposed paragraph (a)(iii)) raises the maximum lump sum compensation payable in respect of fatal accidents occurring on or after 1st January 1970 to thirty-six months' earnings or \$45,000, whichever is the less. The current lump sum maximum, which is \$18,000 would apply in the case of fatal accidents between 1st May 1965 and 31st December 1969. The proposed higher maximum will enable dependants of a deceased workman who was earning wages of more than \$500 a month to receive compensation which is more commensurate with his earnings. The amendment also fixes the minimum amount of compensation at \$7,200 in the case of fatal accidents occurring on or after 1st January 1970. This would enable dependants of a deceased workman whose earnings were unusually low to get compensation of a reasonable amount. Any periodical payments made under section 9 of the Ordinance would not be deducted from compensation paid in fatal cases.

The amendment in paragraph (b) of this clause increases the amount payable by an employer for burial expenses and expenses of medical attendance of a workman who leaves no dependants from \$400 to \$800.

Clause 7. Paragraph (c) of proposed section 7 increases the maximum lump sum compensation payable for permanent total incapacity from \$24,000 to \$60,000 in the case of accidents occurring on or after 1st January 1970. The reasons for the increase are the same as for the increase in compensation for fatal cases. The minimum compensation is \$9,600. As a consequence of these new limits, compensation payable for permanent partial incapacity where a workman's earnings are above \$500 a month or under \$200 a month will be higher.

Clause 8. The proposed section 7A creates a new category of additional compensation where permanent total incapacity is of such a serious nature that a workman has to have constant attention of another person to perform the essential actions of life. This additional compensation would be awarded by the Court on considering the probable duration and cost of the constant attention. The maximum amount is fixed at \$24,000.

Clause 9. The amendment to section 8 of the Ordinance is to make it clear that, in the case of an injury which is not specified in the First Schedule to the Ordinance, a resulting permanent partial incapacity is to be compensated on the same basis as in the case of the scheduled injuries, namely as a functional loss with potential (if not immediate) loss of earning capacity.

Clause 10. The amendment in paragraph (a)(ii) of this clause increases the rate of periodical payments from one-half to two-thirds of the difference between earnings before and after the accident.

By the deletion of paragraph (b) of the proviso to section 9(1) and the insertion of the proposed subsection (1A) a workman whose incapacity extends for more than three days will be entitled to compensation for the full period.

The proposed subsection (1C) provides that no compensation paid or payable for temporary incapacity shall be deducted from any compensation payable subsequently for death or permanent incapacity. The proposed subsection (1D), on the other hand, provides that, where periodical payments have been made over a period of 24 months, an injured workman is to be regarded as having suffered permanent incapacity and compensation is to be assessed accordingly.

Clause 11. The proposed subsections (1B) and (1C) contain new provisions for calculating earnings of workmen under the age of 18 and of apprentices, for purposes of assessing compensation for permanent incapacity. As a result such workmen will get the same amount of compensation as adult workmen or qualified craftsmen. The proposed subsection (1D) raises the minimum monthly earnings from \$50 to \$100 for purposes of calculating compensation.

Clause 12. The amendment of the proviso to section 12(2) of the Ordinance enables periodical payments to be made direct to the injured workman. The proposed subsection (3) increases the amount which may be paid on account of a pending claim from \$500 to \$1,000.

Clause 13. The period within which application for compensation may be made is extended from 6 months to 12 months from the date of the accident or death, as the case may be. The proposed subsection (2A) provides that where a workman employed by a contractor is injured it is sufficient to give notice of the accident to the contractor.

Clause 14. The proposed subsections (1) and (2) prescribe a period of 7 days within which notice of an accident or subsequent

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death is to be given by an employer to the Commissioner. The proposed subsection (2A) empowers the Commissioner to make inquiry into dependency and to make representation on behalf of an injured workman. The proposed subsection (2B) enables the Court to take into consideration, for purposes of section 12(1) of the Ordinance, a report from the Commissioner of his findings on an inquiry under the proposed subsection (2A).

Clause 15. The amendment to section 16(5) extends from 3 months to 6 months the time within which an agreement between a workman and his employer as to compensation may be altered by the Court.

Clause 16. The amendment to section 18(2) is consequential upon the proposed amendment of section 9.

Clause 17. The amendments in this clause enable periodical payments to be ended or diminished in certain cases by agreement without an order of the Court.

Clause 18. The proposed subsection (2) gives the District Court jurisdiction to hear all common law claims for damages for personal injuries to workmen, even if these exceed the usual monetary limits of the Court's jurisdiction.

Clause 19. The proposed section 24 provides that an injured workman may both claim compensation under the Ordinance from his employer and also take proceedings against any other person liable to pay damages at common law. In such an event the injured workman would be able to recover compensation or damages, whichever is the greater.

Clause 20. The proposed section 25(1) contains a similar provision as in new section 24. It enables an injured workman to claim compensation from his employer and also to take proceedings against him to recover damages at common law or under any enactment, but any damages so recovered would be reduced by the amount of any compensation paid or payable under the Ordinance.

Clause 21. The effect of the amendment is to exclude from the application of the Ordinance persons employed on Hong Kong ships who are remunerated wholly by shares in the profits or earnings of the working of such ships.

Clause 22. The amendment in this clause widens the exception to the general prohibition against contracting out of rights to compensation. Persons suffering from certain handicaps are

enabled to enter into agreements, with the authority of the Commissioner, reducing or giving up their rights to compensation in respect of any further personal injury by accident.

Clauses 23, 24 and 29. The various amendments in these clauses prescribe appropriate time limits within which claims for compensation may be made in respect of the occupational diseases set out in the Second Schedule to the Ordinance. The new periods are based on medical experience of such diseases.

Clause 25. The proposed Part IIIA relates to compulsory insurance of workmen. This Part will not come into force until a date of commencement is appointed (clause 1) and insurance will be mandatory only in respect of those employments which are prescribed by the Governor in Council by notice in the *Gazette* (new section 34B(1)). The other provisions of this Part are—

Section 34C provides for the authorization of insurance companies to undertake accident insurance business for the purposes of this Part.

Section 34D prohibits employment of workmen in any employment which may be prescribed under new section 34B(1) unless such workmen are insured against employer's liability under the Ordinance and independently of the Ordinance.

Section 34E provides for the giving of a bond with sufficient sureties to stand in lieu of a policy of insurance and for the enforcement of such bond.

Section 34F declares certain conditions, if contained in a policy of insurance, to be void.

Section 34G prescribes the conditions under which liability for payment by an insurer or surety arises.

Section 34H gives an injured workman the right to proceed directly against his employer's insurer to recover any compensation or damages.

Section 34I makes it obligatory for authorized insurers to keep records of statistics and information relating to the business of insurance and to furnish such statistics and information to the Commissioner upon demand.

Clause 26. The proposed section 36A prevents an employer, except with the consent of the Commissioner, from terminating a contract of service or apprenticeship during the incapacity of a worker in respect of which he is entitled to compensation until either the workman is certified fit to resume work or compensation for permanent incapacity becomes payable.

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[*Explanatory Memorandum*]

Clause 27. The amendment of section 37 empowers regulations to be made prescribing conditions subject to which insurance companies may carry on accident insurance business in the Colony.

Clause 28. The amendments to the First Schedule to the Ordinance increase to a small extent the percentage loss of earning capacity in respect of certain injuries.

**INTERPRETATION AND GENERAL CLAUSES
(AMENDMENT) BILL 1969**

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of:—"A bill to amend the Interpretation and General Clauses Ordinance."

He said:—Sir, this bill seeks to make a number of amendments of a minor nature, some due to experience of the working of the principal Ordinance since it was passed in 1966* and others because of changes which have taken place since then.

Clause 2 of the bill amends the definition section to include the term "Acting Governor" which has replaced the older phrase "Officer administering the Government" in the Letters Patent†. It also adds the word tunnel to the definition of road, so that the cross harbour tunnel can be governed by road traffic legislation when it is completed.

Clause 3 amends section 34 of the Ordinance, so as to require subsidiary legislation to be laid on the table of this Council at the first sitting after its publication instead of the first meeting. This is to accord with the new standing orders, which refer to sittings and not to meetings.

Clause 4 replaces section 55, which enables the Governor to declare a change in the title of a public office or Government Department by notice in the *Gazette*. The effect of such a notice is that all references in the laws to the former title will then be construed as references to the new title of the public office or the Government Department. The new clause will enable this to be done in the case of any public office, public body or person which or who is mentioned in any law and is thus somewhat wider in its scope.

Section 64 of the Ordinance at present empowers the Governor in Council to make rules governing the procedure to be followed in appeals to him other than appeals by way of petition. It is thought

* 1966 Hansard, page 378.

† (Article XVII).

desirable to extend this power to enable him also to make procedural rules governing other kinds of appeal, including appeals which are brought by way of petitions and objections, whether these are written or whether they are made by appearance before the Council, and clause 5 amends section 64 accordingly.

In some Ordinances, the consent of some public officer is required before a prosecution is initiated. Clause 7 of the bill, which inserts a new section 91A in the Ordinance, is intended to make it clear that this in no way derogates from the general control of the Attorney General over prosecutions.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The object of this Bill is to add certain provisions to, and to correct errors in, the Interpretation and General Clauses Ordinance.

2. Clause 2 makes certain amendments to the interpretation section. The definition of "Governor" is amended by deleting paragraph (b) "any officer for the time being administering the Government" and substituting "the Acting Governor". The definition of "officer administering the Government" is deleted. These amendments are consequential to amendments to Articles XVII and XVIIA of the Letters Patent.

3. Clause 2 also amends the definition of "street" and "road" by including "tunnel".

4. The new Legislative Council Standing Orders refer to a "sitting" of the Council instead of a "meeting". This change has necessitated an amendment to section 34 of the principal Ordinance which is effected by clause 3.

5. The effect of clause 4 is to extend the provisions of section 55, which relate to changes of title of public offices and Government departments, to public bodies and to any persons referred to in Ordinances.

6. Section 64 of the principal Ordinance at present enables rules to be made governing the procedure to be followed only in appeals, other than by way of petition, to the Governor in Council. It is considered desirable to amend section 64 so that rules may

Interpretation and General Clauses (Amendment) Bill—second reading

[Explanatory Memorandum]

be made governing also the procedure to be followed in appeals by way of petition land in dealing with objections to the Governor in Council, whether in writing or otherwise. Clause 5 seeks to effect these amendments.

7. Clause 6 seeks to improve the wording of section 77.

8. A few Ordinances provide that the consent of an authority other than the Attorney General is required for a criminal prosecution. Clause 7 adds a new section providing that such a requirement shall not derogate from the Attorney General's powers. It is considered desirable that the powers of the Attorney General in respect of the prosecution of criminal offenders should in no way be eroded.

9. Clause 8 amends the boundaries of the Harbour as set out in the Third Schedule by deleting the references to Tsing Yi Rock. Owing to reclamation Tsing Yi Rock no longer exists and is now part of Tsing Yi.

SUPPLUNIENTARY APPROPRIATION (1968-69)**BILL 1969****Resumption of debate on second reading (8th October 1969)**

Question again proposed.

Question put and agreed to.

Bill read the second time.

Committee Stage**OFFENCES AGAINST THE PERSON (AMENDMENT)****(No 2) BILL 1969**

Clauses 1 to 4 were agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Offences against the Person (Amendment) (No 2) Bill 1969 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE FINANCIAL SECRETARY (SIR JOHN COWPERTHWAIT) *pursuant to Standing Order No 59* moved the third reading of the Supplementary Appropriation (1968-69) Bill 1969.

Question put and agreed to.

Bill read the third time and passed.

ADJOURNMENT

3.07 p.m.

Motion made, and question proposed. That this Council do now adjourn—
THE ACTING COLONIAL SECRETARY (MR HOLMES).

Question put and agreed to.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 5th November 1969.

Adjourned accordingly at eight minutes past Three o'clock.