

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 23 November 1977****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE ACTING GOVERNOR (*PRESIDENT*)
SIR DENYS TUDOR EMIL ROBERTS, KBE, QC, JP

THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP

THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, CMG, QC, JP

THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR LI FOOK-KOW, CMG, JP

THE HONOURABLE DAVID HAROLD JORDAN, CMG, MBE, JP
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS

THE HONOURABLE DAVID AKERS-JONES, JP
SECRETARY FOR THE NEW TERRITORIES

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

THE HONOURABLE DAVID WYLIE McDONALD, JP
DIRECTOR OF PUBLIC WORKS

THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY, CMG, JP
DIRECTOR OF EDUCATION

THE HONOURABLE DAVID GREGORY JEAFFRESON, JP
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE ALAN JAMES SCOTT, JP
SECRETARY FOR HOUSING

THE HONOURABLE GARTH CECIL THORTON, QC
SOLICITOR GENERAL

THE HONOURABLE EDWARD HEWITT NICHOLS, OBE, JP
DIRECTOR OF AGRICULTURE AND FISHERIES

THE HONOURABLE THOMAS LEE CHUN-YON, CBE, JP
DIRECTOR OF SOCIAL WELFARE

THE HONOURABLE DEREK JOHN CLAREMONT JONES, JP
SECRETARY FOR THE ENVIRONMENT

DR THE HONOURABLE THONG KAH-LEONG, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, JP
SECRETARY FOR SOCIAL SERVICES

THE HONOURABLE PETER BARRY WILLIAMS, JP
COMMISSIONER FOR LABOUR

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, JP
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE JOHN CHARLES CREASEY WALDEN, JP
DIRECTOR OF HOME AFFAIRS

DR THE HONOURABLE CHUNG SZE-YUEN, CBE, JP

THE HONOURABLE LEE QUO-WEI, CBE, JP

THE HONOURABLE OSWALD VICTOR CHEUNG, CBE, QC, JP

THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP

THE HONOURABLE PETER GORDON WILLIAMS, OBE, JP

THE HONOURABLE LI FOOK-WO, OBE, JP

THE HONOURABLE JOHN HENRY BREMRIDGE, OBE, JP

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

THE HONOURABLE LO TAK-SHING, OBE, JP

THE HONOURABLE FRANCIS YUAN-HAO TIEN, OBE, JP

THE HONOURABLE ALEX WU SHU-CHIH, OBE, JP

THE REV THE HONOURABLE JOYCE MARY BENNETT, JP

THE HONOURABLE CHEN SHOU-LUM, JP

THE HONOURABLE LYDIA DUNN, JP

DR THE HONOURABLE HENRY HU HUNG-LICK, OBE, JP

THE HONOURABLE LEUNG TAT-SHING, JP

THE REV THE HONOURABLE PATRICK TERENCE McGOVERN, SJ, JP

THE HONOURABLE PETER C. WONG, JP

THE HONOURABLE WONG LAM, JP

DR THE HONOURABLE RAYSON LISUNG HUANG, CBE, JP

THE HONOURABLE CHARLES YEUNG SIU-CHO, JP

ABSENT

THE HONOURABLE JAMES WU MAN-HON, OBE, JP

THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR STEPHEN TAM SHU-PUI

Papers

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

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation:	
Immigration Ordinance. Immigration (Amendment) (No 3) Regulations 1977.....	268
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Boilers and Pressure Receivers Ordinance. Boilers and Pressure Receivers (Exemption) (Consolidation) (Amendment) (No 2) Order 1977	274
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Aerial Ropeways (Safety) Ordinance. Aerial Ropeways (Operation and Maintenance) Regulations 1977 (Commencement) Notice 1977.....	276
Sessional Papers 1977-78:	
No. 19—Annual Report of the Hong Kong Trade Development Council 1976- 77 (published on 23.11.77.)	
No. 20—Supplementary Provisions for the Quarter ended 30 June 1977 (published on 23.11.77.)	

Oral answers to questions

Traffic accident files

1 REV JOYCE M. BENNETT asked:—*Will Government, Sir, state how long traffic accident files are kept by the Police before destruction?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, the files concerned are retained for varying lengths of time depending upon the seriousness of the accident. Those relating to fatal accidents are kept for five years, those involving personal injury for three years and other cases, where no death or injury has resulted, for one year.*

REV JOYCE M. BENNETT:—*Sir, in view of the seriousness of certain accident blackspots, would it not be better to keep all files for longer?*

SECRETARY FOR THE ENVIRONMENT:—*I understand that the length of time for which these files are kept has been agreed between the Police and the Law Society and that to keep them longer would involve problems of storage. There isn't enough space to keep them.*

Refund to taxpayers

2 MR S. L. CHEN asked:—*Sir,*

- (a) *does Government agree that there is considerable delay on the part of the Inland Revenue Department in refunding to taxpayers any amount of tax which was not payable or which was exempt in the first instance?*
- (b) *if so, what steps will the Government take to reduce the delay?*

THE FINANCIAL SECRETARY:—*Generally speaking, Sir, there is no delay in making refunds (laughter) once the Department is satisfied that refunds are due (laughter). I say generally speaking, because a few—very few—cases of delay do occur due to human frailty, and such cases are inevitable in any large organization, though of course neither the Commissioner of Inland Revenue nor I would wish to excuse them.*

I sympathize, as a taxpayer's friend, with a taxpayer's desire to obtain an early refund of tax which he considers due to him, but the Commissioner and his staff are duty bound to seek evidence in support of a claim for refund and check this evidence. The time taken to establish that a refund is in fact due varies with the type of refund involved and with the complexity of the case.

A large number of claims for refunds is made every year, involving large sums of money. Not all these claims for refunds can be dealt with at once, any more than all assessments and demands for tax due can be issued at

once. Some 70,000 actual *cases* of refunds, involving \$171 million worth of revenue were dealt with by the Department last financial year. This year the Commissioner expects to deal with more than 90,000 cases involving payments of over \$200 million. This is due to the increases in the personal allowances introduced for 1976-77 final assessment and 1977-78 provisional assessment. These increases were, of course, proposed in my last-budget speech and approved by this Council.

Nonetheless, I can assure Mr CHEN that, from the time it has been established that a refund is due, and a refund notice is issued, the actual refund is effected in less than a week.

MR S. L. CHEN:—*Sir, I accept the statement of the last sentence but I still want to know what steps Government is going to take to ensure minimum delay in establishing the refund is due?*

FINANCIAL SECRETARY:—These delays, Sir, are frequently due to the complexity of the particular applications and the inadequate way in which they are submitted. Occasionally, they are due to human frailty. I wouldn't wish to suggest for one moment that in the processing of these refund applications the Commissioner and his staff are in any way complacent and they have in fact, sought to streamline processing procedures in recent times and indeed the computer programme has been extended this year so that cheques as well as the refund notices can be prepared by the computer and I think that computer-produced refunds and cheques will be making their first appearance next month.

MR T. S. LO:—*I suppose computer-produced errors will no longer be due to human frailty.*

FINANCIAL SECRETARY:—That was a comment, Sir, and as such does not require a reply.

Companies Ordinance—amendment

3 MR F. W. LI asked:—*Sir, will Government state what progress has been made in drafting an amendment to the Companies Ordinance to provide for limited companies already established to dispense with 'Limited' after incorporation?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, a bill which includes provisions to bring into effect the recommendations on this issue in the second report of the Companies Law Revision Committee has been drafted and will be put to the Executive Council shortly.

Mutual Aid Committees—financial assistance for

4 MR WONG LAM asked in the Cantonese dialect:—

政府可否考慮給予互助委員會若干津貼，以協助其支付各項必需費用，例如差餉？

(The following is the interpretation of what he asked.)

Will Government consider giving financial assistance to mutual aid committees to help them meet such necessary expense as rates?

DIRECTOR OF HOME AFFAIRS:—Yes, Sir, a recommendation has been made to the Finance Committee of this Council that any mutual aid committee be allowed to claim reimbursement of actual expenses incurred in operating its offices up to a total of \$300 a quarter, and if the recommendation is accepted I will be ready to consider rates as a reimbursable item within the \$300 limit in any case where the office of the Mutual Aid Committee is used exclusively for the Committee's activities.

Street lighting—Sha Tau Kok/Fanling

5 DR HU asked:—*Sir, could this Council be informed when street lighting on the motor road between Sha Tau Kok and Fanling would be installed?*

DIRECTOR OF PUBLIC WORKS:—Sir, the section of road between Sha Tau Kok and the restricted area check point has already been provided with street lighting.

Installation works for lighting to another section of the road between Luen Wo Market and Loi Tung will commence in April 1978.

The current Street Lighting Programme does not allow for the installation of lighting to the remaining sections of the road. I should explain that proposals for new or improved street lighting are considered by a Vetting Committee which determines priorities and prepares submissions for approval by the Public Works Sub-Committee. To date no proposal for lighting of the remaining sections of the Sha Tau Kok/Fanling road has been made but as Dr HU has raised the matter it will be referred to the Vetting Committee for consideration for inclusion in the Street Lighting Programme.

FM reception—improvement on

6 MR PETER C. WONG:—*Sir, will Government consider installing more powerful FM broadcasting transposers at strategic places such as Beacon Hill*

in order to improve the FM reception particularly in the northern part of Hong Kong Island?

SECRETARY FOR HOME AFFAIRS:—The Postmaster General is preparing an overall FM transmission scheme aimed to improve FM reception in Hong Kong generally. Pending the production of this scheme, transposers to supplement Radio Television Hong Kong's main transmitter were installed earlier this year at Wah Fu and Beacon Hill to plug significant gaps. While the performance of these transposers is regarded by the Postmaster General as generally satisfactory, consideration is currently being given to increasing the power at Beacon Hill so as to facilitate better reception in certain areas in the northern part of Hong Kong Island.

MR PETER C. WONG:—*Sir, when will the overall FM transmission scheme be ready and how long will it take to implement it?*

SECRETARY FOR HOME AFFAIRS:—Preparation of the scheme, Sir, will probably be finalized early next year but as regards implementation, this depends on what the scheme involves. I am afraid I cannot speculate at this point as to when it will be implemented.

'Give Way' signs—installation

7 REV JOYCE M. BENNETT asked:—*Sir, by what date will all approach roads to roundabouts have 'Give Way' signs erected for the guidance and safety of motorists?*

DIRECTOR OF PUBLIC WORKS:—Sir, 'Give Way' signs are not used on the approach roads to roundabouts as under existing Regulations they would have no legal significance.

An amendment to the Road Traffic (Roads and Signs) (Amendment) Regulations 1977 to allow the use of these signs in such situation is in preparation and is expected to be enacted early next year.

However it is not intended that 'Give Way' signs be erected on all roundabouts as to do so would create serious traffic delays on some approach roads because of one dominant traffic stream claiming and retaining the right of way. Each site will be examined to ensure that the erection of the signs will be beneficial on both traffic and safety grounds.

REV JOYCE M. BENNETT:—*Can you then explain why 'Give Way' signs have been erected before roundabouts in Kwun Tong?*

DIRECTOR OF PUBLIC WORKS:—I am not aware that any 'Give Way' signs have been erected on roundabouts. Many have already been installed at uncontrolled junctions and these are already covered under existing legislation.

REV JOYCE M. BENNETT:—*Sir, are you not aware how dangerous the situation can arise when two roundabouts in close proximity have different arrangements? I speak very feelingly from experience.*

DIRECTOR OF PUBLIC WORKS:—The intention would be to bring in this legislation to allow the proper use of ‘Give Way’ signs. If there is a variation between these, it will be examined and amended.

REV JOYCE M. BENNETT:—Thank you.

Social Welfare—setting standard for

8 MISS KO asked:—*Sir, does Government agree that the principles that should be followed in setting standards for social welfare are:—*

- (a) to protect the well-being of people in need of social welfare services;*
- (b) to be realistic and flexible in our approach; and*
- (c) to review and improve the standards during the course of development?*

DIRECTOR OF SOCIAL WELFARE:—Sir, I fully appreciate that there is a need in the future to set standards for our social welfare services. Indeed in connection with our early attempts towards the evaluation of welfare services it became clear that unless we had sets of standards which could be used to measure, it would be very difficult to evaluate services effectively.

I agree with Miss KO on the general principles which she has just enumerated and I am sure these will be very useful guidelines for the Government and organizations concerned when formulating standards for agencies. However, these being general principles cannot by themselves be used as standards. When it comes to actually writing down the standards, one would need to be much more specific, because it would not be possible to leave it to individual agencies to interpret what is regarded as realistic or to what extent a certain standard can be flexibly applied. Of course, I am in entire agreement with Miss KO that we should avoid setting ourselves unrealistically high standards at the outset, but what has been laid down initially as standards could be and should be reviewed and where possible improved.

Miss KO’s suggested principles are valuable, and I intend to draw the attention of the Social Welfare Advisory Committee and the Hong Kong Council of Social Service to these when they are asked to consider matters related to standard setting or to the evaluation of welfare services in Hong Kong.

MISS KO:—*Sir, will Government work on more detailed guidelines for setting standards on social services and on specific guidelines for various areas which require them?*

DIRECTOR OF SOCIAL WELFARE:—Yes, Sir, we will look into this.

Code of Practice on access for the disabled

9 REV MCGOVERN asked:—*Sir, what measures has Government taken to publicize the recommendations in the Code of Practice on access for the disabled to buildings, which was published by the Public Works Department in June 1976?*

DIRECTOR OF PUBLIC WORKS:—Sir, the Code of Practice was circulated to all Authorized Persons and Registered Structural Engineers in June 1976 under cover of a practice note which sought their support in adopting the Code in the design of buildings. At the same time the Code was circulated to all interested Government departments and copies were supplied to the Hong Kong Council of Social Service for distribution.

Only a limited number of this first edition of the Code was produced for free issue to those most closely involved as it was thought that experience would show that variations and improvements to the Code would be necessary. But, because of the long lead time which precedes actual construction there is as yet insufficient information available to justify amendment, reprinting and general publication of the Code.

It is intended that, when the revised Code of Practice is prepared, an intensive campaign to publicize the Code be started and it is hoped that the sub-committees now being formed by the Rehabilitation Development Coordinating Committee will assist in the campaign.

REV MCGOVERN:—*I am gratified that an intensive campaign is being prepared. In view of the fact that it has been brought to my notice that informed members of the public have fairly recently met both Government officers and private individuals directly involved in building planning who had never heard of this Code, would Government be willing to take more immediate and effective steps to publicize the Code?*

DIRECTOR OF PUBLIC WORKS:—We are in fact going into this in some degree and have asked for another small reprint which will be given wider distribution.

Code of Practice—statutory effect

10 REV MCGOVERN asked:—*Sir, has Government any plans to make the Code of Practice statutory in the near future?*

DIRECTOR OF PUBLIC WORKS:—*Sir, when the Code of Practice was published it was not thought that the design of buildings should necessarily be controlled by law so as to compel accessibility for the disabled. The Code, therefore, was designed to deal with the generality of cases, it being left to the designer to incorporate such features as were appropriate and practicable for the individual buildings.*

Government agencies are following the Code and incorporating facilities for the disabled where practicable. Unfortunately, present information suggests that the response in the private sector has been limited. The Hong Kong Institute of Architects has recently been asked for any suggestions it may wish to put forward for improving the Code and whether they consider that an element of compulsion would be appropriate. Therefore although there are no plans to make the Code of Practice statutory in the near future, the question of whether some elements in it can be given statutory effect is being considered.

Motion (in Committee)

Supplementary provisions for the quarter ended 30 June 1977

Council went into Committee, pursuant to Standing Order No 58(2), to consider the motion standing in the name of the FINANCIAL SECRETARY.

THE FINANCIAL SECRETARY moved the following motion:—That this Council approves the proposals set out in Paper No 20.

He said:—*Sir, the schedule of supplementary provision for the first quarter of the financial year 1977-78, that is for the period 1 April to the 30 June 1977, covers a total amount of \$180.7 million. Of this sum, Public Works Non-Recurrent accounts for \$153.4 million and is required as a result of more rapid progress on a number of existing projects in the programme and the upgrading of 13 projects to Category A of the Public Works Programme.*

The supplementary provision covered by the schedule will not result in a net increase of expenditure for the year as offsetting savings have been found under other subheads of expenditure, or by the freezing of funds under Head 50 Miscellaneous Services Subhead 100 Additional commitments.

The Finance Committee has approved all items in the schedule and the purpose of this motion is simply to seek the covering approval of this Council.

Question put and agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the motion had been agreed to in committee without amendment.

Question agreed by the whole Council pursuant to Standing Order 58(4).

First reading of bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1977

POLICE FORCE (AMENDMENT) (NO 3) BILL 1977

LAW REVISION (MISCELLANEOUS AMENDMENTS) BILL 1977

WORKMEN'S COMPENSATION (AMENDMENT) (NO 2) BILL 1977

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

Second reading of bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1977

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to amend the Criminal Procedure Ordinance.’

He said:—Sir, it seeks to introduce general provision for the award by the High Court and District Court of costs to acquitted defendants in criminal cases. With limited exceptions, the Court of Appeal will also have power to award costs to persons whose appeals against conviction are allowed.

The principle which will guide the courts is that costs ordered to be paid under the new provisions should be such sums as appear reasonably sufficient to compensate the applicant for expense properly incurred. And costs awarded by the Court of Appeal to a successful appellant may include costs incurred on the trial or on any preliminary hearing.

Applications for costs will be subject to the scrutiny of the court itself, but there is provision for final taxation by the Registrar of the Supreme Court. In this respect, Sir, I would say that it has already been suggested to me that it may be preferable to leave the question of costs wholly with

the court in the normal case and I shall discuss this suggestion with Honourable Members in due course.

The power to award costs is wholly discretionary, and it will be for the courts to determine what policy they will pursue.

Costs awarded under these provisions will be paid out of the public revenue.

Motion made. That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL.

Question put and agreed to.

POLICE FORCE (AMENDMENT) (NO 3) BILL 1977

THE SECRETARY FOR SECURITY moved the second reading of:—‘A bill to amend the Police Force Ordinance.’

He said:—Sir, the Bill provides for the amendment of section 8(3) of the Police Force Ordinance to enable the Commissioner of Police to recognize an association of junior police officers. It is intended that police officers of the rank of station sergeant and below should be eligible for membership of the Association.

In considering the Bill Members may find it useful to have some information about staff associations in the Police Force. There are three associations of police officers already in existence. These are the Superintendents’ Association, the Local Inspectors’ Association and the Expatriate Inspectors’ Association.

There is, in addition, a Junior Consultative Council containing elected representatives from various formations. This Council meets periodically with the Commissioner and other senior officers and considers matters pertaining to the welfare of police officers below the rank of Inspector. I should add in parenthesis that its last meeting with the Commissioner was on 29 September this year. Since then events have highlighted a demand for an association of junior police officers on the lines of the other existing associations and the need for this is recognized. The proposed Association should provide this facility. Once it is functioning, the need for the continued existence of the Junior Consultative Council will be considered.

The constitution of the proposed Association will generally follow the principles already included in the rules of the Superintendents’ and the Inspectors’ Associations. However, a condition of recognition of the new Association by the Commissioner will be that there is provision in the Association’s constitution to bar interdicted officers from serving as office bearers, or committee members. The rules of the Association will also be

subject to the approval of the Commissioner and cannot be altered without his concurrence. It is intended that the Association should be representative of junior police officers serving in all formations and that membership be limited to serving officers.

I understand that the representatives of the Preparatory Committee of the proposed Association have accepted such provisions.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE SECRETARY FOR SECURITY.

Question put and agreed to.

LAW REVISION (MISCELLANEOUS AMENDMENTS) BILL 1977

THE SOLICITOR GENERAL moved the second reading of—‘A bill to repeal certain Ordinances and to make provision incidental thereto.’

He said:—Sir, this Bill illustrates one aspect of the unspectacular but useful work which is performed on a continuing basis by the Law Reform Section of the Legal Department in the interests of keeping the Laws of Hong Kong in good shape.

Clause 2 of the Bill repeals 4 Ordinances which have outlived their usefulness. These are listed in the First Schedule to the Bill.

First of these is the Vagrancy Ordinance which goes back to 1897 and is in general neither relevant nor apposite to the present circumstances of Hong Kong. Two sections are to be retained, those which make it an offence to beg for alms in a public place, and to do so in a threatening manner. It is convenient to place an updated version of these sections in the Summary Offences Ordinance and this would be achieved by clause 3 and the Second Schedule.

The Crown Lands Resumption (Chai Wan) Ordinance, the Defence (Finance) Regulations (Validation of Contracts) Ordinance and the Hong Kong General Chamber of Commerce (Amendment of Memorandum) Ordinance no longer serve any practical purpose on the statute book and therefore clause 2 removes them from it.

Clause 3 and the Second Schedule contain 2 minor amendments. Item 1 in that Schedule corrects a technical inconsistency in the Public Health and Urban Services Ordinance. Item 3 amends the Hong Kong War Memorial Fund Ordinance so as to extend from 1 to 6 months the period after each year during which the Committee which administers the fund must forward to the Chief Secretary their report and audited accounts. This amendment has been requested by the Committee.

Motion made. That the debate on the second reading of the Bill be adjourned—THE SOLICITOR GENERAL.

Question put and agreed to.

WORKMEN'S COMPENSATION (AMENDMENT) (NO 2) BILL 1977

THE COMMISSIONER FOR LABOUR moved the second reading of:—‘A bill to amend the Workmen’s Compensation Ordinance.’

He said:—Sir, workmen’s compensation is an area of social activity which requires regular review and amendment—and it would be a matter for concern if the Workmen’s Compensation Ordinance was not subject to the regular amendment that it receives in this Council.

The changes set out in the Bill—that is, to extend the benefits of the Ordinance to more non-manual workers; to extend the period for commencing application for compensation from 12 months to 24 months; to achieve uniformity in the assessment of compensation in certain cases; and to reduce delays in payment of compensation—have received careful attention from all those concerned during the past year and are now presented for Honourable Members’ consideration.

First—clause 2 of the Bill seeks to raise the wage ceiling for non-manual workers from the existing \$2,000 to \$5,000 a month. The Workmen’s Compensation Ordinance, originally enacted in 1953, was intended to enable all manual workers, irrespective of their earnings, and non-manual workers with low incomes to claim compensation for employment injuries without having to establish negligence on the part of the employer. The argument was that the higher-paid non-manual workers should be sufficiently enlightened or resourceful to insure or otherwise protect themselves against the risk of employment injuries. In 1953, a wage ceiling for non-manual workers was therefore set at \$700, and subsequently raised to \$1,500 in 1969 and \$2,000 in 1974. These increases reflected the rise in wages and the consequential need to restore comparable protection to non-manual workers at about the same level generally applicable in 1953.

This reasoning appears less relevant today. For non-manual employees covered by the Ordinance can now claim both workmen’s compensation under the Ordinance and civil damages under Common Law, provided that any amount of civil damages awarded is diminished by the amount of workmen’s compensation paid. Non-manual employees earning more than \$2,000 a month, however, are at a disadvantage. They cannot claim workmen’s compensation under the Ordinance and are liable to pay the costs of any proceedings for recovery of civil damages. Furthermore, they have to prove that their employer has a civil liability to pay damages. The proposed

amendment will place the majority of non-manual workers within the protection of the Ordinance.

Sir, this Bill also seeks to rectify anomalies in compensation payable for non-scheduled permanent partial incapacity. Prior to an amendment to the principal Ordinance in 1969, non-scheduled injuries (that is, injuries not listed in the First Schedule of the Ordinance), in many cases involving functional loss, were not compensatable unless they carried actual loss of earning capacity. The present section 9(1)(b) was intended to allow a worker with a non-scheduled injury to be compensated on the same basis as a scheduled injury (that is, based on a functional loss with immediate or potential loss of earning capacity). However, in practice this has not always happened. For scheduled injuries, the amount of compensation is based on a fixed percentage of loss of earning capacity as specified in the First Schedule, irrespective of personal circumstances such as former employment or age. For non-scheduled permanent partial incapacities, assessment is made only on the loss of earning capacity as a result of an injury. The assessment involves the comparison of what the injured person was capable of earning before the accident and what he can earn after the accident. Such a comparison involving value judgements is difficult and often leads to anomalies. There have been instances when a person who sustained a nonscheduled injury obtained more compensation than another who sustained a scheduled permanent incapacity of a similar nature. Clause 3 of the Bill rectifies this anomaly by amending section 9(1)(b) so as to achieve uniformity between assessments for injury specified in the First Schedule and assessments for injury of a like nature but not so specified.

This proposal is made in the interests of consistency of treatment of injured workmen and on the basis of the present principles of the Ordinance. The proposal should not be taken as implying that loss of future capacity is not potentially a desirable basis on which compensation should be assessed. However, as change to this new principle of assessment would involve significant changes in the Ordinance as a whole, this aspect will be examined by a Working Party shortly to be set up to make the next comprehensive review of the Ordinance.

Thirdly, extension of the time limit for the application for compensation is proposed— in clause 4 of the Bill. Under section 14 of the Ordinance, an application for compensation must be made within twelve months from the date of the accident, unless the Court gives leave to apply out of time. But some injuries have healing periods in excess of twelve months and permanent incapacity cannot be assessed before the expiry of the limitation period. When such a case is referred to Court, all the Court can do is to adjourn it until the assessment is made. Clause 4 amends subsection 14(1) to permit the period of limitation to be extended to 24 months. This reduces the anxiety of the workman and the time of the Court and of the officers of the Labour and other Departments concerned.

Fourthly—clause 5 of the Bill inserts a new section, imposing a surcharge in cases of unreasonable delay in payment of compensation. Under section 17, an employer and a workman may, after the injury in respect of which a claim for compensation has arisen, agree in writing as to the compensation to be paid by the employer, provided, first, that the amount agreed is not less than that payable under the Ordinance, and provided, second, that no such agreement is binding on either party until it has been approved in writing by the Commissioner for Labour. Experience has shown that in a number of cases, payment is delayed after agreements have been signed and approved by the Commissioner for Labour. Most employers involved in these cases have insured their workers against liability under the Workmen's Compensation Ordinance. But a number of these employers, in spite of the requirements of the Ordinance, wait for reimbursement from insurance companies before making payments to the workers concerned. In some cases, too, delay is caused by queries by the insurer with the employer on the accuracy of the calculation or the sufficiency of the insurance coverage taken out by the employer. Such delays in payment can cause hardship to the injured employee or his dependants. The proposal imposes a surcharge of five per cent of the agreed amount of compensation or \$50, whichever is greater, in addition to the agreed amount of compensation where the employer fails to effect payment within 21 days after approval of the agreement. I would add, at this stage, that these proposed arrangements to deal with unreasonable delays in payments should be considered as initial ones and that further consideration, after appropriate consultation, will be given to making them more comprehensive.

The Labour Advisory Board has endorsed these amendments and the four major employers' associations have also expressed agreement with them.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE COMMISSIONER FOR LABOUR.

Question put and agreed to.

CROWN RIGHTS (RE-ENTRY AND VESTING REMEDIES) (AMENDMENT) BILL 1977

Resumption of debate on second reading (9 November 1977)

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).

Committee stage of bills

Council went into Committee.

SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL 1977

Clauses 1 to 4 were agreed to.

New Clause 3A. 'Amendment of section 28'.

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order 46(6).

THE SOLICITOR GENERAL:—Sir, in accordance with Standing Order 46(6) I move that new Clause 3A as set out in the paper circulated to Honourable Members be read a second time.

Question put and agreed to.

Clause read the second time.

THE SOLICITOR GENERAL:—Sir, I move that new Clause 3A be added to the Bill.

Proposed addition.

Clause

New Clause 3A. That there be added after clause 3 the following new clause—

Amendment of section 28

3A Section 28 of the principal Ordinance is amended—

(a) in subsection (1), by deleting ' , within 7 days after the date on which the award or order of the tribunal was reduced to writing, ';

(b) in subsection (2), by inserting after 'Court' in paragraph (b) the following—

'within—

(i) 7 days after the date on which the written award or order is served on the aggrieved party; or

(ii) if within that period the aggrieved party applies to the tribunal for the reasons for the award or order, 7 days after the date on which the reasons are served on him'.

The addition of the new clause was agreed to.

CROWN RIGHTS (RE-ENTRY AND VESTING REMEDIES) (AMENDMENT) BILL 1977

Clauses 1 to 3 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

CROWN RIGHTS (RE-ENTRY AND VESTING REMEDIES) (AMENDMENT) BILL

had passed through Committee without amendment and that the

SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL

had passed through Committee with 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 pm on Wednesday the 7 of December.

Adjourned accordingly at twelve minutes past three o'clock.