OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 12 October 1983

The Council met at half past two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY
SIR CHARLES PHILIP HADDON-CAVE. K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN HENRY BREMRIDGE. K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
LAW DRAFTSMAN
MR. GERALD PAUL NAZARETH, O.B.E., Q.C., J.P.

THE HONOURABLE ROGERIO HYNDMAN LOBO. C.B.E., J.P.

THE HONOURABLE DENIS CAMPBELL BRAY. C.M.G., C.V.O., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE DAVID AKERS-JONES. C.M.G., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE LO TAK-SHING. C.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN. O.B.E., J.P.

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM. O.B.E., J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE REVD. THE HONOURABLE PATRICK TERENCE McGOVERN. O.B.E., S.J., J.P.

THE HONOURABLE PETER C. WONG. O.B.E., J.P.

THE HONOURABLE WONG LAM. O.B.E., J.P.

DR. THE HONOURABLE THONG KAH-LEONG. C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO. C.B.E., J.P.
SECRETARY FOR TRADE AND INDUSTRY

THE HONOURABLE CHARLES YEUNG SIU-CHO. O.B.E., J.P.

THE HONOURABLE JOHN MARTIN ROWLANDS. C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

DR. THE HONOURABLE HO KAM-FAI. O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI. O.B.E., J.P.

THE HONOURABLE ANDREW SO KWOK-WING. J.P.

THE HONOURABLE HU FA-KUANG. J.P.

THE HONOURABLE WONG PO-YAN. O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI. C.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE CHAN KAM-CHUEN, J.P.

THE HONOURABLE JOHN JOSEPH SWAINE. O.B.E., Q.C., J.P.

THE HONOURABLE COLVYN HUGH HAYE. C.B.E., J.P.
DIRECTOR OF EDUCATION

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN. J.P.

THE HONOURABLE CHEUNG YAN-LUNG. M.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE. J.P.

THE HONOURABLE MARIA TAM WAI-CHU. J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE PIERS JACOBS. O.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE DAVID GREGORY JEAFFRESON. C.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE HENRY CHING. C.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE CHAN NAI-KEONG. J.P.
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE. J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG. M.B.E., J.P.

THE HONOURABLE JAMES NEIL HENDERSON. O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MICHAEL SUEN MING-YUENG. J.P.
SECRETARY FOR TRANSPORT (*Acting*)

ABSENT

DR. THE HONOURABLE HARRY FANG SIN-YANG. C.B.E., J.P.

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN. O.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN. C.P.M.

IN ATTENDANCE

THE CLERK OF COUNCILS
MR. ROBERT IAN WILLIAM UPTON

Papers

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

Subject	*L.N. No*
Subsidiary Legislation:	
Buildings Ordinance Building (Construction) (Amendment) Regulations 1983	268
Child Care Centres Ordinance Child Care Centres (Amendment) Regulations 1983	269
Dangerous Goods Ordinance Dangerous Goods (General) (Amendment) Regulations 1983	270
Dangerous Goods Ordinance Dangerous Goods (Government Explosives Depots) (Amendment) Regulations 1983	271
Shipping and Port Control Ordinance Merchant Shipping (Miscellaneous Craft) (Amendment) (No. 2) Regulations 1983	273
Shipping and Port Control Ordinance Merchant Shipping (Fees) (Amendment) Regulations 1983	274
Supreme Court Ordinance Rules of the Supreme Court (Amendment) (No. 4) Rules 1983	275
Evidence Ordinance Evidence (Authorized Persons) (No. 8) Order 1983	276
Shipping and Port Control (Hong Kong—China and Macau Ferry Terminals) Regulations Sham Shui Po—Macau Ferry Terminal Boundaries Order 1983	277
Shipping and Port Control (Hong Kong—China and Macau Ferry Terminals) Regulations Sham Shui Po—Macau Ferry Terminal Restricted Area Boundaries Notice 1983	278
Probate and Administration Ordinance Official Administrator's Accounts (Interest) (Amendment) Rules 1983	279
Smoking (Public Health) (Amendment) Ordinance 1983 Smoking (Public Health) (Amendment) Ordinance 1983 (Commencement) Notice 1983	280

Subject *L.N. No.*

Sessional Papers 1983-84:

No. 1—Report on the Administration of the Fire Service Welfare Fund with Balance Sheet and Income and Expenditure Account and Certificate of Director of Audit for the year ended 31 March 1982.

No. 2—Hong Kong Housing Authority Annual Report 1982-83.

No. 3—Hong Kong Housing Authority—Balance Sheet and Accounts with Certificate of Director of Audit for the year ended 31 March 1983.

No. 4—Hong Kong Tourist Association Annual Report 1982-83.

No. 5—Social Work Training Fund—Twenty Second Annual Report by the Trustee for the year ending on 31 March 1983.

No. 6—The Prince Philip Dental Hospital—Report by the Board of Governors for the period 1 April 1982 to 31 March 1983.

No. 7—Urban Council Annual Report 1983.

No. 8—Urban Council. Hong Kong—Accounts for the year ended 31 March 1983 with Report and Certificate of the Director of Audit.

No. 9—Clothing Industry Training Authority—Annual Report for the year 1982.

No. 10—Construction Industry Training Authority—Annual Report 1982.

No. 11—Pneumoconiosis Compensation Fund Board—Report for the year ended 31 December 1982.

Oral answers to questions

Future development of District Administration Scheme

1. MR. WONG LAM asked in Cantonese:—

請政府說明有關地方行政計劃未來發展的政策，以及打算如何增強區議會與行政立法兩局的聯繫？

(The following is the interpretation of what Mr. WONG Lam asked.)

Will Government state its policy regarding the future development of the District Administration Scheme and say how it proposes to strengthen liaison between District Boards and the Executive and Legislative Councils?

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, in your address to this Council only a week ago you said that you had asked that the existing arrangements for local administration should be examined to consider whether they might be improved. I think it would be remarkable, Sir, even by Hong Kong standards if this examination had been completed in order to answer Mr. WONG's question to-day, but let me say to Mr. WONG that this work is now in hand.

I should add. however, that there are already strong direct links between District Boards and their members with other Councils. Boards and Committees, and that these are being strengthened. In the New Territories the Boards are linked directly with Rural Committees and thus with the Heung Yee Kuk; in the city there are direct links with the Urban Council. There are 17 District Board members now serving on Housing Authority and its Committees and. not least some Members of this Council and the Executive Council are also members of District Boards. In addition. of course. UMELCO Groups in their periodic visits to districts are making a point of meeting with members of District Boards to exchange views.

Thus within the short space of one year, strong links have already been forged between the Boards and other consultative bodies in Hong Kong and I have no doubt that this trend will continue.

Price inflation

2. MR. SO asked in Cantonese:—

請政府告知本局，可採取甚麼積極措施以控制本港經濟體系中各項價格不斷上升的情況，特別有關下述兩方面：

（甲） 將採取甚麼行動以削減政府部門所提供服務的成本和改善工作效率，以減少增加收費的需要？

（乙） 政府將以甚麼方式向公用事業公司傳達同一訊息，鼓勵節約和提高效率，使該等公司亦嚴格檢討是否需要向用戶增加收費？

(The following is the interpretation of what Mr. SO asked.)

Will Government inform this Council of the active measures it can take to control the incessant price spiral in our domestic economy, in particular:—

(a) what action will be taken to cut costs and improve productivity in the public sector in order to reduce the need to increase charges on services provided by Government?
(b) by what means will the Government convey the same message on economy and efficiency to public utility companies so that they too will review critically their need to increase charges on consumers?

SECRETARY FOR ECONOMIC SERVICES:—

Inflation
Sir, in answer to Mr. SO's general question concerning—and I quote—'the incessant price spiral in our domestic economy', Members are, of course, aware that in common with many other places, Hong Kong has experienced significant price inflation in recent years. Nevertheless, the average rate of inflation in terms of the Consumer Price Index has been falling—from over 15% in 1980 and 1981 to just under 11% in 1982. The forecast given by the Financial Secretary for 1983 in his budget speech was 9%, although this may prove a little overoptimistic having regard to the recent sharp depreciation of the Hong Kong dollar, which will put up the price of imports.

To the extent that the rate of inflation in Hong Kong is due to increases in prices elsewhere, there is little the Government can or should do. Even in cases where inflation is domestically generated, Government intervention would not be desirable. If the Government were to interfere directly with the cost/price structure through price controls or subsidies. the cost would have to be borne somewhere, either through the reduced profitability of firms leading to reduced investment in new plant and equipment, reduced availability of certain goods

and services, or increased taxation, or a reduction in the flexibility and efficiency of the economy generally, or all of these results together.

Where inflation arises from the excessive creation of credit, some action may be appropriate. The Financial Secretary indicated in his recent mid-year review speech that discussions of possible new measures to improve the control of the money supply were continuing. In the meantime, however, the money supply figures do not suggest that there is much danger of further inflation from this source at present.

The most likely cause of an increase in the rate of inflation comes from the recent sharp depreciation of the exchange rate. This depreciation with its associated inflation arises from several extraneous factors and runs counter to the present state of the economy, which is both fundamentally sound and improving rapidly. I am unable to elaborate on further steps which the Government might take because the matter is still under active examination, and must be confidential.

Productivity in the public sector
In relation to cutting costs and improving productivity in the public sector, the Government has done much.

First, all submissions to Executive Council proposing increases in fees charged for services provided by the Government must indicate the measures which have been taken *prior to* the proposal to increase fees. to reduce costs and to improve efficiency and productivity. And Executive Council must at the same time be informed of any further measures which may be taken in future.

Second, as regards specific budgetary measures taken to cut costs and to improve productivity, Members will recollect that last year a ceiling of under 4% was set for the growth rate of the Civil Service in 1983-84, compared with the actual growth rates of 3.75% in 1982-83 and 9.6% in 1981-82. For 1984-85, Your Excellency has made it clear that the Government intends to allow for no growth in the Civil Service, except where it is essential to provide staff for new facilities and where such staff cannot be provided by redeployment.

Lastly, in support of these budgetary measures, the Finance Branch has introduced a programme of value for money studies. The studies examine the way in which money is spent, identify the best means of using scarce resources, and aim to reduce manpower and increase output. To date during this financial year, the Finance Branch have identified savings of some $60 million in annually recurrent expenditure. There are many other studies in progress, with scope for achieving savings of a much greater magnitude.

With regard to the public utility companies, they are as vulnerable as anyone to the effect of increased operating costs. And it must be remembered that a large proportion of such costs are influenced by factors beyond their control. This is particularly so with regard to imports such as fuel, which accounts for more than half the operating costs of the power companies. The Financial

Monitoring Unit of the Economic Services Branch or the Commissioner for Transport are in regular contact with the public utility companies to satisfy themselves that the companies do, in fact, review their operating costs and reduce them where they can.

MR. SO asked in Cantonese:—

閣下，經濟司可否詳細說明經濟科內的財政管制單位及運輸署署長是怎樣經常和公用事業機構聯絡及接觸？

(The following is the interpretation of what Mr. SO asked.)

Sir, would the Secretary for Economic Services explain in further detail on how the Financial Monitoring Unit of the Economic Services Branch as well as the Commissioner for Transport keep regular contacts with the public utility companies?

SECRETARY FOR ECONOMIC SERVICES:—Sir, the regular contact in the case of the power companies, with which I am more familiar, is informal in nature. There is a regular flow of information between the power companies and the Branch. As far as the Commissioner for Transport is concerned—and the Secretary for Transport may wish to add to anything I have to say—I understand that the contact is much more formal and any changes that are likely to have an effect on fares are in fact communicated to the Commissioner for Transport.

This contact between Government and the Utilities is, of course, part of the monitoring process and, as far as the power companies are concerned, Members will recollect that the process is being examined by consultants at the present time. It may be of some comfort to Members to know that I have today drawn the consultants' attention to this matter although it was always within their terms of reference.

SECRETARY FOR TRANSPORT:—Sir, regular meetings are held between the Commissioner for Transport and the bus companies in particular, while less regular meetings are held with other public utility companies.

Malaria

3. DR. HO asked:—*Will Government inform this Council*

(a) the incidence of malaria in the past three years; and
(b) the measures taken to control the disease?

SECRETARY FOR HEALTH AND WELFARE:—Sir, as regards the first part of Dr. HO's question, there were 62 cases of malaria in 1981 and 80 cases in 1982. These figures included, in each of these years, only one indigenous case. 81 cases of malaria have been reported so far this year, of which six were indigenous cases.

I take the second part of Dr. HO's question to refer to the measures taken to prevent the transmission of the disease. The most important is the action taken against the breeding of vector mosquitoes, including the spraying of insecticides in areas where conditions are conducive to mosquito breeding, and the prosecution of people responsible for mosquito-breeding offences. Advice is also given to owners of private premises to avoid the creation of possible mosquito-breeding grounds.

The Urban Services Department has 20 anti-mosquito gangs, comprising a total of 186 men, engaged full-time throughout the territory in the elimination of man-made mosquito-breeding conditions, particularly those on building sites. Another 20 teams of 275 men work to prevent mosquito-breeding in natural conditions such as found in streams and catchment areas.

The six indigenous cases of malaria reported so far this year represent an obvious increase, but in absolute numbers they certainly do not amount to an outbreak. However, the situation is being carefully monitored. The Urban Services Department has established a special team responsible for case investigations and biological studies of vector mosquitoes. An inter-departmental co-ordinating committee has been set up to facilitate the up-dating of plans to meet any possible outbreak, and the Medical and Health Department is keeping a close watch on the incidence of malaria in Hong Kong through its hospitals and out-patient clinics. All suspected cases are being thoroughly investigated.

DR. HO:—*Sir, may I ask the Government to confirm whether the cases of malaria identified this year are caused by new strains of mosquitoes and therefore the treatment of the disease requiring drugs and new treatment procedures?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, if I may be permitted to answer this question, the direct answer is 'no', Sir. The malaria parasites responsible for the cases so far this year are also the usual two species, that is, plasmodium vivax and plasmodium malariae, and the treatment for these are quite effective.

Statements

The Seventh Annual Report of the Clothing Industry Training Authority and the Seventh Annual Report of the Construction Industry Training Authority

MR. TIEN:—Sir, laid before this Council are the seventh annual reports of the Clothing Industry Training Authority and the Construction Industry Training Authority. The reports cover the calender year 1982.

Since the Clothing Industry Training Centre at Kwai Chung started its operation in October 1977, some 20 000 trainees have completed training in the

Centre, including more than 4 000 trainees in the year under review. Despite the world-wide recession in 1982, the Centre experienced little difficulty in finding suitable employment for the trainees.

The clothing industry is now rapidly picking up again and continues to be the largest manufacturing industry in Hong Kong. This has promoted the Clothing Industry Training Authority to establish. with full speed, a second Training Centre at Kowloon Bay, which is scheduled or completion in early 1984. This second Centre, together with the existing Centre at Kwai Chung, will ensure that the clothing industry will continue to have an adequate supply of well-trained manpower.

1982 was a difficult year for the construction industry. but the two Construction Industry Training Centres also had little difficulty in finding suitable employment for their trainees. The Construction Industry Training Authority has decided to provide training courses to adult workers in the construction industry, to upgrade their skill and to improve their knowledge and practices on industrial safety. In order to meet future demand of the construction industry, the Authority has also decided to proceed with its plan to establish a third training centre and has applied to the Government for the grant of a piece of land on the Hong Kong Island. I hope the Government will accede to that application.

Report on the Prince Philip Dental Hospital for the period 1 April 1982 to 31 March 1983

MISS DUNN:—Sir, tabled today is a report on the activities of the Prince Philip Dental Hospital together with a statement of accounts for the financial year from 1 April 1982 to 31 March 1983.

During the year the Hospital provided training facilities for first, second and third year students reading for the Bachelor of Dental Surgery degree of the University of Hong Kong, as well as for a full range of dental ancillary staff. The first class of graduates will complete their studies and be ready to serve the community in early 1985 as originally planned. That a project of this magnitude is reaching fruition on schedule is due to the hard work and dedication of the University and Hospital staff, various Government departments, and, of course, the diligence of the students.

The success rate of the undergraduate dental students has been most impressive. In the academic year 1982-83, 94% of the students sitting the First Bachelor of Dental Surgery degree examination passed at first attempt, while 97% of the class sitting the Second degree examination passed at the first attempt. Such results clearly exemplify the ability and the commitment of the dental students to their studies—a fact which has received the commendation of several external examiners.

It has therefore been particularly distressing to both the faculty and the students that moves were made on the part of certain people to petition the General Dental Council of the United Kingdom to withhold recognition and registration of the graduates holding the degree of Bachelor of Dental Surgery of the University of Hong Kong. Such moves, prompted by matters over which the students had no control whatsoever, could have jeopardized the future professional careers of these young people and were manifestly unfair to both the students and their teachers. I am, therefore, happy to report that the General Dental Council of the United Kingdom is taking no action on this petition.

Sir, in the Prince Philip Dental Hospital, Hong Kong has an institution of which it should be proud. It is already recognized as one of the foremost dental teaching hospitals in the world. I have every confidence that the Hospital will make a significant contribution to the community in the years ahead.

The Second Annual Report of the Pneumoconiosis Compensation Fund Board

COMMISSIONER FOR LABOUR:—Sir, tabled today before this Council is the second report of the Pneumoconiosis Compensation Fund Board covering the year 1982, the second year of operation of the Board.

The Pneumoconiosis Compensation Fund Board was established under the Pneumoconiosis (Compensation) Ordinance. Its main functions are to administer the statutory Pneumoconiosis Fund financed by a levy from the construction and quarry industries and to pay compensation from this Fund to people suffering from pneumoconiosis, an occupational lung disease caused by prolonged exposure to dust.

On behalf of the Chairman of the Board, Mr. Ho Sai-chu, I am pleased to report that despite the slow-down in the construction industry, the Board has achieved considerable progress in its second year of operation. During the period, the levy collected amounted to about $21 million which was six times the amount collected in 1981. Compensation payments in 1982 amounted to $22 million, which was three times the figure for the previous year. Due to the increase in the number of claims, the Board was unable to make a surplus as forecast in its previous report. However, it is expected that with the caseload stablizing at the present level and a continuing increase in levy income from construction work, the Board should be able to balance its income and expenditure in the coming year.

To enhance the efficiency of collection of the levy, the Board recommended during the year that the Pneumoconiosis (Compensation) Ordinance should be amended so as to permit imposition of a penalty for late payment and raise the level of fines for some offences under the Ordinance. The Amendment Ordinance came into effect on 1 February this year, and has put the Board into a much stronger position to discharge its statutory duties.

Sir, the Board's achievements result from the devotion of the Chairman and the Board members, supported by the construction and quarry industries, to all of whom I should like to extend my thanks and the Government's appreciation of their efforts.

Government business

Motions

MASS TRANSIT RAILWAY CORPORATION ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:—Under section 12 of the Mass Transit Railway Corporation Ordinance that the Financial Secretary on behalf of the Government may grant a guarantee in respect of the redemption or repayment of the principal amount of notes issued by the Mass Transit Railway Corporation in Hong Kong up to an aggregate principal amount not exceeding 100 million Hong Kong dollars.

He said:—Sir, I move the motion standing in my name in the Order Paper.

Section 12 of the Mass Transit Railway Corporation Ordinance requires the authority of the Legislative Council for the Financial Secretary, on behalf of the Government, to grant guarantees in respect of the repayment of loans and other indebtedness incurred by the Corporation.

Authority is now sought for a Government guarantee to cover repayment of a loan of HK$100 million and such amount as may be payable in respect of interest and other charges.

The sum borrowed under this guarantee will be used to finance the Island Line contracts for the supply, installation and commissioning of dual mode locomotives, additional rolling stock, an environmental control system, chillers, station and tunnel ancilliaries and depot services.

If Members approve this motion, the Government's total guarantee commitment in respect of outstanding loans available to the Mass Transit Railway Corporation will be HK$10,738 million. This contingent liability is provided for within our reserves.

Sir, I beg to move.

Question put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL moved the following motion:—That the Legal Aid in Criminal Cases (Amendment) Rules 1983, made by the Chief Justice on 15 September 1983, be approved.

He said:—Sir, I move the motion standing in my name on the Order Paper.

This seeks approval of the Legal Aid in Criminal Cases (Amendment) Rules 1983 which were made by the Chief Justice on the 15th of last month. The amending rules effect a number of minor improvements to the principal Rules, which regulate the grant of legal aid in criminal cases.

Under the principal Rules there are several panels of barristers and solicitors who are willing to act for aided persons. This multiplicity of panels is unnecessary and the amending rules provide for them to be combined into just two panels, one for barristers and the other for solicitors.

In another respect, it has been suggested that the principal Rules can be interpreted as conferring upon an applicant a right to be granted legal aid unless the authorities prove that his disposable income and capital exceed the prescribed limits. But in fact it is the applicant himself who best knows his income and capital and who is best able to establish their size. For the authorities to have to do this would make the scheme unworkable. Notwithstanding, therefore, that the principal Rules seem not unclear on the point, it is considered desirable to put the matter beyond argument. The amending Rules therefore make it clear that the Director of Legal Aid has to be satisfied that the prescribed limits are not exceeded before legal aid is granted.

Likewise it has been suggested that where legal aid is granted, the principal Rules require not only a solicitor but also counsel to be assigned to the aided person. In practice counsel are often not required and the amending rules now make it clear that the Director of Legal Aid has a discretion both as to whether counsel are to be assigned and as to the number of counsel.

For the rest, the amending rules delete an unnecessary provision in the principal Rules, replace the form of application for aid and make minor improvements to other prescribed forms consequential upon the amendments I have mentioned.

Sir, I beg to move.

Question put and agreed to.

EMPLOYMENT ORDINANCE

THE COMMISSIONER FOR LABOUR moved the following motion:—That the level of wages specified in sections 4(2)(*b*) and 31 G(2) of the Employment Ordinance be amended by deleting '$7,500' wherever it occurs in those sections and substituting in each case the following—

'$8,500'.

He said:—Sir, I move the motion standing in my name in the Order Paper.

The current wage ceiling for non-manual employees in the Employment Ordinance is $7,500. In 1980, the Labour Advisory Board advised that this ceiling should be reviewed annually and that action should be taken to revise it if there was a clear need to do so.

The last revision was made in May 1982 when the wage ceiling was raised from $6,000 to $7,500.

A review was made in September this year. It indicated that the monthly level of $7,500 in March 1982 would be equivalent to $8,200 in March 1983. the last date for which figures are available. Nominal wages have continued to increase since then and it can be assumed that, by October 1983, a monthly wage level of $8,500 is equivalent to $7,500 per month in May 1982. It is therefore proposed to raise the wage ceiling for non-manual employees in the Employment Ordinance from $7,500 to $8,500. It is estimated that thereafter approximately 2% of employees will remain outside the scope of the Ordinance. This is similar to the position when this ceiling was previously revised.

Sir, I beg to move.

Question put and agreed to.

First reading of bills

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1983

PENSIONS (INCREASE) (AMENDMENT) BILL 1983

BUILDINGS (AMENDMENT) (NO. 2) BILL 1983

MASS TRANSIT RAILWAY (LAND RESUMPTION AND RELATED PROVISIONS) (AMENDMENT) BILL 1983

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

Second reading of bills

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1983

THE FINANCIAL SECRETARY moved the second reading of:—'A bill to amend the Mass Transit Railway Corporation Ordinance'.

He said:—Sir, I rise to move the second reading of the Mass Transit Railway Corporation (Amendment) Bill 1983. The Bill clarifies the financial relationship between the Government and the Mass Transit Railway Corporation. As

Corporation its subsidiary. It is therefore appropriate for the Government to have control mechanisms which are normal between parent and subsidiary and which are not set out specifically in the existing law.

Section 13 is amended to ensure that the Financial Secretary is consulted and his approval obtained before the M.T.R.C. applies its profits in any way.

Section 14 is amended to make clear that the establishment and use of any general or special reserve fund requires the prior approval of the Financial Secretary and that the latter will have power to direct that whole or part of the M.T.R.C.'s profits be carried to reserve.

A new section 14(*a*) is inserted

(1) to empower the M.T.R.C. to declare and pay dividends. This might be desirable at some future time and at present such a power cannot be inferred.
(2) to provide that after consultation with the M.T.R.C. and taking into account its loan obligations, the Financial Secretary may direct the M.T.R.C. to pay as dividend into the general revenue the whole or part of any profits in any financial year, after making allowance for any sums earmarked for reserve funds and any accumulated loss of previous years.

The above amendments had been agreed with the M.T.R.C. after extensive consultation and discussion.

Sir, I move that the debate of this motion be adjourned.

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

Question put and agreed to.

PENSIONS (INCREASE) (AMENDMENT) BILL 1983

THE SECRETARY FOR THE CIVIL SERVICE moved the second reading of:—'A bill to amend the Pensions (Increase) Ordinance'.

He said:—Sir, I move the second reading of the Pensions (Increase) (Amendment) Bill 1983.

Following an amendment to section 18 of the Pensions Ordinance in June 1980, male children aged over 18 and female children aged over 21 of serving officers who die as a result of their duties may be granted pensions until they reach the age of 23, provided they are receiving full-time education. However, no provision was made at that time for such pensions to attract pension increases.

This Bill remedies the position by making such pensions eligible for pension increases, as is already the case with all other pensions paid to dependants of former officers.

Sir, I move that the debate on this motion be adjourned.

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

Question put and agreed to.

BUILDINGS (AMENDMENT) (NO. 2) BILL 1983

THE SECRETARY FOR LANDS AND WORKS moved the second reading of:—'A bill to amend the Buildings Ordinance'.

He said:—Sir, I move that the Buildings (Amendment) (No. 2) Bill, 1983, be read a second time.

This Bill seeks, by the amendment of sections 26 and 27 of the Buildings Ordinance, to give the Building Authority powers to deal with building works, such as scaffolding and shoring, which become dangerous, and over which there is currently no control, in the same manner as he is empowered to deal with dangerous buildings, and also to enable the Building Authority to obtain the closure of a building, or part of a building, which is not in itself dangerous, in order to allow him to carry out work in the exercise of his statutory powers, such as the demolition of unauthorized structures, without danger to the occupants or to the public.

Sir, I move that the debate be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—SECRETARY FOR LANDS AND WORKS.

Question put and agreed to.

MASS TRANSIT RAILWAY (LAND RESUMPTION AND RELATED PROVISIONS) (AMENDMENT) BILL 1983

THE SECRETARY FOR LANDS AND WORKS moved the second reading of:—'A bill to amend the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance'.

He said:—Sir, I rise to move the second reading of the Bill standing in my name on the Order Paper, which has the effect of extending the power of the Governor

to create easements under section 6 of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance in favour of the Crown.

The power section 6 confers in relation to land in the railway area and for the purposes of, and incidental to, the railway is held to be only sufficient to enable the Governor to create common law easements. Experience since the Ordinance was originally enacted in 1974 has shown, however, that other permanent and temporary rights are required to facilitate railway construction. These can be provided by extending the powers conferred by section 6.

An example of *permanent* rights which may need to be created but cannot be provided by means of a common law easement relates to ground anchors. These are engineering devices which make use of the underground strata of neighbouring land to provide support to construction but leave irretrievable materials permanently in the ground after that support is no longer required. An example of *temporary* rights which may be needed but cannot be provided by a common law easement is where temporary and exclusive rights of access to a construction site on leased land are required.

The main amendment is to section 6 itself of Chapter 276. The opportunity is also being taken to correct an error in the same section.

The existing provisions of the Ordinance in relation to compensation will be extended by means of consequential amendments to provide for compensation as a result of the creation of any permanent or temporary rights under section 6. These and other such amendments will affect sections 7,9,16,31,32 and Item 2 of Part I of the First Schedule.

Sir, I move that the debate be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—SECRETARY FOR LANDS AND WORKS.

Question put and agreed to.

EMPLOYMENT (AMENDMENT) BILL 1983

Resumption of debate on second reading (13 July 1983)

Question proposed.

MR. PETER C. WONG:—Sir, the Employment (Amendment) Bill 1983 seeks to improve the sickness benefits available to workers under the Employment Ordinance.

Not unexpectedly, it has generated considerable public interest as well as extensive and comprehensive media coverage. Unofficial Members too showed a keen interest. The *Ad Hoc* Group which I have the honour to convene

comprised 22 Unofficial Members. I would like to take this opportunity to express my thanks to Members of the Group for their concerted efforts and valuable contribution. And to Mr. LO who has agreed to move the various amendments agreed with the Administration.

Perhaps it may be helpful to relate briefly events leading to the resumption of debate this afternoon. Following the introduction of the Bill in this Council on 13 July 1983, representations were received by UMELCO from employers' associations which alleged that they had not been consulted over the proposals in the Bill and that there was a breakdown of communication between the employers' representatives in the Labour Advisory Board and their parent organizations. They asked that the Bill be deferred to allow them time to study and comment on its full implications. The resumed debate on the Bill, originally scheduled to take place on 27 July 1983, was therefore deferred to 10 August 1983 so that all interested parties as well as the public could have more time to study the Bill and present their views. As a result of the postponement, a large number of representations were received from employers' and employees' associations. The former expressed that the proposed increases in sickness benefits were over generous and that the system might be open to abuse. The latter wanted the Bill to be passed into law as soon as possible and asked that certain eligibility rules on sickness benefits be relaxed.

In the light of these conflicting views, Unofficial Members decided, and in my view quite rightly that the Bill should be further deferred so that the representations put forth by all interested parties could be studied thoroughly. As this Council went into recess after 10 August 1983, the earliest possible date available for the debate to resume is today. As scheduled, we have resumed debate this afternoon and this was made possible because we continued our discussions and consultations throughout the recess.

The deferment has proved to be fruitful. UMELCO have received a total of 28 representations from employers' and employees' associations as well as from concerned individuals. To give some idea of the efforts put in by Unofficial Members, I need only say that the *Ad Hoc* Group held no less than 16 meetings during the last two months.

After hearing views from employers and employees, we are satisfied that the spirit of the Bill is not in dispute. There is general agreement that sickness benefits should be extended to cover workers who may be sick for long periods.

We therefore support the proposal to increase sick leave entitlement to a maximum of 120 days. This proposal originated from the 1977 Green Paper on Social Security and was developed and finalized in full consultation with the Labour Advisory Board.

After careful deliberation, the *Ad Hoc* Group made three main recommendations, all of which have been accepted by Government. As Mr. LO will be moving the amendments, he will in a moment explain what these recommendations are.

Regarding transitional arrangements, the Administration has confirmed that sick leave entitlement accrued by a worker before the commencement of the Bill will not be affected and that his service with the same employer will be counted in calculating sick leave benefits at the rate applicable to his length of service.

Two related issues which do not directly affect the provisions of the Bill have also been brought up in the representations to UMELCO. The employees' groups would like to see that considerations for a comprehensive social security scheme be given early attention and that positive action be taken as soon as is practicable. The employers' association strongly urged the Administration to improve the consultative process in the Labour Advisory Board, especially as regards balancing the need to maintain confidentiality of the subjects discussed with the need to conduct thorough consultations with outside bodies. These views have been made known to the Administration.

Sir, labour legislation is usually sensitive and emotive, and views are often diametrically opposed. We agree that sickness benefits is an important aspect amongst the various forms of protection for workers. We also agree that caution is required in making comparison with other countries. We do not pretend for a moment that the recommendations we proposed would present a panacea. Far from it; we are fully conscious of the difficulties and complexities inherent in the matters at issue. However, we have put forward a package which in our view is reasonable and workable. If problems should arise in the implementation of the new provisions, the Administration will no doubt introduce further amendments if so required. At any rate, the review of labour legislation is an on-going process.

Several of my Unofficial Colleagues will be speaking this afternoon. No doubt, they will expand on the matters I have raised and deal with others not covered by this speech.

Sir, subject to the agreed amendments, I support the motion.

MR. LO:—Sir, I shall be proposing amendments in committee to clauses 2, 3, 4 and 5 and I shall propose that clause 6 be replaced by a new clause 6. The legal language involved is somewhat complicated and I feel there is a need to make a brief account of the objects of various amendments which are themselves simple enough.

They are to achieve the following objectives, that is to say, *to extend* the period during which sick leave is earned at two days each month in subsection (2)(*a*) from the first three months of employment to the first 12 months; *to make transitional arrangements* (omitted in the Bill) by introducing a form of retroactive legislation governing the rate but only the rate at which sick leave is to be earned; *to remove the hospital stay requirement* for sick leave in excess of 90 consecutive days of claimed sick leave; but *to provide* that a medical certificate certifying the employee's treatment at a hospital may be required by the employer if the employee has taken sick leave in excess of his 36 days

entitlement; *to include* Government specialist clinics in the definition of a hospital; *to provide* for the medical certificate referred to earlier to be accompanied by a brief record of investigation and treatment where required by the employer; *to require* employers to keep a sick leave record to show the sick leave position of each employee; to *divide* sick leave entitlement into two categories: category 1 to contain the sick leave earned up to 36 days and category 2 to contain the sick leave earned other than category 1 up to a maximum of 84 days; *to require* the sick leave be first deducted from category 1 and finally to make all consequential amendments.

Sir, these amendments are made alas without the wisdom of Solomon but merely by the industry of man. They represent, in my view, a typical Hong Kong compromise between the immediate short term interests of employer and employee. They are made, however, against the back-drop that in the longer term their interests do not conflict but are identical.

REVD. MCGOVERN:—Sir, the original Bill as gazetted in July 1983 was a long overdue effort to improve, from the employees' point of view, the Employment Ordinance in the matter of paid sick leave. In that Bill the amount of sick leave to which an employee was entitled was improved from the unrealistic one day a month to, as a first step, two days a month for new employees in their first three months, and thereafter four days a month. The amount of unused sick leave which could be accumulated was also improved from 36 days after three years, to 120 days, which at the new rate of entitlement would be earned in two years and eight months.

In the matter of the accumulation of unused sick leave, it was a clear piece of legislation designed principally to cater for one rare possibility, that is, a long continuous illness of more than 90 consecutive days up to the maximum of a possible 120 days. We were asked to look particularly at the practicability of the clause which states that after 90 consecutive days of paid sick leave a stay in hospital would be required before further entitlement up to the possible 120 days.

Having discussed this hospital clause in the very first meeting of the *Ad Hoc* Group of Unofficial Members it was decided that the requirement of a stay in hospital was impracticable from the administrative point of view. It was also deemed unpractical in view of the fact that there are chronic illnesses which can be treated at home and do not need hospital treatment. It was also noted that such sick leave would be a very rare occurrence with no likelihood of cheating, as a hospital stay would only apply in cases of more than 90 *consecutive* days illness. It is conceivable that an employee might find a soft-hearted doctor who would give him a couple of days extra leave to make sure he was fully recovered, but not 90 consecutive days. So the group at that first meeting decided to settle for a flat 120 days without a hospital clause.

Some of this discussion was to my mind rather academic. The latest figures available from Government were for 1979. In that year the average length of

leave in fact taken was 3.22 days per employee. Being dissatisfied with those old figures employers conducted their own survey. As you would expect, they got a higher figure—but not significantly higher. A still more recent survey of 90 000 workers which was mentioned in last Sunday's Victoria Park Rally came up with the finding of an average of only 2.8 days leave over a 20-month period. Members will no doubt remember that whether you take 2.8 or 3.22 both are less than the required four days necessary for the beginning of paid sick leave and are therefore outside the ambit of this legislation. Employers' fears that this Bill will encourage malingering are not based on facts. Workers cannot afford to take unnecessary sick leave at 2/3 of their meagre basic pay. In the most recent survey referred to, it was found that 70% of the workers had taken no sick leave at all in the 20-month period.

But to go back to July. Having agreed on removing the need for a hospital stay which was the main question for discussion, the group felt that the Bill could go ahead as planned and be passed in that session of the Legislative Council.

It was not to be so. As so often happens, the Employers Pressure Groups, as usual, interspersed with platitudes about their concern for their employees' welfare, mounted an all out campaign to try to weaken a sensible bit of legislation aimed at improving workers' conditions of service. They first asked for a delay, and in spite of the requests from workers organizations that there should be no further delay, further delay there was. I must stress it was *further* delay. The idea of 120 days goes back at least as far as the 1977 Green Paper in the context of a proposed contributory scheme. In time, that is after four years' delay, the contributory scheme was abandoned, and in its place the extension of sick leave was proposed. The basic idea of this Bill i.e. an accumulation of sick leave up to a possible maximum of 120 days was agreed, as we now know, by the Labour Advisory Board—by that I mean employers and employees—in June 1981. His Excellency the Governor formally announced this on 7 October 1981 adding, alas, 'Amendments to the Employment Ordinance in the above sense will be introduced during this session...' i.e. the session 1981-82. (Hansard Page 21 para. 77, 7 October 1981). Somehow it did not happen until the last weeks of the 1982-83 session, and here we are starting still another session. If the former Commissioner for Labour found as he did last session that some of my observations on labour legislation have a 'seen before' air about them, it should not be hard to find the reason why repetition of the same ideas becomes necessary in successive sessions.

I do not intend to go into details of the discussions which took place during the summer. I will deal only with the result. The result is a mangled piece of legislation which, especially in the introduction of a 'hospital element', will lead to confusion, and frustration and more quite unnecessary paper work for our already overworked hospital doctors.

The changes to be made by amendments are unfavourable to workers. You have heard them already, I will repeat them in a slightly different light:

—the increase in the number of paid sick leave days from two to four per month, which new workers can get after three months, is delayed to 12 months;
—the hospital clause, which was dropped in July, is reintroduced in a less demanding but more complicated and difficult to administer form; and
—the basic non-hospital sick leave is reduced from 120 or 90 days back to the present 36 days.

That is bad enough. What is much worse to me is the mentality displayed by employers during this long hot summer. There was a presumption, sometimes openly stated, but more often implied, that considerable numbers of our workforce are only waiting for the opportunity to engage in large scale malingering at the expense of their employers. As already stated, this is simply not grounded on facts under our present limited legislation. What is grounded on fact is what happened in some developed countries. Management, by creating an atmosphere of distrust, of grudging reluctance to concede workers' rights, wrecked the possibility of building up decent and harmonious Industrial Relations, and drove the workers into their present state of apathy or non-cooperation. They also of course drove them into the hands of those who are only too happy to exploit their discontent for their own undemocratic political ends. 'Deja vu' or not, I repeat that our hardworking employees are far from that stage. But if the present insensitive attitude of organized employers continues to imply that our workers are a lazy lot of potential malingerers, not to be trusted with better conditions, then those employers deserve the sort of Industrial Relations they will get. They will get them because, as in some developed countries, they have asked for them.

There was a further insulting implication in some employers' attitude. The purpose of this Bill—to make life better for the few workers who may have the misfortune to suffer a long illness—was almost smothered in a frantic endeavour to close possible loopholes which might lead to possible abuse. The implication was that the medical profession by and large are only too ready to sign medical certificates for over-long sick leave. They, not just a few, but as a profession, are not to be trusted, is the only possible meaning of requiring hospital documentation. If I were a doctor I would be very loathe to waste any time co-operating with such a scheme.

In order not to oppose whatever good is left in this Bill I will not vote against it, but to register my disgust, not only at the way the Bill has been mangled by amendment, but also at the damage that has been and will be done to harmonious Industrial Relations at this sensitive time in Hong Kong's history, I will abstain from voting at all further stages of the Bill.

I further urge that there should be no further delay in the implementation of the Bill. It should not come into effect at some distant future date to be published in some distant future *Gazette*. It should come in effect on the date of the next *Gazette*. I remind you again that it is already three sessions late.

MR. WONG LAM delivered his speech in Cantonese:—

督憲閣下：本人認爲勞工有薪病假應否由目前的水平增至一百二十天，主要應從三方面衡量：（一）到底目前環境下是否有必要增加有薪病假。（二）增加幅度是否僱主負擔得起及（三）如何堵塞此法例的可能漏洞。

到底目前環境下是否有必要增加有薪病假，答案當然隨僱主與僱員身份的不同而有異。事實上，這是一項無法兩面討好的法案，所以除了要衡量勞資雙方所提的觀點外，也應該從其他的客觀因素着眼。

平心而論，目前每年三十六天的有薪病假，對於一些較嚴重或長期性的病來說是不足夠的，而且本港並無其他全面性的社會保障，或應泛性推行的勞工傷病保險，所以平日把有薪病假延長從而爲勞方提供更佳的保障，在原則上是非常恰當的。從另方面而言，假如大家把香港的勞工有薪病假與亞洲部份地區相比，明顯地本港勞方所獲的保障較少。這點在國際貿易談判上往往是一大弱點，成爲其他地方針對本港出口的藉口。在環境許可下，將這項假期提高至與鄰近地區相若不獨會爲勞方帶來好處，也間接地爲資方帶來好處，因爲這樣會大爲提高本港在貿易談判上的地位，從而爲資方帶來較佳的貿易環境。目前貿易保護主義高漲，香港實在應該儘快去除任何可供他人攻擊的弱點，這點相信無論勞資雙方都可以理解的。

雖然部份僱主認爲目前經濟剛好復甦，爲免打擊資方，此項法例應延遲實施；但必須瞭解的是這法例由通過起計，至少要三年後僱員才能夠累積到一百二十天的病假，（即使僱員在法案通過時已累積了三十六天病假，也要近兩年才能達到一百二十天的頂點），所以在目前通過此項法案，時間上並無明顯的不妥。

至於有薪病假的增幅是否僱主負擔得起的問題，目前當然無法肯定作答。不過從過往的實際數字來推測，僱主的負擔極可能不如想像中沉重。政府的估計是僱主的額外支出會增加千分之四，而據香港總商會於本年八、九月間的問卷調查所得，在九萬二千二百一十四名僱員中，支取超過三十六天有薪病假的祇有二百九十六人，佔總僱員的千分之三左右。由此可見，整體而言，本港僱員支取有薪病假比率極低。事實上，目前部份僱主已經給與僱員超過三十六天的有薪假期，有些甚至早已給與僱員超過此法案所提的一百二十天的有薪病假（例如香港政府），但據本人查詢所得，支取此項福利的僱員，比例極少，對僱主並不造成過份的負擔。大家必須明白，這法案並非直截了當地增加僱員的有薪假期，而祇是增加僱員在有特殊疾病情形下所能享有的病假。假如僱員無此特殊情形，或祇極少數僱員有此情形，則僱主的負擔是有限的。

當然，對於規模較小的廠家而言，此法案會帶來較大的壓力，因爲祇要其中一兩位僱員支取較長的病假，便會在一定程度上影響整體生產運作或支出。不過，小廠家也並非全無得益。過往小廠因規模小，勞工福利較差，工人流動率自然較高，但新法例在很大程度上減低工人的流動率，因爲積了相當數目有薪病假的工人隨便離職的可能性相應減少。這種情形對小廠家不無幫助，也減低新法例帶來的衝擊。

雖然這法案值得支持，但本人認爲其中仍有一兩點漏洞值得討論。其一是無法徹底防止僱員濫用病假，因爲雖然一般而言醫生不會隨便簽病假紙，但也並無絕對保證。所以本人同意在新法案上加上條文，使僱員在支取第三十七天或以後的病假時，必須由醫院醫生簽紙才算有效的證明。這對減低濫支病假是有積極作用的。第二點漏洞是新法案未能提供適當的監察或懲罰，以針對一些不負責任僱主藉故開除老弱而積有很長有薪病假的僱員。這點漏洞雖然不易堵塞，但政府仍應考慮對付之法。

督憲閣下，本人支持此項動議。

(*The following is the interpretation of what Mr. WONG Lam said*.)

Sir, the issue of whether paid sick leave for workers should be increased from the present level to 120 days ought to be considered mainly in the light of three aspects. First, is there a need to increase the number of days of paid sick leave under the present circumstances? Second, could employers afford the proposed level of increase? Third, how are we going to plug any possible loopholes in the legislation?

Is there a need to increase the number of days of paid sick leave under the present circumstances? The answer given by an employer will of course differ from that given by an employee. As a matter of fact, this Bill can in no way please both parties. Therefore, apart from considering the viewpoints of both management and labour, we should also look at other objective factors.

Honestly, the existing 36 days of annual paid sick leave is insufficient for workers suffering from more serious or chronic diseases. Moreover, we do not have in Hong Kong a comprehensive social security programme nor an extensive insurance scheme for our injured or sick workers. It is therefore in principle very appropriate to increase paid sick leave at an earlier date to afford better protection to workers. Judging from another angle, when we compare the length of paid sick leave for workers in Hong Kong and for those in other parts of Asia, our workers obviously have less protection. This has often shown up as a major weakness at our international trade negotiations as a pretext for restricting Hong Kong exports by our trading partners. If circumstances permit, to raise the amount of paid sick leave to a level similar to those in our neighbouring regions will not only benefit the workers, but will also indirectly help the employers. Because in doing so, we can greatly improve our position in trade negotiations, resulting in a more favourable trading environment for our manufacturers. Given that protectionism is widespread, we should eliminate as soon as we can any weaknesses that render us vulnerable to attacks. I believe that both management and labour will appreciate this.

Some employers are of the opinion that as the economy is just beginning to recover, the implementation of this legislation should be postponed to avoid dealing a blow at the employers. However, one must realize that from the date of introduction of the new legislation, employees have to wait for at least three years before they can accumulate up to 120 days of sick leave. (Even if an employee has accumulated 36 days of sick leave at the time of passing of the Bill, he still has to wait for nearly two years before his sick leave entitlement will reach the maximum of 120 days.) Therefore to pass the Bill now is obviously not inopportune.

As regards the question of whether employers could afford the proposed increase in paid sick leave, of course it is not possible to give a definite answer at present. Nevertheless, based on past figures, the burden on the employers might not be as great as one might have thought. The Government has estimated that the cost of employers will be increased by 4/1 000. While the findings of a survey conducted by the Hong Kong General Chamber of Commerce around August and September this year showed that, out of 92 214 employees, only 296

persons, or about 3/1 000, have drawn paid sick leaves of over 36 days. It is evident that, on the whole, the proportion of Hong Kong employees drawing paid sick leave is rather low. In fact, some employers have already granted their employees paid leaves of more than 36 days at present, whilst some others (e.g. the Hong Kong Government) have even given their employees entitlements exceeding the 120 days as proposed in the Bill. My enquiries also indicate that only a small fraction of the employees have ever made use of such welfare benefit and hence the burden to the employers is not excessive. We must realize that the Bill will not directly lead to increased paid leave for employees. Instead, it is intended to lengthen the paid sick leave to which employees are entitled only under special conditions of illness. Burdens thus added to the employers will be limited since only very few, if any, of them are suffering from such conditions.

Of course, the Bill will bring greater pressure to smaller factories because their overall production or cost will be affected to a certain extent even only one or two of their employees take a long sick leave. Nevertheless, small factories owners will not find the new measure totally disadvantageous. Previously, mobility of workers was high in small factories which offered rather poor benefits. The new legislation will lower labour mobility to a large extent because the possibility of workers, who have accumulated a long paid sick leave, resigning will be diminished. This will be beneficial to the small factories and help to cushion the impact of the new legislation on them.

While this Bill deserves our support, there are a couple of loopholes which are worth discussing. The first one is that it fails to completely prevent any abuse of their sick leave entitlements on the part of employees. Although normally doctors do not sign medical certificates for sick leave purpose indiscriminately, there is no absolute guarantee. Hence I agree with the proposed amendment which stipulates that only those medical certificates signed by medical officers/practitioners in hospitals shall be deemed valid support for employees' applications for the 37th day or later period of their paid sick leave. The second loophole is that the new Bill fails to provide for appropriate supervision or punishment on those irresponsible employers who may try to dismiss, by using various excuses, the aged and infirm employees who are entitled to long, accumulated paid sick leave. While it is not easy to plug this loophole, the Government should still consider counter measures.

Sir, I support the motion.

MR. SO delivered his speech in Cantonese:—

督憲閣下：本人歡迎原有的法案，因爲它的精神是在沒有全面的社會保障計劃下，爲生病的工人提供經濟上的協助。法案內的主要提議曾經過現有的諮詢途徑認可，政府亦早於八一年四月作公開解釋。它可算是合符本港實際需要而制訂，既不會給與僱主過重負擔而打擊投資；亦不會使僱員太依賴福利，侵蝕本港工人的向上精神，對人力增產和良好的勞資關係實有裨益。

將提出的委員會審議階段修訂希望堵塞紕漏，避免並非患病的工人取得有薪病假，和延長病假累積率的受僱日期，使受僱較久的工人比較短者在生病時獲得較好的利益。本人認爲現存的法例已有防止作弊的條方，因爲工人要連續生病四天或以上方可領得祇相等其工資三分二的津貼，如僱主方面設有醫療計劃，僱主亦得要求生病僱員往指定的醫生處診治，否則便不發放津貼。原有法案所提議的病假累積率的受僱日期就本港現有的社會保障計劃情況下並不過於寬厚。委員會審議階段修訂一旦獲得通過，無疑是挖苦生病的工人，增加一般早已負荷過重的醫院門診部和醫生的工作，製造勞資雙方在病假和疾病津貼上的糾紛。

香港的工人大部份是勤懇的，帶病上班的亦甚爲普遍，能藉此法案而採取欺騙手段的，相信會佔極少數。香港的醫生的職業判斷亦有極佳的紀錄，爲了些少可能的紕漏而提出這些修訂，未免矯枉過正。

督憲閣下，本人謹此陳辭，反對提出與上述有關的修訂，若它們獲得通過，本人祇好在法案三讀時棄權表決。

(*The following is the interpretation of what Mr. So said*.)

Sir, I welcome the original Bill because it is in essence designed to provide financial assistance for sick workers in the absence of a comprehensive social security scheme. The principal recommendations of the Bill have been endorsed by existing channels of consultation and an open explanation was made by the Government as early as April 1981. It may well be said that the Bill is in keeping with Hong Kong's practical needs. It will not put too heavy a burden on employers and thereby deal a blow to investment. Nor will it make employees too reliant on welfare benefits and sap the fighting spirit of local workers. Indeed the Bill will be of benefit to both production and labour-managment relations.

The amendments to be moved at the committee stage seek to prevent employees who are not genuinely ill from obtaining paid sick leave and to provide greater sick leave benefits for workers with longer service by extending the length of service required to accumulate the maximum amount of sick leave. There are provisions of the existing legislation which, I feel, will forestall abuse because a worker has to be sick for four days or more before he qualifies for sickness allowance equivalent to two-thirds of his pay. Employers providing a medical service scheme may require sick employees to seek treatment from prescribed doctors, or the allowance will be withheld. The length of service required of an employee to accumulate the maximum amount of sick leave, as proposed by the original Bill, cannot be regarded as too generous under the exising social security system in Hong Kong. Once the amendments at the committee stage are adopted, workers who are taken ill are bound to suffer. Passage of the Bill will also add to the already heavy burden on Government clinics and doctors, and create disputes between labour and management over sick leave and sickness allowance.

Local workers are mostly hardworking and some even go to work during their illness. I believe only a handful of employees will exploit this Bill to cheat. Moreover, doctors in Hong Kong are known to have a good track record in

professional judgment. It would be really going too far if amendments were to be introduced just to remove some possible loophole.

With these remarks, Sir, I shall oppose amendments to the aforesaid Bill. Should they be adopted, I would abstain from voting when the Bill receives its third reading.

MR. F. K. HU:—Sir, the existing Employment Ordinance allows the accumulation of sick leave up to a maximum of 36 days, with the earning rate of one day per month. It is generally agreed that this aspect of benefit to employees should be improved in Hong Kong. to be comparable to that of the neighbouring countries.

The Bill, with the proposed amendments to be moved during committee stage, offers considerable improvement in this area, and is certainly moving in the right direction. Apart from maintaining the 36 days sick leave in Category 1, the proposal provides for an additional benefit of 84 days sick leave in Category 2 to employees who will have fallen sick, with the element of the need for inpatient or out-patient treatment in a hospital. Taken together, the total sick leave is allowed to accumulate up to a maximum of 120 days. Not only is this benefit improved, but also the earning rate has been increased to two days per month during the employee's first year of service, and four days per month during subsequent years. Also, the accumulation of sick leave is allowed even though during an employee's sickness.

This is certainly an encouraging and welcome move to help employees who, through no fault of their own, may become victims or serious illness and thus be affected in their income and families' livelihood. However, this should be seen as the first step in the right move. In due course, improvement should be introduced to offer further benefits to employees, to say 60 days sick leave without the need for hospitalization, and a further 60 days with an element of hospitalization.

To digress slightly from the present issue, I am also concerned about the welfare of non manual workers earning an income of over $7,500 per month (which has been increased to $8,500 by a resolution in this Council today). At present, their entitlement to sick leave is provided only when they are injured during their normal course of work, whereupon they are entitled to benefits provided in the Employees' Compensation Ordinance. Apart from this, they are not properly protected by any other existing Ordinance. I would like to suggest that the Administration should look into the aspect and introduce appropriate measures to protect this group of employees who also make their contribution towards the well-being of our economy, and should thus be adequately looked after by their employers.

The Employment Ordinance sets out the minimum level of benefits to employees. There are employers who offer better terms than the minimum. They should be encouraged to do so. Those who have not should also look to their

more benevolent counterparts. We should work in a concerted effort to strive for better protection of our very productive workforce, and thus achieve worthy social and economic advancement.

I would like to stress the importance of being dynamic enough in our philosophy and action in the provision of benefits to our employees. We therefore need to review the matter regularly and monitor it to give the best possible effect.

Sir, with these remarks, I have the pleasure to support the motion before the Council.

MR. WONG PO-YAN:—Sir, it is an indisputable fact that manpower is the only natural resources we have—the dilligent workforce and the enterprising entrepreneurs. It is also an indisputable fact that we owe much of our past economic achievement to the harmonious relationship between the two parties.

We have before us today the Employment (Amendment) Bill 1983 which seeks to extend paid sick leave benefits to workers to a maximum of 120 days.

I understand the plight of the employees and their need for financial assistance when they are kept involuntarily away from work because of a prolonged illness in the absence of a comprehensive social security system.

I understand also the anxiety felt by employers who, justifiably, are concerned about the likely financial implications, the possible effects on production cost and price competitiveness.

The need to find an equitable equilibrium is obvious.

It would not, however, be prudent to use provisions in other countries as a yardstick for comparison as each country has its own social security system that pertains to its own individual requirements.

Although we have no official statistics that indicate conclusively the pattern of sick leave taken by employees in recent years, results of surveys conducted by trade associations and industrial organizations confirmed that there were workers, though small in number, who required sick leave in excess of the current provisions.

Under these circumstances, the present Bill and amendments to do moved by my Colleague are honest attempts to balance the interest of all parties concerned; and I hope its enactment will further strengthen the co-operative spirit between the employers and employees—a spirit which is founded on mutual trust and respect—that has made possible the economic miracle of Hong Kong.

Sir, subject to the agreed amendments I support the motion.

MR. CHAN KAM-CHUEN:—Sir, I rise to support, in principle, the Employment (Amendment) Bill 1983 which if passed would provide sick leave with pay up to a maximum of 120 days for employees with genuine prolonged sickness.

As I am also a member of the Labour Advisory Board, I recollect that the general feeling of both employer and employee representatives was that employees with some years of service should not be discarded like old rags due to prolonged sickness. The ceiling of 120 days was agreed in principle.

By the time this Bill reached the hands of the Unofficial Members of the Legislative Council, it was near the end of the last Legislative Council session. It was felt that the Bill should not be rushed through before hearing a full range of views from the public, as labour legislation is usually controversial.

Indeed we had interviewed many 'labour' representatives—some of them look so much alike but under different organizations and clothings, that they made me believe they were twin sisters and brothers—with the usual complaint that this Bill was introduced too late, with insufficient benefits. On the other hand, there were also those employers who wished to reduce the 120 days ceiling on grounds of additional cost and reduced productivity. So delaying this Bill for two Legislative Council sittings served the purpose of allowing Unofficial Members to hear and consider the full range of views before forming their own.

Statistics show that in 1982 there were approximately 116 000 small establishments with less than ten employees, forming about 80% of the total business establishments in Hong Kong. If an establishment has only five employees and one is on prolonged sickness, to get a skilled relief at short notice may indeed be a hardship to the employer in terms of cost and productivity. However, prolonged sickness cases are fortunately not too many and steady progress in labour benefits have to be made whenever economic circumstances permit in order to stabilize our society and preserve the image of Hong Kong, especially in the export front.

True labour unions with majority memberships were fortunately fully represented on the Labour Advisory Board and they were reasonably satisfied with this improvement for 'genuine' prolonged sickness. Good employers also support this 120 days but voiced some concern on safeguarding abuse.

After all, it is the employers who foot the Bill. It is therefore important that when we venture into something new in labour legislation, we should try to allay their fears first. Otherwise, the resistance from employers would harden if they felt that new proposals are rammed down their throat. This in the end would hinder the progress in improving benefits for employees in the future. I therefore support the amendments made by my learned Colleague using the 'hospital' element to safeguard abuse.

In one of the open forums debating this subject, I heard one spokesperson from a pressure group who tied her logic into a knot by saying that to mention abuse would be an insult to the workmen and doctors.

Let me help her by pointing out that penalty clauses and safeguards for abuses are part of the preventive measures in any good piece of legislation. Is the penalty for theft an insult to all good citizens of Hong Kong? Are the penalty clauses in this Bill also an insult to all good employees in Hong Kong?

As a person who has been dealing with personnel problems for over ten years, I would not be forgiven if I claim ignorance of the open secret that one can raise one's body temperature by taking something hot and obtain sick leave by pretending to have fever. I had also come across interesting cases of 'pay day syndrome'. I had the unpleasant job of calling the employees concerned to my office and showed them their sickness records pointing out the strange coincidence of sick leave taken immediately after pay days in 10 to 12 consecutive months. This somehow cured the sickness. Fortunately, these irresponsible employees are in the minority.

One must remember that employers provide capital, entrepreneurship and jobs while employees provide skills and productivity. Each have their own functions in our community and they are interdependent on each other for services and exports. Like the child who complained to his parents that he did not like going to school by bus citing as a reason that his classmate went to school in a chauffeur driven car, it is no use comparing the maximum and minimum benefits in other advanced industrialized nations. What each family or society can afford depends on individual circumstances.

In conclusion, we are in times of uncertainty and there are not many 'fat cats' around town, but pretty lean and sick 'cats' struggling for survival with cash flow problems, and reduced business volumes. If these cats were fat, why did they have to go bankrupt or even to enter a 'cage'? I earnestly ask pressure groups not to rock the boat in these stormy days. It may be sensational but not beneficial to employment nor in the interest of our community to do so.

Sir, with these observations, I support the motion.

MR. STEPHEN CHEONG:—Your Excellency, the eloquence of some of my Colleagues might lead some to draw the conclusion that the proposed amendments in the committee stage were the result of employers' lobbying. This does not really give justice to Members of the *Ad Hoc* Group whose deliberations on this Bill have been objective, fair, extensive and thorough. As legislators, Sir, it is our job to closely scrutinize any bill, let alone this one. The fact that this Bill took a longer period of time shows the care which went in to cover the legitimate interests of all concerned; surely this is not wrong. We must not lose sight of the fact that the spirit of the Bill has not been watered down at all by any of the proposed amendments. The purpose of the increased benefit is not to squeeze more from wicked employers to give more money to the helpless employees. The spirit of this Bill, as everyone understands, is to legislate employers to offer increased help to employees who might be unfortunate enough to have contracted serious illnesses. It would be grossly misrepresented to say that the workers considered by employers as willing to malinger at any time. The employers for all their sins did support 120 days. Whether or not such burden should fall on employers' shoulders entirely can be open to debate. Nevertheless, the Group accept that, in the present unique circumstances of Hong Kong, the passage of this Bill is timely.

The amendments, Sir, have been carefully debated and worked out. The main purpose of the amendments is to safeguard against possible abuse of the sick leave allowance. Again, as legislators, I hope you will agree that there is nothing wrong in building safegurads, and, in fact, I would go so far as to say that as responsible legislators, it is our job to consider and build in safeguards. Experiences from other countries do show that sick leave allowances are more open to the possibility of abuse. It has been noted that the rolls of sick pay recipients have been increasing in the United States even though there are no signs of deterioration in the health condition of the American public. The crux of the problem lies in the fact that any inability to engage in employment could well be affected by levels of alternative income offered. When workers, especially younger ones, can receive nearly as much in pay by simply citing headaches or other similar unverifiable illnesses, one can imagine the power of temptation in opting for sick leave allowances. One must accept that human weaknesses do exist. Also, one should not be blinded by one's good heartedness in refusing to accept that the possibility of abuse do exist. Nor should one underestimate the contagious nature of abusive behaviors. The resultant effect of such abuses, if allowed to be widely taken, can be disastrous. Hong Kong certainly cannot afford to allow any damage to the work ethos of our people for we are certainly not wealthy enough to entertain the luxuries of the free-loader seen all too often in the West.

In building the safeguards, I do not think it should be regarded as an insult to our workforce. If that is to be so, I am really not intelligent enough to comprehend. We must, of course, sympathize with those who had contracted serious illnesses such as tuberculosis, cancer etc., and it should be pointed out that representations from employers do stress they are more than willing to extend a helping hand in such unfortunate cases. Looking at the whole issue dispassionately, the Bill, if passed today, would be able to cover such contingencies. The amendments would be able to safeguard and limit possible abuses. All in all, Sir, this is a very balanced piece of legislation and the passage of it would make another step forward in the progress of our society.

Sir, I have great pleasure in supporting this motion.

MRS. CHOW:—Sir, the Bill before us is no doubt a controversial one. As representations flooded in to UMELCO, the *Ad Hoc* Working Group of Unofficials decided to work through the summer recess in order to give fair consideration to all the views put forward. At the same time, we set ourselves a deadline so that we would not be misunderstood for adopting delaying tactics.

With respect to Father MCGOVERN, public debate was set off only with the introduction of this Bill two and a half months ago into this Council. And we, as responsible legislators, have the duty to open our doors to all representations for a reasonable period of time so that we are fair, and are seen to be fair, to all groups whose interests are being affected by the enactment of the Bill. Surely this is the only proper attitude to be adopted and expected to be adopted by

legislators in the examination of any proposed legislation. As it is, we have found the interim two and a half months to be adequate and reasonable for us to give fair and constructive assessment to both sides of the argument.

May I first point out, that this Bill applies to all employees presently earning $8,500 a month or less, including all blue and white collar workers, as well as all employees in our vast service industries. Secondly, may I point out that with the present amendment the original requirement of thirty days of hospitalization is no longer a pre-requisite, this takes into consideration prolonged illnesses which may prove terminal or unsuitable for hospitalization. It also covers others not so serious or long illnesses as long as they have investigated and diagnosed in a hospital or special clinic. This is certainly a relaxation on the original proposed Bill.

All of us in the Working Group are in support of the spirit of the Bill. The jump from 36 to 120 days, though quite substantial, was considered reasonable. Certain extension was regarded as particularly necessary for serious or prolonged illnesses. The introduction of the hospital element for the additional 84 days is for the purpose of certifying such illnesses. However as the amended Bill stands, out-patients of hospitals or special clinics would qualify to claim sickness allowances so long as they can obtain the necessary medical certificates. This might mean that, instead of protecting employees who suffer from serious illnesses, we are allowing the possibility of more casual sick leave for such minor indisposition, such as the common cold, to increase. This is not a matter of abuse, but more a matter of where to draw the line, and it is up to employees to guard against the relaxation of self-discipline, which could undermine the productivity and efficiency hitherto characterize of our work force.

Finally, Sir, as a Member of the *Ad Hoc* Group I think it is fair to say that we have performed our job well in acting as a bridge to arrive at a compromise acceptable both to employer and employee, but also remaining true to the original spirit of the Bill.

Sir, I support the motion.

DR. IP:—Sir, I rise to support the Employment (Amendment) Bill 1983.

Benefit to the workers

This Bill allows an ill worker, whose family's livelihood depends on his income, to recover from his illness without the additional financial burden of complete loss of income. All doctors are aware, that such financial burden prolongs an illness, whether it is due to the element of *psychological stress* or of *physical stress* which results from a 'premature return to work'. In this respect, this Bill facilitates *the acceptance of doctors' advice* on treatment and rest as it now becomes financially and practically possible to do so.

Distinction between the two categories of sick leave

This Bill with its amendments, allows two categories of sick leave to be taken.

Firstly, in category 1, a total of 36 days sick leave can be accumulated at any one time for *common, intercurrent illnesses* of *short duration* (such as coughs, colds, flu, stomach upsets and minor injuries), which *all workers* suffer from time to time and which in the *majority of cases* resolve after *one or two clinic visits* to the *family doctor*.

As statistics show that the average number of such sick leave days required by an adult per year is well below 36, existing provisions are more than adequate to meet the need.

Therefore, the extra *84 sick leave days under category 2* is to be accumulated for a different purpose. namely for *special illnesses* which are *less common,* of *longer duration* and which inflicts an unfortunate *few*, and in which the majority of cases resolve only after *many consultations* to the *specialist* in a *hospital setting*.

There is no hard and fast rule which disease fits into which category. A common illness under certain circumstances can become complicated; *and* a serious illness, in a basically healthy person, if diagnosed and treated early, can be easily managed. It is therefore not so much the disease, but the *presentation and the method of management of* that disease in the *person in question* which *determines the category* of sick leave to be applied.

Without losing the theme behind the two category distinctions, but to *cater for flexibility* in application, this Bill allows common illnesses (usually falling under category 1) which when complicated with hospitalization and requiring specialist attention, to fall into category 2 and vice versa.

The responsibility of the doctors

Inadvertently, this Bill has *ascended the status of any doctor* registrable in Hong Kong, since doctors are now given the privilege *to recommend (and then to be accepted by law)* a total of 120 days sick leave, with 2/3 pay, to any ill non manual worker earning up to $8,500 per month. In other words, for any doctor in Hong Kong. giving such recommendation is *equivalent to signing a cheque up to $20,000 on behalf of any employer in Hong Kong.* Furthermore, there is no limit to the number of such 'cheques' issued, as long as the circumstances allow.

Although doctors ought not take into consideration such financial implications *before* recommending such sick leave, since *if a man needs sick leave, he needs it;* however doctors should consider such financial implications *after* making such a recommendation!

Just as a doctor is *accountable to his patients* in the *treatment* of a patient's *disease* which he prescribes, so is a doctor *accountable* to his *patient's employer* in the treatment of the employer's *money,* which he likewise recommends.

It can therefore be seen that with the doctor's *increased status* also comes the *increased responsibility and* accountability. It states in subsection (7) regarding the application for sick leave under category 2 that *'if so required'* doctors must

give a 'brief record of the investigations carried out and the treatment prescribed'. The purpose of producing such a brief report is to *document* what the person is suffering from, with the *'results of the investigations'*; and to *explain the need for such sick leave* of such duration, with *'the prescribed treatment'*.

Medical jargon such as 'Mrs. WONG is suffering with Thalaessaemia Minor and haematological profile indicates microcytosis and hypochromia...)She is not expected ever to recover in spite of all treatment' *or* Mr. WONG is suffering with Glucose 6 Phosphate Dehydrogenase Deficiency and he must abstain from Sulphonamides, Nitrofurantoin, Probenecid, lest he develops an acute haemolytic crisis... This is a life long threat and he is not expected ever to recover' may appear serious and contains both aspects of investigations and treatment; however *nowhere is there an explanation for the need for sick leave.* In fact, there is none! If these two conditions are used in the application for sick leave (it would not be done, but it could be done—I am only giving an example on how the system could fall apart) it may mean that, at any one time, up to half a million people in Hong Kong would be off sick.

I therefore *stress again* that *documentation of the disease* with the 'results of the investigations' and *explanation into the need for sick leave* with the 'prescribed treatment' *ought to be made clear.*

This information is necessary because I believe that in general, employers are genuinely concerned about the condition of their staff. They also have to plan ahead for their organization as work must go on. Furthermore such report is no more than a *written form* of what a good doctor would have told his patients, who might as a matter of fact, be delighted to also receive a copy.

Practical Application

Although the phrase 'if so required by his employer' has been added to reduce unnecessary work when certain employers may not request for such, I would recommend to both the patients and particularly their doctors that, such brief record *should always be provided when the medical certificate is first issued, rather than 'if so required' at the later stage,* since the conditions under which one recommends sick leave is still 'fresh in one's memory'. If such brief record is only subsequently issued, on request, the following may occur:

1. it may mean an additional visit of the employee to the doctor's clinic;
2 the conditions under which sick leave is granted to a patient is *not* fresh in the doctor's memory, and time is spent on retracing the records to produce even the shortest report, and lastly
3 a certain degree of unnecessary delay would result.

As for the employers, it would simplify matters if they state their own policy on whether a brief report would be requested in *all cases of sick leave falling in category 2.* If this is the case, it is their duty to keep the employees informed of the number of sick leave days they have accumulated in either category, or at least make it readily available.

If we do not have such understanding employers, the phrase 'if so required' may cause more inconvenience, although primarily designed to avoid it.

Futhermore, it is important that doctors keep a *file copy of such sick leave certificates* issued so that *cross checking* is possible to *prevent abuse.*

Staff Replacement for those on sick leave
The story does not end at granting sick leave with pay to employees when they are ill. We must ensure that in such case when *demand of work* cannot *contract or be deferred* the other employees *are not stressed with extra work to beyond their capabilities,* thereby causing *work fatique* and then *accidents*. If that was to happen, in essence, it is not the employers who are improving *the benefits of the workers when they are ill,* but it is really the workers themselves who are shouldering the consequences of such benefits. If that happens, when the ill worker returns to work, he would feel the *psychological burden* that his absence had caused a lot of undue hardship to his colleagues.

Here I will give the example of welfare workers working on shift duties in the subvented sector. In a three shift system with three staff per shift, when one out of nine staff is ill, it can mean that the remaining staff have to do night duty as frequently as once every other night, and it may mean that there is one shift, in which each staff is doing 1½ share of her normal duties. When the above situation continues for one week, it will be tough; for two, it will be unbearable; for three, it will be killing; and finally when the 4th weeks comes, all eight workers will be off sick when the sick worker returns to work.

Under such circumstances, *replacements* for staff who are ill *must be considered* if we have any *intention to benefit employees* through this Bill. I therefore disagree that this Bill have no financial implications to Government being one of the major employers in Hong Kong, if our final objectives *is really to*, and *should be* to benefit the employees when they are sick without putting added workload on them when they return healthy.

With these comments, Sir, I support the motion.

COMMISSIONER FOR LABOUR:—Sir, it will be clear from all that has just been said, that this Bill is of great concern to both employers and employees. That is why resumption of the debate on the second reading was deferred to allow time for further comments from both groups.

Not surprisingly, the comments received were sharply divided. While employees tend to feel that the Bill still does not provide adequate benefits, many employers are of the opinion that the amendments proposed in the Bill go too far. This divergence of views is fully reflected in the speeches we have just heard.

Mr. Peter WONG and his UMELCO Working Group have taken a great deal of trouble to consider the comments both from employers and employees and see what could be done to meet them. As he said they have held more than 16

meetings, some of them very lengthy, trying to find fair and practicable solutions to some of the points that have been raised. On one occasion I understand that they even continued until 10.30 p.m. hearing representations from employees. Their work is reflected in Members' speeches and in the amendments that Mr. T. S. Lo will move in Committee.

I do not think it is necessary for me to comment in detail on the points that have been raised, but I would like to re-emphasize some of the more general points that some Members have just made: the amendments now proposed involve no departure from the Bill's original intention to provide more protection for employees who suffer from prolonged sickness; the proposed new maximum number of paid sickness days which can be accumulated remains 120 days, as in the Bill as originally gazetted on 8 July; the new maximum sick leave earning rate of four days a month also remains unchanged. While the main aim of the amendments is to provide safeguards against possible abuses, the safeguards now proposed are in some ways less restrictive and more realistic than those included in the original Bill as gazetted.

I am most grateful to Unofficial Members for the trouble they have taken to examine the Bill and propose workable amendments. It would be unrealistic to expect the Bill as amended to please all concerned, but it does in my view represent a reasonable compromise between sharply conflicting views and has been welcomed as such in a number of newspaper editorials.

The scheme now proposed is, unavoidably, somewhat complicated and there is a risk of it being misunderstood. The Labour Department's Labour Relations Service will issue a guide and will do their best to resolve any misunderstandings which may occur. If experience of the practical working of the new scheme proves that further changes are necessary, I will recommend further amendments after consultation with the Labour Advisory Board.

Mr. Peter WONG referred to criticism by employers' associations of the working of the Board. On a Board which deals with controversial subjects on which there are sharply divided views, there are bound to be some tensions. Nevertheless the Board does, in my view, serve a useful purpose in bringing together employers and employees for a frank and informal exchange of views and I very much hope that both sides will continue to support it with a reasonable degree of tolerance and goodwill. As Mr. Lo has pointed out, in the longer term the interests of employers and employees do not conflict but they both share a common interest in the prosperity of Hong Kong. There is therefore nothing to be lost by them getting together for a frank exchange of views.

The Bill was originally intended to come into force immediately after it was enacted by this Council. However, I have been advised that it will make the calculation of paid sickness days easier if it were to come into effect on the first day of a month. Accordingly I shall move at the committee stage an amendment to clause 1 for it to come into operation on a day to be appointed. It is proposed, Sir, that you appoint the first of November 1983 as the day.

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 were into Committee.

EMPLOYMENT (AMENDMENT) BILL 1983

Clause 1

THE COMMISSIONER FOR LABOUR:—For reasons already explained, I move that clause 1 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 1

That clause 1 be amended by inserting after '1983' the following—
'and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette'*.

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clauses 2 to 6

MR. LO:—Sir, I move that clauses 2 to 6 be amended as set out in the paper circulated to Members. For the reasons I mentioned earlier, as well as for the cogent reasons given by many Members today, in particular those given by Mr. K. C. CHAN whose personal experience and knowledge in these matters are well known.

Proposed amendments

Clauses 2, 3, 4, 5 and 6

That clause 2 be amended by deleting '33(4C)' and substituting '33(4B)'.

That clause 3 be amended by deleting '33(4C)' and substituting '33(4B)'.

That clause 4 be amended by deleting '33(4C) and (4D)' and substituting '33(4B)'.

That clause 5 be amended—

(*a*) in paragraph (a)—

(i) in new subsection (2), by deleting 'An' and substituting the following—

'Subject to subsection (2A), an';

(ii) in new subjection (2)(a), by deleting '3' and substituting '12';

(iii) by deleting the inverted commas and the semicolon at the end; and

(iv) by inserting after new subsection (2) the following—

'(2A) In the case of an employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding the commencement of the Employment (Amendment) Ordinance 1983, the employee's entitlement to sickness allowance shall, with effect from and without prejudice to the entitlement to sickness allowance accrued at such commencement, accrue at the rate prescribed by subsection (2) as amended by that Ordinance, and his employment for part of a month (if any) at such commencement shall be taken into account in calculating his entitlement to sickness allowance under and at the rate prescribed by that subsection.';

(57 of 1983.)

(*b*) in paragraph (*b*), by deleting '(4B), (5)' and substituting '(5), (5A)';

(*c*) in paragraph (*c*)—

(i) in new subsection (4)—

(A) by deleting '(4A) and (5)' and substituting '(5) and (5A)'; and

(B) by deleting 'subsection (2), at that time' and substituting the following —

'subsections (2) and (2A), immediately before the commencement of the sickness days taken';

(ii) by deleting new subsection (4A);

(iii) in new subsection (4B), by deleting 'subsections (4) and (4A) shall be deducted from the paid sickness days accumulated by him as at the relevant time' and substituting the following—

'subsection (4) shall be deducted in accordance with section 37(1B) from the total number of paid sickness days accumulated by him';

(iv) in new subsection (4D), by deleting 'or (4A), and subsections (5)' and substituting the following—

',and subsections (5), (5A)'; and

(v) by renumbering new subsections (4B), (4C) and (4D) as (4A), (4B) and (4C) respectively;

(*d*) in paragraph (*d*), by deleting sub-paragraph (i) and substituting the following—

'(i) in paragraph (*a*), by inserting before "unless" the following—
"subject to subsection (5A),";'

(*e*) by inserting after paragraph (*d*) the following—
'(*da*) by inserting after subsection (5) the following—

"(5A) Where an employee takes paid sickness days entered in category 2 of the record kept in respect of him under section 37(1A), he shall, if so required by his employer, produce to the employer, in respect of each such sickness day, a medical certificate that is issued by a medical practitioner attending the employee as an out-patient or in-patient in a hospital.";'

(*f*) in paragraph (*e*), in new subsection (6)(*a*), by inserting before 'maintained' the following—
'or specialist clinic'; and

(*g*) by deleting paragraph (*f*) and substituting the following—
'(*f*) in subsection (7), by inserting after "work" where it occurs in the second place the following—
"and, in the case of a medical certificate produced by an employee for the purposes of subsection (5A), the medical certificate shall, if so required by his employer, contain or be accompanied by a brief record of the investigation carried out and the treatment prescribed by the medical practitioner".'.

That clause 6 be deleted and substituted by the following—
'**6**. Section 37 of the principal Ordinance is amended—
(*a*) by deleting subsection (1) and substituting the following—
"(1) Every employer shall keep a record—
(*a*) of the date of commencement and termination of the employment of each employee;
(*b*) in accordance with subsection (1A), of all paid sickness days accumulated by each employee under section 33;
(*c*) of all paid sickness days taken by each employee in respect of which sickness allowance is payable under section 33, and such sickness days shall be deducted in accordance with subsection (1B); and
(*d*) of all sickness allowance paid to each employee and the sickness days in respect of which the sickness allowance was paid.
(1A) A record kept for the purposes of subsection (1)(*b*) shall contain the following heads and details—
Category 1: in which shall be entered the number of paid sickness days accumulated by an employee—

(*a*) under section 33(2A); and

(*b*) in respect of each month under section 33(2),

but so however that the total number of paid sickness days in this category does not at the time of entry exceed 36 days; and

Category 2: in which shall be entered every paid sickness day in excess of 36 days which cannot be entered in category 1, but so however that the total number of paid sickness days in this category does not at the time of entry exceed 84 days,

and references in this section to category 1 and category 2 shall be construed as references to category 1 and category 2 respectively in this subsection.

(1B) The number of paid sickness days taken consecutively by an employee shall be deducted from the total number of paid sickness days in category 1 accumulated by him immediately before the commencement of those sickness days and where the number of paid sickness days taken exceeds the total number of paid sickness days in that category, the excess paid sickness days shall be deducted from the total number of paid sickness days in category 2 accumulated by him immediately before such commencement."; and

(*b*) in subsection (3), by deleting "one paid sickness day for each completed month of his employment in accordance with section 33(2)" and substituting the following —

"paid sickness days for each completed month of his employment in accordance with section 33".'.

The amendments were agreed to.

Clauses 2 to 6, as amended, were agreed to.

Council then resumed.

Third reading of bill

THE ATTORNEY GENERAL reported that the

EMPLOYMENT (AMENDMENT) BILL

had passed through Committee with amendments and moved the third reading of the Bill.

Question put on the Bill and agreed to.

Bill 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 26 October 1983.

Adjourned accordingly at thirteen minutes past four o'clock.