

# OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 2 July 1986

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 DAVID AKERS-JONES, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL

MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

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

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

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

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.

SECRETARY FOR TRADE AND INDUSTRY

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

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

THE HONOURABLE HU FA-KUANG, O.B.E., 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 DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.

SECRETARY FOR LANDS AND WORKS

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

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

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

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

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.

SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.

SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE JACKIE CHAN CHAI-KEUNG  
THE HONOURABLE CHENG HON-KWAN  
THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.  
DR. THE HONOURABLE CHIU HIN-KWONG  
THE HONOURABLE CHUNG PUI-LAM  
THE HONOURABLE THOMAS CLYDESDALE  
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.  
THE HONOURABLE HUI YIN-FAT  
THE HONOURABLE RICHARD LAI SUNG-LUNG  
DR. THE HONOURABLE CONRAD LAM KUI-SHING  
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.  
THE HONOURABLE LEE YU-TAI  
THE HONOURABLE LIU LIT-FOR, J.P.  
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.  
THE HONOURABLE PANG CHUN-HOI, M.B.E.  
THE HONOURABLE POON CHI-FAI  
PROF. THE HONOURABLE POON CHUNG-KWONG  
THE HONOURABLE SZETO WAH  
THE HONOURABLE TAI CHIN-WAH  
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING  
THE HONOURABLE TAM YIU-CHUNG  
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.  
THE HONOURABLE ANDREW WONG WANG-FAT  
THE HONOURABLE JOHN RAWLING TODD, C.V.O., O.B.E., J.P.  
SECRETARY FOR HOUSING  
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.  
THE HONOURABLE HARNAM SINGH GREWAL, E.D., J.P.  
SECRETARY FOR TRANSPORT

**ABSENT**

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.  
THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.  
THE HONOURABLE CHAN YING-LUN, J.P.  
THE HONOURABLE DAVID LI KWOK-PO, J.P.  
THE HONOURABLE HELMUT SOHMEN

**IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

**Papers**

The following papers were laid on the table pursuant to Standing Order 14(2):

*Subject* *L.N. No.*

## Subsidiary Legislation:

Water Pollution Control Ordinance	
Water Pollution Control (General) Regulations 1986 .....	149
Water Pollution Control Ordinance	
Water Pollution Control (Tolo Harbour and Channel Water Control Zone) (Amendment) Order 1986 .....	150
Immigration Ordinance	
Immigration (Unauthorised Entrants) (Amendment) Order 1986 .....	151
Revised Edition of the Laws Ordinance 1965 (No. 53 of 1965)	
Annual Revision 1985 .....	152

## Sessional Papers 1985-86:

No. 60—Customs and Excise Service Welfare Fund—Income and Expenditure Account with Balance Sheet and Certificate of the Director of Audit for the year ended 31 March 1986

**Oral answers to questions****Burglaries in Central District**

1. MR. LIU asked (in Cantonese): *In view of the fact that reported burglaries in the Central District has gone up by over 50 per cent in the first four months of 1986, will the Government inform this Council what are the main reasons for such an increase and what anti-crime measures would be adopted to prevent a further deterioration of the situation?*

ATTORNEY GENERAL: Sir, the number of reported burglaries in Central District increased from 109 cases to 171 cases in the first four months of this year compared to the corresponding period of 1985, which is a rise of 57 per cent. The increase was mainly attributable to the rise in burglaries in commercial buildings from 29 cases to 109 cases. Burglaries of shops also rose significantly with seven additional cases, to a total of 18, while cases involving residential premises fell from 56 to 36 cases.

But I should point out to hon. Members that the rise in reported burglaries in commercial buildings is distorted by the incidence of multiple burglaries. For example, 20 separate company offices on a single floor of a building may be broken into one night by one burglar or gang of burglars, yet they would be recorded as 20 separate burglaries. In January to April 1986, there were three cases in Central District of multiple burglaries in which five or more premises were broken into. These three cases alone accounted for 40 of the total number of reported burglaries. There were no such multiple burglaries in Central District in the same period of 1985. So the rise, while serious, is not quite as dramatic as might first appear.

Increasing burglaries of commercial premises is a worrying phenomenon not only in Hong Kong but also in Britain and the United States. Commercial premises are a tempting target. After office hours, they may offer a large number of unoccupied offices and a suitably lengthy period of time for burglars to operate undisturbed. Often the burglar's life is made even easier by poor security or even a total lack of any security provisions, either for the building in general or for particular offices.

The best defence is proper security measures both by owners of the buildings and by the tenants. The ground floors of buildings must be secure with regular patrol or surveillance of corridors, lifts and passageways. Premises should be subject to proper security measures including good quality locks and alarms. Valuables should not be left in insecure offices overnight.

I can assure the hon. LIU Lit-for that the police are taking active steps to counter the increase in burglaries. Police patrols are briefed to pay special attention to buildings with scaffolding, which is a favourite method of illegal entry. Caretakers and watchmen are visited by police patrols and urged to report any information on suspicious persons immediately via the 999 system. The Neighbourhood Watch Scheme is being introduced in Central District; at present four buildings are taking part and others are being actively canvassed by Police Community Relations Officers and Crime Prevention Officers, who are also on hand to give advice on security measures.

MR. CHEONG-LEEN: *Sir, in view of the fact that there is a large number of commercial premises in the Central District, can consideration be given to a special campaign being mounted to give support to the Central Fight Crime Committee to improve security measures among offices and other commercial premises in the Central District?*

ATTORNEY GENERAL: Sir, it may be difficult to have publicity directed towards particular areas but there is constant publicity through the media to educate the public in the problem of burglaries. From time to time dedicated publicity campaigns are mounted by Government, urging greater security consciousness within the community. The Commissioner of Police, for example, in his review of the year addressed the media on burglaries and made specific mention of the

fact that prevention was by far the best cure and urged householders and property owners to be more generous in providing themselves with better anti-burglary measures. As I have said, the Neighbourhood Watch Scheme is being expanded, not only in the Central District but also territory-wide, specifically to combat burglaries. And the district fight crime committees play a very important part. They are provided regularly with the statistics of burglaries within their areas and their co-operation is regularly sought to make the public more security-conscious. I doubt, Sir, with this level of on-going publicity, that any member of the public, whether in the Central District or elsewhere, has not heard or seen some advice on anti-burglary measures.

MR. MARTIN LEE: *Sir, does the number of arrests and successful prosecutions of burglars of commercial premises match with the increase of reported burglaries of commercial premises?*

ATTORNEY GENERAL: Sir, I do not have the figures for prosecutions, but I can tell this Council about the detection rate which is, for this purpose, related to the incidence of arrests. From January to April of this year, there was a detection rate of 8 per cent territory-wide for the 4 000 or so reported burglaries, as compared with 7.4 per cent for the same period in 1985. Sir, I think those figures illustrate that, in general, burglary is a difficult crime to detect. There are rarely any witnesses and usually there is very little evidence left by the criminals.

### **Negligence of duties by civil servants**

2. MR. LAU asked (in Cantonese): *Will the Government inform this Council:*

- (a) *how many known cases were there in the past three years involving negligence of duties by civil servants which resulted in Government's financial losses; and*
- (b) *were these civil servants held responsible for such financial losses and were they penalised accordingly?*

CHIEF SECRETARY: During the past three financial years, there were nine disciplinary cases of misconduct dealt with by the Civil Service Branch involving financial losses to Government. In five of these, the officers were found guilty of misconduct and punished. In addition, five officers were surcharged for financial losses suffered by Government because of their negligence.

From this it will be seen that a civil servant whose negligence has caused financial loss to Government may either be surcharged or subject to disciplinary proceedings and punishment.

If the negligence constitutes a prima facie case of misconduct, disciplinary action will be taken against the officer. If misconduct is proved, the officer will be punished which will usually include a fine, a deferment of increment, or a stoppage of increment to reflect Government's loss.

If the officer's negligence does not constitute misconduct, he may be surcharged by Government to recover the value of the loss to Government.

MRS. CHOW: *Sir, has any officer ever been dismissed where misconduct has been proved and is dismissal ever used as a form of punishment where misconduct has been proved?*

CHIEF SECRETARY: Sir, I am not aware of a case of dismissal, Sir, but dismissal is one of the possible punishments. Often the punishments involve reprimand, severe reprimand or warnings or stoppages of increment and so forth, but I am not aware personally this afternoon of a case of dismissal.

MR. TAI: *Sir, could the Government inform this Council what is the extent of the Government's financial loss due to the negligence of the civil servants?*

CHIEF SECRETARY: Sir, I should like to give a written answer to that question (Annex I).

### **Quality of air in Kwun Tong**

3. PROF. POON asked: *In respect of the monitoring of the quality of air in Kwun Tong by the Environmental Protection Department, will Government inform this Council:*

- (a) what is the present position regarding the findings of the monitoring programme, especially whether the air quality control standards are being met;*
- (b) if the air quality in Kwun Tong does not meet the required standards, whether there are plans for improvement; and*
- (c) what are these plans?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Environmental Protection Department monitors air quality in Kwun Tong from a station installed on the roof of the Kwun Tong City District Office Building. The relevant air quality parameters are measured continuously. Wind speed and direction are also continuously measured. The results of these measurements are compared with the air quality objectives which it is proposed to establish under section 7 of the Air Pollution Control Ordinance. In 1985-86, the amounts of sulphur dioxide, total suspended particulates (or dust) and nitrogen dioxide were all in excess of the proposed objectives on a number of occasions.

The high level of sulphur dioxide detected in the air at Kwun Tong is a result chiefly of the combustion of sulphur-bearing fuel oil by industry in the area. Following discussions with the Environmental Protection Department, the major oil supplying companies in Hong Kong have agreed to reduce the sulphur content of fuel oil from the previous range of 2.8 to 3.5 per cent by weight to an average of 2.5 per cent, with effect from 1 January this year. Prior approval is required under the Air Pollution Control Ordinance for the installation and alteration of furnaces, ovens and chimneys in factories, and in exercising these controls care is taken to ensure that the emission of pollutants is kept to a minimum.

High total suspended particulate concentrations occur throughout the territory and not just in Kwun Tong. Efforts are being made to reduce the emission of dust to the atmosphere through the provision of appropriate lease conditions to control site formation works and the operation of cement batching plants. Controls on particulate emissions from stationary sources, such as the Castle Peak and Lamma power stations, have been agreed following environmental impact assessments. Measures are being developed to control dust generated by construction and reclamation works, and a new scheme for taking action against smoking vehicles has recently been endorsed by the Environmental Pollution Advisory Committee.

The high levels of nitrogen dioxide are a relatively new phenomenon in Hong Kong. The exact cause of the problem is unclear and the Environmental Protection Department is still investigating this matter.

Our present aim is to move towards comprehensive air pollution control, and consultation on the proposed legislation will be undertaken later this year. Kwun Tong will be one of the first two air control zones to be declared.

PROF. POON: *Sir, will the Secretary for Health and Welfare inform this Council what is the trend of air quality variation in Kwun Tong since 1 January 1986 when the major oil supplying companies have agreed to reduce the sulphur content of fuel oil?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I feel it is too early really to indicate any particular trends as a result of this development, but we are monitoring the situation and will report in due course.*

### **Limits of maintenance payments**

4. MR. HUI asked: *Could the Government inform this Council:*

(a) *what is the principle behind the fixing of financial limits on the amount of maintenance payments granted under the Separation and Maintenance Orders and Affiliation Proceedings Ordinance;*

- (b) *why the assessment of the amount to be paid cannot be left entirely to the discretion of the judge (i.e. without any financial limits); and*
- (c) *would the Government consider amending these Ordinances to bring them in line with the Guardianship of Minors Ordinance which does not set any financial limit at the moment?*

ATTORNEY GENERAL: Sir, the financial limits in these Ordinances are the product of history rather than principle. The existence of maximum financial limits on the amount of maintenance payments granted under the two Ordinances dates back to a period in England and Wales when the jurisdiction was exercised by lay magistrates. The concept of a strictly limited jurisdiction exercisable by magistrates without legal qualifications is not, of course, relevant to Hong Kong where matters under both Ordinances are handled by the district court. Hansard does not disclose any discussion in this Council of the financial limits when the Separation and Maintenance Orders and the Affiliation Proceedings Ordinance were enacted in 1935 and 1971 respectively. One of the difficulties with having limits is that if they are to be sufficiently high to enable justice to be done in all cases, they may raise expectations unduly in the everyday case.

There is no reason in law why the assessment of maintenance under both Ordinances could not be left to the discretion of the court, like applications under the Matrimonial Proceedings and Property Ordinance. In all cases there will be, of course, the usual rights of appeal.

As to the third part, yes, the Government has for some time had under consideration the amendment of these Ordinances to remove the limits. I should, however, point out that maintenance orders under the Guardianship of Minors Ordinance are presently subject to a limit of \$500 per week if made in the district court, although no limit applies to proceedings transferred to the high court, as they can be at the option of either party.

The whole matter is due to be considered by the Executive Council later this month, when the arguments for and against limits will be canvassed fully.

MR. HUI: *Sir, the Attorney General pointed out that maintenance orders under the Guardianship of Minors Ordinance is presently subject to a limit of \$500 per week if made in the district court. Will you kindly tell us whether this amount will be looked into as well in the current review exercise and whether this amount will also be reviewed periodically to take into consideration inflation?*

ATTORNEY GENERAL: Sir, this limit, like all the others, will be considered by the Executive Council. Yes, if it does remain, clearly it will have to be revised from time to time to match changes in the value of money.

**Effectiveness of school social work service**

5. MRS. NG asked (in Cantonese): *Will Government inform this Council of the effectiveness of the school social work scheme since its introduction in 1980?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the school social work service is designed to identify and help pupils who have problems with their academic, social and emotional development, to assist pupils to make the maximum use of their educational opportunities, to develop their potential and to prepare them for responsible adult living. The scheme was first introduced on an experimental basis in 1978, and at present the service covers about 462 000 pupils in 487 secondary schools and 410 000 pupils in 796 primary school sessions.

A number of surveys conducted in recent years have indicated that the scheme has met with a good response from heads of schools, teachers, parents and students. According to the surveys, the service has been very useful in helping school children with a variety of social and emotional problems; it has also helped to relieve heads of schools and teachers of some of the work involved in dealing with behavioural problems. The surveys have also indicated areas in which the service could be further improved. In the light of comments made by the Social Welfare Advisory Committee, a working group with representatives from the Government, the voluntary welfare sector and schools, has been set up to review the service and to make recommendations on its long-term development. This working group has already met four times and is expected to submit a report later this year.

MRS. NG (in Cantonese): *Sir, from paragraph 2 of the reply, it has been pointed out that the service can be further improved. I would like to know whether the scope of the improvement can include improving the ratio between school social workers and pupils. At the present moment, the existing ratio of 1:4 000 would mean that one school social worker might have to go to four different secondary schools for counselling work and this is really too much for the social worker.*

SECRETARY FOR HEALTH AND WELFARE: Certainly, Sir, this is one of the possibilities which is being considered by the working group. Some years ago in the Social Welfare Five Year Plan, a possibility of an improved ratio was discussed and it was considered to be a desirable development. I hope that in the not too distant future we shall be able to improve the ratio.

MR. YEUNG: *Sir, as the Secretary for Health and Welfare has stated, the surveys do indicate areas in which the school social work service can be further improved. Now, may this Council be informed what these specific areas are and whether consideration has been given to improving the situation, e.g. some schools cannot afford to provide a suitable place or room for the proper implementation of the school social work service?*

SECRETARY FOR HEALTH AND WELFARE: Sir, a variety of improvements are being considered; one of course is the improved ratio which I have just mentioned. The working group is also trying to define more clearly the respective responsibilities of the school social workers and the guidance teachers provided within the schools. Certainly, I would hope that with the co-operation of the Education Department, we can do something to ensure that schools do have proper accommodation to enable the service to be adequately provided.

MR. SZETO (in Cantonese): *Sir, in September this year, all Government and subsidised secondary schools in Hong Kong will each have one additional certificate master to help with pupil counselling. Could the Government inform this Council whether this move would have any effect on changing the ratio of school social workers to pupils from 1:4 000 to 1:2 000?*

SECRETARY FOR HEALTH AND WELFARE: Sir, these new posts of guidance teachers will, I think, help to some extent but there is quite a distinction between the sort of work which these teachers are intended to carry out and the sort of work which school social workers do and this, I think, does not detract from the need to review carefully the future of the school social work system.

MRS. TAM (in Cantonese): *Sir, could the Government advise this Council on schools which still do not have school social workers stationed there. They just have a referral system, so when we do the review this time, will we encourage schools to change from referral to the stationing arrangement?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think in general it is agreed that the stationing arrangement is preferable to referral. I wouldn't like to anticipate the recommendations which the working group will make to me but I am sure this is one aspect which they will be considering.

MR. HUI (in Cantonese): *Sir, in 1982 the Government has already made a promise to improve the staff provision of the school social work scheme. The improvements have not been brought about, probably because of financial reasons. Could I ask the Government whether the \$40 million surplus accumulated by the voluntary agencies could be used partly towards improving the service?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I am sure there will be lots of demands on this \$40 million when it becomes available for allocation for improvements in services. It will be up to the Director of Social Welfare on the advice of the Subventions and Lotteries Fund Advisory Committee to determine exactly how it is going to be spent.

DR. HO: *Sir, to increase the effectiveness of the school social workers, will the Secretary for Health and Welfare ask the working group to consider among other things to reduce the number of pupils per social worker for those school social*

*workers who are stationed in schools which require this service badly, rather than a blanket reduction of pupils for all school social workers?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I think this is a very valid point and I will certainly ask the working group to consider this.

### Complaints about taxi malpractice

6. DR. LAM asked (in Cantonese): *Will the Government inform this Council:*

- (a) of the number of complaints about taxi malpractice in the past three years;*
- (b) the nature of such complaints; and*
- (c) whether the Government has considered measures to rectify the situation?*

ATTORNEY GENERAL: Sir, I would just take the first two parts of the question together. Complaints about taxi malpractices are generally made either to the Transport Complaints Unit of the Transport Branch of the Government Secretariat or directly to the police. The Transport Complaints Unit publishes an annual report containing statistics relating to complaints it has received. The reporting year is October to September. The numbers and types of complaints concerning taxi malpractices it received in the three years between October 1982 and September 1985 are:

	82-83	83-84	84-85	Total
Non-adherence to direct route	20	6	10	36
Conduct of driver	38	17	10	65
Failure to pick up/set down passenger	61	34	30	125
Overcharging	80	49	34	163
Total	199	106	84	

Statistics of the number of complaints made direct to the police are not readily available. But records are available of the numbers of prosecutions resulting from such complaints. They are—

	1983	1984	1985	Total
Refusing hire	66	57	95	218
Refusing to drive to required destination	36	61	54	152
Non-adherence to direct route	34	41	52	127
Overcharging	27	21	23	71
Taximeter offences	N.A.	N.A.	48	N.A.
Total	163	180	272	

So far as the third part of the question is concerned, Sir, I would answer that the number of complaints does not seem to call for any exceptional measures. There are 16 678 licensed taxis in Hong Kong operating virtually 365 days and nights a year. The number of complaints about taxi malpractices to the Transport Complaints Unit averages, as you will see, less than one a day. Nevertheless, vigorous enforcement action will continue. Amendments to the Road Traffic (Public Service Vehicles) Regulations are also planned. These will enable the Commissioner for Transport to specify in greater detail the design, content and positioning of fare plates in taxis. This will provide taxi passengers with clearer information about taxi fares and will also show the telephone number of the Transport Complaints Unit.

DR. LAM (in Cantonese): *Sir, according to the Attorney General's answer, in 1985 the number of prosecutions taken out against taxi drivers for refusing hire in 1985 was 65 per cent higher than the figure in 1984. Can I ask what is the reason for this increase? Does that have anything to do with the supply and demand of taxis?*

ATTORNEY GENERAL: I would guess that it has something to do with the supply and demand but I could not say to what extent that is the main cause or indeed what other causes there are that explain the rise in figures. It could be an increasing desire on the part of the public to argue the toss with taxi drivers and to complain about it afterwards.

MISS DUNN: *Sir, does the Government agree that most taxi users such as tourists simply do not bother to make a complaint unless the situation was serious, and therefore does the Government agree that malpractice in the taxi trade is in fact much more widespread than the complaint figures indicate?*

ATTORNEY GENERAL: I am sure Miss DUNN is right that the number of complaints is always the tip of the iceberg because there must be many other grounds for complaint that do not give rise to an actual complaint. One of the ways in which that may be eased is the point I made in my answer about providing more information about taxi fares and the telephone number of the Transport Complaints Unit in the taxis themselves.

MR. YEUNG: *Sir, would Government consider putting the telephone number of the Transport Complaints Unit on taxi stands to facilitate intended taxi passengers to make appropriate complaints whenever necessary?*

ATTORNEY GENERAL: That is an idea well worthy of examination and consideration by the Commissioner for Transport and I shall convey the idea to him.

**Enforcement of Smoking (Public Health) Ordinance**

7. MR. LEE YU-TAI asked: *On the subject of environmental health and protection of non-smokers from smokers, would the Government advise on the following:*

- (i) what are the criteria used for deciding the extent of no smoking areas in public areas, ferries, buses and other forms of public transport under the Smoking (Public Health) Ordinance;*
- (ii) what measures are being taken to ensure that 'No Smoking' notices are complied with;*
- (iii) how many offences relating to persons smoking in no smoking areas have been reported in the last two years and what penalties have been imposed on them; and*
- (iv) does Government propose to review the effectiveness of penalties against offences in (iii) above?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the answers to Mr. LEE'S four questions are as follows:

- (i) Under the Smoking (Public Health) Ordinance, smoking is prohibited in public lifts, single deck public land transport vehicles other than taxis, trains and private hire vehicles, and the lower decks of double-deck public land transport vehicles. In addition, not less than 50 per cent of each class of seating accommodation in other types of public transport vehicles such as ferries and trains and in cinemas, theatres, and concert halls must be set aside as no-smoking areas. When the Ordinance was enacted in 1982, the extent of no-smoking areas in public places and public transport services was determined having regard to the fact that the majority of the population were non-smokers, to public opinion on the establishment of no-smoking areas, to the practicability of dividing a place or vehicle into smoking and no smoking sections, and to enforcement difficulties. All these considerations are still valid.
- (ii) The initiative in taking action against people who smoke in no-smoking areas rests mainly with the management of the public place, or transport service concerned and they are given powers under the Smoking (Public Health) Ordinance to require an offender to cease smoking, and if he fails to do so, to require him to give his name and address and to produce proof of identity. Assistance may be obtained from the relevant Government departments or the police. The managements concerned were informed of the powers vested in them by the Ordinance, the detailed arrangements for enforcement, and the assistance they could obtain from the Government, by a circular letter issued in February 1983. A similar circular letter will be issued shortly in conjunction with the major publicity campaign on anti-smoking this year.

- (iii) In 1984 and 1985 the relevant Government departments received 228 and 250 reports respectively about smoking in no-smoking areas. The fine imposed in most of the cases ranged from \$100 to \$200.
- (iv) The maximum fine for smoking in a no-smoking area is \$1,000, while the penalty for failing to produce proof of identity or giving a false name or address is \$3,000. These penalties appear to be adequate at present, but the need to raise them at some time in the future will be kept in mind.

MR. LEE YU-TAI: *Sir, the third last paragraph of the answer refers to a major publicity campaign on anti-smoking. May I ask if specific dates of the campaign have been determined and what activities are being planned?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, the campaign will include all the main aspects of the anti-smoking campaign including publicity about the bad effects of smoking, the health aspects, also the question raised in Mr. LEE'S question today about the restrictions on smoking in public places.*

MR. PETER C. WONG: *Sir, may I ask the Secretary why is smoking allowed in taxis, particularly when all taxis are air-conditioned in the summer months?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, my understanding is that at the time when the regulations were brought into force it was thought that taxis were a form of private transportation rather than mass public transportation and therefore a ban on smoking entirely would not be appropriate.*

MR. CHAN KAM-CHUEN: *Would the Government take the lead of putting no-smoking notices in conference rooms, especially of advisory boards where members contribute a voluntary service and the Government has a moral obligation to protect them from lung cancer?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I am sure that if any particular advisory body expressed a wish that this be done, we could certainly arrange that.*

DR. IP: *Sir, a point of clarification under paragraph (ii) of the answer on enforcement action in no-smoking area. Does smoking include holding a burning cigarette in a public lift? If it does not, would Government consider revising legislation to include this?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I think it probably does but I will check and let Dr. IP know. (Annex II)*

MR. MARTIN LEE: *Sir, is it intended to extend the provision of no-smoking areas in public places so as to cover restaurants as well as this very building?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the question of restaurants is certainly under consideration. There are particular difficulties. As far as this particular building is concerned, Sir, I would not wish to venture to express an opinion I think on that possibility. I would like to leave that to Members on the whole.

MR. CHEN: *Sir, has the maximum fine for smoking in no-smoking area of \$1,000 ever been put in force?*

SECRETARY FOR HEALTH AND WELFARE: Not so far as I am aware, Sir.

MR. CHEONG: *Sir, in the light of so many colleagues' concern over the question of smoking, would the Secretary for Health and Welfare consider a total ban and make it a criminal offence to smoke?*

SECRETARY FOR HEALTH AND WELFARE: No, Sir!

### **Cable television service**

8. MR. CHEONG-LEEN asked: *Will the Government inform this Council:*

- (a) whether so far there has been any application for a cable television service and if so, what is the progress in processing the application;*
- (b) when will the service be expected to begin operation; and*
- (c) whether such service will show programmes on current affairs and home education courses produced by Radio Television Hong Kong and education institutions?*

CHIEF SECRETARY: Sir, the Hong Kong Telephone Company has submitted an application to operate a cable television service in Hong Kong. Since then, other companies have also expressed an interest in operating a cable television service.

The Administration is currently studying in detail the overall feasibility of cable television in Hong Kong as well as the different kinds of technology that may be used. I hope to be able to seek the Executive Council's advice in the near future on whether, and if so, in what form cable television should proceed. Once that advice is obtained we shall be able to consider any applications received in greater detail.

I am unable at this stage to say when cable television will begin operation, because even after policy approval has been obtained for cable television to be established, legislation will have to be introduced before an operator can be licensed to provide a cable television service. It will take time for the licensee to lay on the network before any programme can start transmission.

As I understand it, one of the advantages of cable television is that a wide range of programmes can be provided to cater for minority interests. Certainly, the possibility of showing programmes on current affairs and home education courses will be considered when the licence conditions are drawn up.

MR. CHEONG-LEEN: *Sir, will the Administration take it as a matter of priority to introduce cable television in Hong Kong say within the next 12 to 18 months which I am told on good authority is quite feasible given the will to do so?*

CHIEF SECRETARY: I would hope, Sir, that we could manage to make that timetable of within the next 12 to 18 months.

### **Difficulties in alighting MTR trains during rush hours**

9. DR. CHIU asked: *Is the Government aware of the great difficulties MTR passengers encounter in getting off during rush hours and can the MTRC be asked to introduce some useful measures to improve the situation?*

SECRETARY FOR TRANSPORT: Sir, as with other modes of public transport, the Mass Transit Railway is subject to heavy demand during peak hours. The difficulty passengers experience in alighting from MTR trains during rush hours stems partly from the fact that it is a mass transit system carrying a large number of passengers in each car and partly from car exits being blocked by people anxious to get on board.

The Mass Transit Railway Corporation is aware of the problem and has pursued various measures to improve the situation. The corporation has carried out, from time to time, publicity campaigns to promote courteous behaviour through television and press advertisements, posters and notices. At all busy stations during peak hours, announcements are made by station staff to remind passengers waiting on platforms to allow those on board incoming trains to alight before getting on themselves, while passengers on trains between stations are advised over the internal speaker system what the name of the next station is so that they may position themselves near a door if they should wish to alight.

Sir, I am advised that the corporation will continue with these various measures and indeed others that may be appropriate, but passengers themselves can help ease the situation by exercising a little courtesy and allowing those wishing to alight to disembark first.

DR. CHIU: *Sir, the measures which the Secretary for Transport mentioned have been undertaken for some time and yet MTR passengers still encounter great difficulties in alighting. It indicates that existing measures may not be the most effective means to tackle such a problem. Will the Government inform this council if solutions and measures used by subway systems in overseas countries for*

*instance, making indicative markings so that passengers both ways can position themselves, have been taken into consideration?*

SECRETARY FOR TRANSPORT: Sir, a number of more radical suggestions have indeed been made and considered by the corporation over the years. For instance, making a one-way system through the doors. I am, however, advised that this would be unenforceable in Hong Kong circumstances. The possibility of providing a larger number of staff at key stations to regulate boarding passengers has also been considered but it has been thought to be expensive in resource terms. Certainly the suggestion that Dr. CHIU has put forward will be sent to the corporation for their consideration.

### **Written answer to question**

#### **Renewal of green minibus licences**

10. MR. POON CHI-FAI asked: *The failure of maxicab licensees to apply to the Transport Department for renewal of their licences has led to temporary suspension of maxicab service affecting residents. Will Government inform this Council:*

- (a) of the number of such incidents in the past three years;*
- (b) what measures does Government intend to take to prevent the recurrence of such incidents; and*
- (c) when these incidents occur, what special emergency measures will Government take to minimise the inconvenience caused to members of the public?*

SECRETARY FOR TRANSPORT: Sir, as at 30 June 1986 there were 1 056 green minibuses in operation on 137 approved routes. During the past three years, there have been only two incidents of a green minibus service being disrupted as a result of expired vehicle or service licences. The underlying cause in both cases was an internal partnership dispute among the operators concerned. The incidents were both short in duration having been resolved within a day each, and disruption in service was therefore limited.

Although it is the responsibility of a green minibus operator to ensure the timely renewal of his passenger service licence, the operator is normally reminded by the Transport Department to renew it well before its expiry date. To reduce the likelihood of partnership disputes occurring to a minimum, operators are encouraged to formalise their business relationships with their partners through the formation of properly incorporated companies.

In the unlikely event that a partnership dispute should arise in future leading to the possibility of prolonged disruption of service, the Transport Department would take steps to minimise the inconvenience caused to members of the public by arranging for alternative public transport services such as franchised buses to be augmented for the period required or by granting a temporary licence to another green minibus operator to provide an emergency service, or by pursuing both these courses of action as necessary.

## Statement

### The case of 'Kwok Ah-nui'

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like with your permission to make a short statement in connection with the case of Kwok Ah-nui, on which I answered a question in this Council on 14 May. Mr. Y. F. Hui has proposed that when the Director of Social Welfare's review of the case is completed it should be put to the UMELCO Panel on Welfare Services, which would study the report in detail and if necessary have a session with the Administration. The panel would then make known its views on the case, thus assuring the public of an objective assessment of the case outside the Government.

Having spoken to Dr. Ho Kam-fai, the Convenor of the Welfare Panel, I am pleased to say that the Government is prepared to accept this proposal and will make available to the panel the review carried out by the Director of Social Welfare as well as a review by the Director of Medical and Health Services on the medical aspects of the case. Certain parts of these reviews deal with aspects of the case which it would not be proper to disclose to the public, such as the medical reports on Mrs. Wong's condition and other personal details, and we shall be asking the panel to treat these matters as strictly confidential.

Following the examination of the reports by the UMELCO panel, a full statement on the case will be made in this Council.

## Government business

### First Reading of Bills

#### **BANKRUPTCY (AMENDMENT) BILL 1986**

#### **REHABILITATION OF OFFENDERS BILL 1986**

#### **BUILDINGS ORDINANCE (APPLICATION TO THE NEW TERRITORIES) BILL 1986**

#### **EASTERN HARBOUR CROSSING BILL 1986**

*Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).*

### Second Reading of Bills

#### **BANKRUPTCY (AMENDMENT) BILL 1986**

THE FINANCIAL SECRETARY moved the Second Reading of: 'A Bill to amend the Bankruptcy Ordinance'.

He said: Sir, I move that the Bankruptcy (Amendment) Bill 1986 be read the Second time.

The Bankruptcy Ordinance contains provisions designed to prevent bankruptcy proceedings from being a futile exercise involving unjustified administrative effort and expense. Thus, where there are insufficient assets to pay a reasonable dividend, the court may either dismiss the petition, or annul an adjudication. This Bill seeks to alter those provisions, which have been found to be unsatisfactory.

Under the existing sections 9(3) and 10(1) of the principal Ordinance, the court may dismiss a bankruptcy petition if it is satisfied that the assets for division among the unsecured creditors, after payment of all costs, charges, expenses and preferential debts, are not sufficient to pay a 15 per cent dividend. Under section 33(1), the court may, on the same ground and on the application of any person interested, annul an adjudication order in bankruptcy.

The '15 per cent dividend' provision has, however, tended to work in favour of unscrupulous debtors seeking to avoid the consequences of the bankruptcy laws. During the past two years, numerous bankruptcy petitions have been opposed and applications for annulment have been made by *debtors* pleading that their assets are insufficient to pay a 15 per cent dividend. It has been found that the concept of a fixed percentage of dividend is too rigid. Furthermore, it ignores the broader objectives of the law relating to bankruptcy. Much of the court's time can be wasted in examining evidence to determine whether debtors fall within this 15 per cent dividend provision, sometimes allowing insufficient time for the investigation of other more important matters such as the reasons for bankruptcy, the possibility of fraud, and in some cases the rehabilitation of the bankrupt.

Sir, in order to remedy this unsatisfactory situation, it is proposed to remove the 15 per cent dividend provision from sections 9 and 10 of the principal Ordinance so that a petition could not be dismissed on this ground alone. The court's power under section 33 to annul the adjudication should be preserved and extended to rescission of a receiving order but in future, if this Bill is passed, this power may be invoked only by the Official Receiver and not by a debtor.

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.*

*Question put and agreed to.*

**REHABILITATION OF OFFENDERS BILL 1986**

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to rehabilitate offenders who have not been reconvicted for three years, to prevent un-authorised disclosure of their previous convictions and for connected purposes'.

He said: Sir, I move that the Rehabilitation of Offenders Bill 1986 be read a Second time.

This Bill seeks to assist in the rehabilitation of those who, years before, have committed a single minor offence. At present, any recorded conviction, however minor, remains permanently on record. Although an offender may have spent many years endeavouring to live down his past, he will always run the risk that he may be asked to disclose his conviction or that it may be unnecessarily, even mischievously, revealed in later years, thus destroying his efforts at rehabilitation.

This Bill allows a minor conviction to be regarded as spent after a prescribed period and prevents reference to that spent conviction unless there is some specific need for disclosure. Legislation to achieve similar ends has been introduced elsewhere, notably in the United Kingdom, recognising that it is in the interests of society to offer some encouragement to a person who, having been convicted of a minor offence, thereafter behaves himself as a law abiding citizen for a sufficient number of years.

Sir, there have been many representations from individuals and groups calling for the introduction of such a legislative scheme in Hong Kong. Members will recall that my hon. Friend Miss Maria TAM raised the subject in this Council in November 1983. In April 1984 a report by the Hong Kong Branch of Justice urged the adoption of the idea. In December of the same year, my chambers published a discussion paper which put forward a much simplified version of the United Kingdom Rehabilitation of Offenders Act.

There was considerable public comment received on that paper. Most respondents were in favour of the introduction of a spent conviction scheme but there was criticism of some of the detail contained in the proposal. A few people spoke strongly against the adoption of any scheme which would allow an offender to disguise his true background. They argued that truth should not be sacrificed to the social goal of rehabilitation. But Members may think, like the scheme's supporters, that the balance of interest of both society and the offender lies in allowing those who are guilty of a single minor breach of the law to live down that conviction after a suitable period has elapsed.

It was suggested by some that mere passage of time without a subsequent conviction does not necessarily mean that the offender has been law-abiding; he may just be lucky. And many say that more should be required before an offender's conviction is discounted. I accept the point that lapse of time alone

may not be an entirely certain indication that an offender has gone straight. But it does at least provide a simple test without the need for costly and cumbersome administrative procedures.

The scheme now proposed, Sir, has been found to be broadly acceptable to the majority of those commenting on the paper. I recognise that it is still a modest scheme but I believe it is right to proceed cautiously and this is a real step forward.

The essence of the scheme is that any first offence for which the offender is sentenced to a fine not exceeding \$5,000 should become spent after a period of three years has elapsed without the offender being convicted again in Hong Kong of any offence. Sentences of imprisonment fall outside the scheme. So, of course, do death sentences and I shall be moving a minor amendment at the Committee stage to make that clear. The result will be that once a conviction has become spent, and as long as the offender is not convicted again for any offence, evidence of the conviction will not generally be admissible in court, the offender will not need to disclose it in answer to any question, and it will not be a lawful ground for prejudice in relation to employment.

The scheme is I may say limited to a conviction in Hong Kong. Convictions in a foreign court are left out of account altogether.

I should stress that the provisions of this Bill will not, indeed cannot, affect the requirements of disclosure imposed by foreign laws on Hong Kong citizens wishing to emigrate. Requirements to make full disclosure of all convictions are imposed by the country of the intended destination, not by Hong Kong. A prospective emigrant will, if asked, have to reveal his conviction whether or not it is considered spent in Hong Kong, if a foreign law requires him to give an answer. I know that some who responded to our original discussion paper hoped we could assist those seeking to emigrate. But Hong Kong legislation cannot change immigration procedures adopted by foreign states. It is to be hoped, however, that consistent with the spirit of this Bill, overseas authorities will ordinarily overlook a minor conviction where it has occurred some time previously.

The general scheme I have described is subject to certain exceptions. Firstly, the scheme allows a court to hear about a spent conviction where it is important to ensure that justice is done, and also when sentencing an offender.

Secondly, the scheme will not apply to those in certain professions or public offices where the public has a right to expect the highest standards of probity. In these cases it is reasonable that full disclosure of all past misdemeanours should be made. Nor will the scheme apply to any proceedings relating to a person's suitability to be granted any licence, permit or dispensation or to be registered under any law. The scope of this exclusion is wide and will, for instance, make full disclosure a requirement for applications for registration as a teacher, as well as applications for a hawker's licence.

There has been much concern, especially on the part of the police, that those convicted of triad related offences should not benefit from the scheme. Accordingly, Sir, the unusual step has been taken to present a Bill that offers two options for consideration by Members of this Council. The first option is to exclude triad related offences under the Societies Ordinance from the rehabilitation scheme altogether. The second option is to allow a triad related offence to become spent only if the offender has renounced his connection with triad societies which, Members will recall, is an idea discussed in some detail in the paper on 'Options for changes in the Administration of the Law to Counter the Triad Problem', the paper which was recently brought to this Council. Hon. Members are invited to decide which option to adopt and to amend clause 2(4)(e) of the Bill accordingly. The Bill as presented could not be enacted in its present form without adoption of the appropriate amendment.

Sir, finally, I perhaps have to mention that the Bill proposes to amend the Magistrates Ordinance to remove the power of a magistrate not to record a conviction after finding a minor charge proved. The purpose of not recording a conviction when there has been a conviction is not altogether easy to follow, although it was probably intended to help an offender put minor convictions behind him. As such, this Bill offers a more rational approach. The Bill will require the magistrate to record a conviction in such a case. By so doing, it will ensure that a court in subsequent criminal proceedings will be fully apprised of the offender's background and will not wrongly treat him as a first offender. Equally, it will become a spent conviction after three years in the same way as any other eligible conviction. This amendment to the law has the support of the Judiciary.

Sir, I said earlier that the scheme proposed by this Bill was a modest one. With the support of this Council, it will always be possible to extend its provisions at a later date if the measure is found to work satisfactorily, and if the public show by their support that they accept that it is designed to benefit both the individual and society at large.

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

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

## **BUILDINGS ORDINANCE (APPLICATION TO THE NEW TERRITORIES) BILL 1986**

THE SECRETARY FOR LANDS AND WORKS moved the Second Reading of: 'A Bill to apply the Buildings Ordinance to the New Territories, to provide for certificates of exemption from certain provisions of the Buildings Ordinance for building works, site formation works and drainage works for certain buildings in the New Territories and to make necessary consequential amendments'.

He said: Sir, I rise to move the Second Reading of the Buildings Ordinance (Application to the New Territories) Bill 1986.

This Bill repeals and replaces the Buildings Ordinance (Application to the New Territories) Ordinance and Regulations which have not proved satisfactory mainly for the following reasons.

Firstly, it does not specify that exemptions from the Buildings Ordinance procedures and requirements apply only to indigenous villagers under the small house policy, with the result that a large number of buildings erected by non-indigenous villagers have also been exempt.

Secondly, although it was never intended, site formation and drainage works have been automatically exempt because terms such as 'building works' are loosely defined.

The main purpose of this Bill is to rectify the defects and loopholes identified in the current legislation. Clause 5 of the Bill specifies that as a prerequisite for exemption, the building must be built by an indigenous villager. Other structures which will also be exempt will be those erected by bona fide organisations for community use, structures erected on agricultural land for agricultural purposes and small temporary domestic structures for which permission to rebuild has been given. To ensure site formation and drainage works are not automatically exempt, the term 'building works' has been more precisely defined and certificates of exemption will be issued separately for site formation and drainage works to safeguard the health and safety of the villagers.

The opportunity has also been taken to increase the permitted height of the village houses from 7.62m (25 ft) to 8.23m (27 ft) to enable three-storey houses with reasonable ceiling height and ventilation to be built.

Village houses already built to the new height before the enactment of this new Ordinance will be dealt with on an individual basis by the Director of Buildings and Lands. Letters of toleration will be issued and toleration fee will be levied according to the degree of contravention, up to a maximum of \$10,000. If the villager is able to demonstrate that the building complies in all respects with the requirements of the new Ordinance, no penalties will be charged.

Sir, I move that the debate be now adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

## **EASTERN HARBOUR CROSSING BILL 1986**

THE SECRETARY FOR TRANSPORT moved the Second Reading of: 'A Bill to grant franchises for the construction of a combined road and rail tunnel across the eastern harbour, for the construction of a railway line through the tunnel and of other railway works and the regulation of the construction and maintenance of the works to be constructed; for the payment of tolls to the franchise holder for the use by motor vehicles of the tunnel and the regulation of vehicular traffic in relation to such use; for the transfer by the franchise holder of its right to operate the railway line to the Mass Transit Railway Corporation, and for matters ancillary thereto and connected therewith'.

He said: Sir, I move that the Eastern Harbour Crossing Bill 1986 be read a Second time.

In August 1983, final assessments of the impact of a bridge at Lei Yue Mun on the Instrument Landing System for Kai Tak Airport meant that this, initially preferred crossing of the harbour had to be abandoned. So as to identify an alternative, a detailed assessment of the engineering, financial and economic aspects of four other potential tunnel alignments was started. As a result of this study, in September 1984, the Governor in Council decided that the next harbour crossing should be a four-lane road tunnel between Cha Kwo Ling in East Kowloon and Tai Koo Shing on the Island, to be known as the Eastern Harbour Crossing. It was to be financed, constructed and operated by the private sector on terms similar to those of the existing Cross-Harbour Tunnel, and it was for consideration by potential developers if a rail tunnel could be provided on the same alignment. In October 1984 an invitation to make proposals on these lines was gazetted.

On 1 April 1985, nine consortia or individual companies submitted proposals and in July 1985, after a very detailed analysis, the Governor in Council decided to go ahead with a combined road/Mass Transit Railway tunnel and to invite revised proposals from a short list of three consortia. As a basis for these proposals a more precise project brief was issued which, inter alia, covered design and construction standards, laid down target tolls for 1989—\$10 for a private car; noted that the length of the franchise and royalty or equity for Government were negotiable, offered a five-year exemption from passage tax, and, in respect of the rail tunnel, stipulated that the Mass Transit Railway Corporation lease payments should not be greater than their forecast net incremental revenue and that there be no cross subsidy from the road tunnel.

On 1 October 1985, revised proposals based on this project brief were received from a shortlist of consortia and were the subject of negotiations until 3 November. An assessment of the relative financial and engineering merits of the three final, negotiated proposals indicated that the best bid was that from

the New Hong Kong Tunnel Consortium and following the decision of the Governor in Council, on 5 December 1985 a contract was signed with this consortium, on the basis of their final proposal, subject only to the enactment of the Eastern Harbour Crossing Ordinance.

The 5 December 1985 contract was signed by each member of the New Hong Kong Tunnel Consortium, who are jointly and severally responsible for the completion of this project. However, the consortium have formed a road company, the New Hong Kong Tunnel Co. Ltd., to hold the road franchise and a rail company, the Eastern Harbour Crossing Co. Ltd., to hold the rail franchise.

The fundamental objective of the negotiations was to maximise the benefits for the road user through the lowest possible tolls and the most advantageous toll review mechanism. In this respect the consortium have agreed to the target toll structure and have agreed to a toll review procedure comparable to that used in the case of the Cross-Harbour Tunnel. The test of any request for a toll increase will be that the company remains reasonably remunerative. The other key points in the road franchise are that it will run for 30 years from the start of construction, and that Government will receive a transfer of 5 per cent of the equity of the road company, as it is subscribed, and a further 2.5 per cent on the opening of Tate's Cairn Tunnel to give a total of 7.5 per cent. Although not included in the Bill, it should also be noted that Government has agreed there will be no passage tax for a period of five years from the start of operations. The road company will have a capital of \$750 million. There will be a separate rail franchise for 18.5 years from the opening of the rail tunnel, to be held by the rail company with a capital of \$350 million. It is also important to note that the consortium met the target for the Mass Transit Railway Corporation's lease payments and these will be less than the projected net incremental revenue. The consortium is contractually obligated to complete construction within three and a half years.

Sir, I have dealt in some detail with the background and the civil contractual aspects of this Bill because I think it relevant to record that the competition for this vital new link in the transport infrastructure was intense and that the negotiated deal is satisfactory and beneficial for the people of Hong Kong. The only costs to Government of this project are those for a small engineering supervision team, which has been set up by redeployment within Highways Department and the provision of land on which the tunnel and the approach roads rest, for which all clearance and compensation costs will be borne by the consortium. Hence, this project will be built at minimal cost to Government. Indeed, when it makes a profit appropriate dividends will accrue to public revenue.

The purpose of this Bill is to provide the necessary statutory backing to the civil contract, covering in particular the regulation of the construction and maintenance of the tunnels, the setting, reviewing and collection of tolls, the

control of traffic and certain procedures concerning the setting up and control of the companies holding the franchises, including the rights and obligations of the Mass Transit Railway Corporation in respect of the railway. As was a condition of the civil contract with the consortium, it is modelled on the Cross Harbour Tunnel Ordinance but in the event it is rather longer and more complex essentially because of the need to cater for a rail tunnel in addition to a road tunnel.

The Bill has 13 parts. Parts I to IV deal with the length of the franchises, the company structure, capitalisation and directors—Government will have two directors on the board of the road company. Parts V and VI cover the construction phase, in particular the powers of the Director of Highways in respect of standards and methods. Part VII covers the continuing obligations of the road and rail companies, in particular in respect of defects and maintenance. In essence the position is that the companies are responsible for the remedy of latent defects and with respect to the immersed tube portion of the project the additional requirement to maintain the tube in sound condition. Parts VIII, IX and X provide for the operation of the road tunnel, for by-laws to be drafted for the approval of this Council, for tolls to be charged and for the processing of suspected traffic offences within the tunnel. As with the procedure for setting tolls for the Cross Harbour Tunnel, the initial tolls have been established and are recorded in the schedule to the Bill. They can only be altered with the agreement of the Governor in Council, or failing agreement, following arbitration. Part XI provides for the operation of the rail tunnel by the Mass Transit Railway Corporation. Part XII provides for the revocation of the franchises, the key points being that in the event of default the creditors of the companies will be given first option for making suitable arrangements for overcoming default and only in the event of their failure would revocation take place. This departure from provisions in the Cross Harbour Tunnel Ordinance was seen as necessary to assist in the raising of project finance and increasing the confidence of potential lenders. And finally in Part XIII there is provision for appeal to the Governor in Council against any requirements imposed by authorities under this Ordinance, and with respect to the construction elements in a dispute with the director where failure of the appeal would place the companies in default, the Governor will refer such a dispute to arbitration.

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

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1986****Resumption of debate on Second Reading (4 June 1986)**

*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).*

**LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1986****Resumption of debate on Second Reading (4 June 1986)**

At this point, the following Members declare their interest:

Miss DUNN, as a director of a company which is a landlord

Mr. CHEN, as a landlord and as a director of a company which is a landlord

Mr. Peter C. WONG, as a director of a company which is a landlord

Dr. HO, as the spouse of a landlord

Mr. HU, as a director of a company which is a landlord

Mr. CHEONG, as a tenant

Mrs. CHOW, as a tenant and as a shareholder in a company which is a landlord

Dr. IP, as a landlord, a tenant, a director and shareholder in a company which is a landlord

Mr. Peter POON, as a director and as the spouse of a director of a company which is a landlord, as a shareholder and as the spouse of a shareholder in a company which is a landlord

Mr. CHAM, as a director and shareholder of a company which is a landlord

Dr. CHIU, as a director and spouse of a director of a company which is a landlord

Mr. CHUNG, as a landlord, a tenant and as the spouse of a landlord

Mr. CLYDESDALE, as a director of a company which is a landlord

Dr. LAM, as a landlord, a director and shareholder of a company which is a landlord, and as a tenant

Mr. NGAI, as a landlord, a director of a company which is a landlord, as the spouse of a landlord, and a director and shareholder of a company which is a landlord

Mr. TAI, as a landlord

Mr. LAU, as a landlord and director of a company which is a landlord

Mr. Martin LEE, as the husband of a landlady

Miss TAM, as a landlady

SECRETARY FOR TRADE AND INDUSTRY, as the spouse of a landlady

SECRETARY FOR LANDS AND WORKS, as a landlord

Mr. WONG Po-yan, as a director of a company which is a landlord

Mr. LAI, as a landlord

Mr. POON Chi-fai, as a tenant

Mr. LIU, as a director of a company which is a landlord and as the spouse of a landlady

MR. CHAN KAM-CHUEN: Sir, although personally I do not believe that I have an interest to declare but to be on the safe side, I better do so as I am a director of the Hong Kong Telephone Co. Ltd. and a board member of the Kowloon Canton Railway Corporation which may have properties affected by this Bill.

As to domestic premises, I live in my wife's flat and it would be sad in marriage if my wife treats me as a tenant and I look upon her as a landlady.

This Bill has been studied by the Legislative Council ad hoc group and the members present agreed in principle to support it. But as rent increase and security of tenure are sensitive public issues, some of my colleagues may wish to voice their concern. A statement by the Administration to clarify the points raised and periodic monitor of the effects of this amendment Bill would clear doubts, if any, in the minds of the public.

Personally, I support decontrol of rent for private housing and increase in the supply of both public and private housing by stages to solve our housing problems. The various arguments supported by facts and figures were set out in my speeches on 8 July 1981, 9 December 1981 and 25 May 1983 on the same subject.

In a nut shell, they were

- (a) The absolute majority of so-called 'landlords' in Hong Kong are only owners of one or two small flats. Some 30 years ago, purchase of flats by instalment payment was available to men of small means, such as clerks, blue collar workers and domestic servants.
- (b) As most of them would retire without pension or gratuity, buying a flat or two by monthly savings would provide them with food and shelter for their old age. Even if they started at the age of 25 in the late 1950s they would be around their retirement age by now. Fair rent collected by these 373 000 owners would not only provide stable living for them but also for their household and an average of four persons totalling 1 492 000 persons.
- (c) The solution to the housing problem of the 'not-so-well-to-do' should be more public housing and should not be a responsibility of the private sector, after they have paid their taxes. The present system of property tax at the standard rate on actual rent collected less 20 per cent outgoings would provide substantial funds in the public coffers to subsidise more public housing schemes through the Development Loan Fund.

In fact, Hong Kong has done a lot in accommodating not only the local born but also those who came over our border. The following figures taken from the Hong Kong Annual Report 1986 edition will show:

In Government quarters	70 800	persons
In public housing	2 336 100	persons
In private housing	2 519 000	persons
In temporary housing	434 300	persons
Marine (floating population)	36 400	persons
Total population as at 31.12.1985	5 396 600	persons

Of the above five categories, only private housing comes under rent control or decontrol if they are 'luxury flats'. If one deducts the 1 492 000 persons from the owner-households, the balance is 1 027 000 persons of the tenant-households.

In my speech on 9 December 1981, I have pointed out 'that there would be about 1 million persons on the worker-owner side and 1.2 million persons on the worker-tenant side. The trend appears to be that the number of worker-

owners would gradually increase. Those who formulate housing policy and those who have influence over public opinions should watch carefully the swing of public interests over this controversial issue of rent control.' The ratio is now 1 to 1.5 in favour of the worker-owner.

Another indicator is that most flats purchased are wholly owner-occupied. Table 9 of the Property Review 1986 shows the following figures for private domestic occupied units valued in 1985:

Wholly owner-occupied	36 642	89.3%
Partly owner-occupied/let	40	0.1%
Fully let	4 348	10.6%
Total	41 030	100.0%

If legislated, this Bill would be a step in the right direction in gradually phasing out rent control and as the security of tenure is adequately protected, there is no reason for slowing down the rent decontrol mechanism which has been set in motion.

With these observations, Sir, I support the motion.

MR. CHEONG-LEEN: Sir, I wish to declare interest as director and shareholder of a company which is a landlord.

This amending Bill seeks to finely balance the interests of both the landlords and tenants of premises which will be affected.

Following the principle of gradual decontrol, the permitted increases proposed in this Bill should be fair and reasonable, and by and large be within the capacity of the tenant to pay.

In the case of pre-war domestic premises which come under part I, it is proposed to raise the permitted rents from 27 to 30 times the standard rent with effect from 1 August 1986. Some 2 200 pre-war domestic units are under this category, and the average increase is estimated to be 11 per cent or \$132 per month.

The part II group covers post-war premises which gives dual protection of rent control and security of tenure to about 105 000 tenancies of wholly-let domestic units plus a number of sub-tenancies. Under the new proposal, which will be effective from 19 December 1986, the minimum percentage component will be raised to 60 per cent of prevailing market rent, instead of 55 per cent as of last year. It is estimated that 26 000 tenancies out of the total of 105 000 units could be affected.

As these rental adjustments, Sir, would appear to be fair and reasonable to both landlords and tenants of the domestic premises which are protected by rent control and security of tenure, I am prepared to support the Bill, bearing in mind that these adjustments should not cause any social or political or economic disruption within the community. It is to be hoped that the proposals in this Bill will encourage landlords even further to improve the standard of maintenance of their premises.

MR. HO (in Cantonese): Sir, I rise to say a few words about two aspects of the present Bill before this Council, but before doing so, I have to declare an interest in the subject matter under debate in view of my position as director and shareholder of various companies involved in property investment and as landlord of both domestic and commercial properties.

Having said this, I wish to emphasise that I am generally in favour of Government's long-term objective of phasing out rent control but in a manner which is not socially or politically disruptive in Hong Kong's present circumstances.

The first matter which I would like to deal with is in regard to the simplified procedure to obtain possession and their possible effects on the security of the affected tenants.

I have been given to understand by the Administration that the conditions listed out in section 129 of Part VI of the Ordinance only applies to cases where a tenancy has been 'determined' and that where a lease has expired and where the tenant is still protected under other provisions in the Ordinance, the concerned tenant would still be considered as the statutory tenant of the premises so that the summary recovery provisions would not apply. They would only be applicable in cases where all contractual relations between a landlord and his tenant have ceased. In view of the large number of premises which are still under rent control, I am rather concerned as to the adequacy of the provisions to protect the security of tenure of tenants which may be affected and would like Government to confirm the position which I have just mentioned.

The other matter which I would like to mention is in regard to the proposal to lift the value limit of premises covered by the summary recovery provisions from an annual rental of \$900 to those with a current rateable value of not exceeding \$30,000. It seems to me that by setting the rateable value limit at \$30,000, about 200 000 units would come within this limit and this would cover about one-third of the domestic tenancies in Hong Kong. I cannot help but wonder whether the net had not been cast too wide. I would have thought that it would be more appropriate to relate the value limit of \$900 in the existing provisions to the present rateable value which is about \$12,200.

With these remarks, I support the motion before this Council.

MR. LEE YU-TAI: Sir, I wish, firstly, to declare my interest in that I am presently living in premises with the rent being paid by a housing allowance and the tenancy agreement has been entered into by the landlord on the one side and myself as an individual on the other side.

It is said in Confucian Analects: 'Things that are done, it is needless to speak about; things that have had their course, it is needless to remonstrate about things that are past, it is needless to blame'. By 'things that have had their course', it refers to things that have to be done, and things that have reached a stage that is beyond remonstrations. I am, therefore, in support of the passing of the Landlord and Tenant (Consolidation) (Amendment) Bill 1986. According to statistics, every landlord in Hong Kong owns, on average, 2.1 domestic units so this means that the great majority of them are small landlords. Practically speaking, it is difficult to insist that these landlords should benefit their tenants permanently by charging rentals significantly below the prevailing market rent, not to mention that the tenants have generally enjoyed the benefits of rent control for over 10 years.

However, the Hong Kong Government is a responsible and efficient government and its policies have to be implemented on a comprehensive and fair basis. Tenants living in controlled premises in the private sector mainly belong to the 'sandwiched class'; they are not well-off yet they are not qualified to apply for public rental housing or Home Ownership Scheme housing since their incomes have exceeded the specified limit of \$8,500 per month. For certain parts of their incomes, a 30 per cent tax has been levied and the same rate will be applied on any increase of their earnings; thus they are getting only 70 per cent of their incremental income. It is now proposed to raise the minimum percentage component for rent-controlled premises under part II so that landlords can on a one-off basis increase rents to 60 per cent of the prevailing market rent or to add 30 per cent on top of the existing rent, whichever amount is the higher. It is envisaged that this rent increase will affect 26 000 households and over 100 000 of the local population. Moreover, there will be a further increase of 30 per cent every two years in the subsequent four years which will bring the total rent to 100 per cent of the prevailing market rent. By that time, there will be a complete de-control of rents.

I therefore hope that the Government will consider the extension of the Home Ownership Private Sector Participation Scheme and raise the monthly income limit of \$8,500 for application to benefit the "sandwiched class". If private sector developers were to participate in further stages of the Home Ownership Schemes, they could not then accuse the Government of infringing on their interests. Furthermore, these estate developers could always put more investments on construction projects of commercial and industrial premises. Another proposal which is worth considering is the establishment of a Home Purchase Loan Fund. Through this scheme, loans at low interest rates can be made available to the "sandwiched class" to assist them in making down payments for

the purchase of private sector premises. The proposed fund can be administered either by the Government or by the banking industry. It can be specified that those people from the "sandwiched class" with earnings below a certain income limit will be qualified to apply for such loans. There can also be stipulations that the premises purchased shall be used solely for accommodation of the applicant's household and each household can make an application only once.

Sir, in submitting the above proposals, I support the Landlord and Tenant (Consolidation) (Amendment) Bill 1986.

DR. TSE (in Cantonese): Sir, before speaking on this Bill, I would like to declare that neither my wife nor I are landlords. My present residential unit is provided by the Baptist College. Hence, irrespective of the passage or otherwise of the Bill, I will not be financially affected. But what I am concerned about is the sandwiched class in Hong Kong who have neither the financial ability to become flat owners nor the qualifications to move into public housing. In fact, they are falling between two stools and as a result, the rent they are paying for their accommodation takes up too large a proportion of their income. The present rent control in Hong Kong is based on the equitable market rental value. From the economic viewpoint of a free society, gradual rent decontrol is a measure which gives no cause for much criticism. But unfortunately Hong Kong is a small territory with a large population. Coupled with the factor of speculation, the so-called 'equitable market rental value' is actually not very equitable as it is quite incompatible with the income level of the general public. The fact that there is rent control and the implementation of the policy to provide public housing rental and home ownership scheme flats on a massive scale amply prove that the anomaly of high rents does exist. In my opinion, therefore, Government should, apart from exercising phased rent decontrol, try to adjust step by step the prevailing market rent to a level reasonably comparable to the income level of the general public, so that the majority of Hong Kong citizens may live and work in peace and contentment. In this respect, the home ownership scheme policy should be very effective. I consider that the relaxation of rent control should be in co-ordination with the formulation of the home ownership scheme policy so that the sandwiched class in Hong Kong will not have to live under the pressure of unreasonable rent increases.

These are my views on the provision regarding rent increase in the Bill. Except for reservations in this regard, I would support the motion.

MR. ANDREW WONG: Sir, the Landlord and Tenant (Consolidation) (Amendment) Bill 1986 essentially comprises two parts. The first has to do with further de-controlling rents for pre-war and post-war domestic premises. The second part relates to updating the value limit of small premises both residential and non-residential in three sections of the original Ordinance which provide summary procedures for landlords to recover such premises under certain conditions.

I have no direct pecuniary interest to disclose in so far as the first part of the present Bill is concerned, i.e. domestic rental de-control, and this is precisely the part I wish to speak on. In so far as the second part is concerned, i.e. summary procedures for the recovery of small premises up to a rateable value of \$30,000, although I have no comments to offer except that I am in support in general, I do have an interest to declare as I am the tenant of a suite of three small rooms in a commercial complex in Sha Tin. It is ironic that this second part has my support as a tenant. It is even more ironic that the said premises is related solely to my Legislative Council work and expenses that although the rents and other expenses are covered by my Legislative Council stipend and expenses reimbursement, the liability is entirely my own. I am however confident that, with a little bit of prudence on my part, I am not digging my own grave.

Now, Sir, I am sure we all know that domestic rental decontrol was first set in train back in 1981 when you, Sir, and more than half of my hon. colleagues in this Council have not yet assumed office. The de-control measures were first proposed by a committee of review of the Landlord and Tenant (Consolidation) Ordinance, and the current proposals merely aim to bring decontrol one step further towards complete de-control, earlier steps being taken in 1983, 1984 and last year, 1985. As such, the principles behind the measures had all been well debated and deliberated. Also ample opportunities were available throughout the years for their reconsideration.

Although not always speaking as a Councillor because (I was only elected last September), I have consistently been in support of domestic rental de-control on both philosophical and practical grounds. I have already spoken on the philosophical grounds in the 1986 Budget debate. As for the practical grounds, the measures first introduced in 1981 were aimed precisely at solving the problem of stagnant property development caused primarily by rental control and, even today, property development still lags behind demand.

However, despite my general support for de-control measures in general and the current de-control measures in particular, I wish to take the opportunity to put on record two observations which, depending, on how one looks at them, are directly or indirectly related or relevant.

First, the current proposals aim to bring rentals in pre-war domestic premises to an average of 60 per cent of the prevailing market rent and rentals in post-war domestic premises not otherwise excluded, e.g. luxurious flats, to a minimum of 60 per cent of the prevailing market rent. Now these measures have to be viewed in the wider context and the wider perspective of the total domestic housing stock and the rentals charged. According to figures provided to me by the Housing Branch, existing public housing rentals vary from 11 per cent to 37 per cent of the prevailing market rent, or very roughly 24 per cent only of the prevailing market rent as compared to roughly 60 per cent for private domestic

premises, post-war and pre-war. Not all public housing tenants are poor, and not all private housing tenants are rich. Just think of those poor tenants and sub-tenants in private housing who live from hand to mouth.

Sir, my second observation may sound theoretical but is in fact very practical and although the solution could be costly, it is practicable. Prices and rentals are determined not merely by demand, they are also determined by supply. Here, our concern should not be placed merely on property development but on full use of the existing stock in a free economy like Hong Kong. Rent control for domestic premises was introduced presumably because there was an argument that since housing is an essential commodity somewhat akin to rice, the price or rental ought to be affordable and stable. Therefore, on the same line of argument, owners of such essential commodities should not be allowed to profiteer through hoarding. We have done something about rice, but have we failed to do anything about housing? May I here suggest that serious consideration should be given to punishing those landlords who leave their domestic properties vacant for periods of say more than six months by imposing a prohibitive tax of say doubling the property tax. Sir, Government is a necessary evil. Let us all in Hong Kong recognise its necessity but endeavour to guard against and minimise its evil.

Now, with the above two observations, Sir, I beg to support the motion.

SECRETARY FOR HOUSING: Sir, I am grateful to Members for the interest which they have shown in this Bill, for the careful and detailed way in which they have examined it and for the constructive comments which have been made today in this Council.

Landlord and tenant legislation is, by its nature, complex and, as Mr. CHEONG-LEEN has said, if it is to achieve its objectives it must balance the need to ensure that tenants can enjoy a fair rental system with adequate security of tenure while landlords can achieve a fair return on their investment.

Mr. Ho Sai-chu in his speech asked whether the proposal to raise the limit in section 129 of the Ordinance, which deals with the recovery of premises, would affect security of tenure. The provision will only apply to cases where the tenancy has been determined under the provisions of the Landlord and Tenant (Consolidation) Ordinance and I can confirm that the security of tenure, which tenants enjoy under other provisions in the Ordinance, will not be affected.

Mr. Ho Sai-chu has also suggested that the limit under section 129 would be better set at \$12,000, based on an updating of property values. The great majority of premises under this limit have monthly rentals of about \$1,000 and are non-domestic premises such as car parking and storage spaces. Only a small number of domestic premises, mainly temporary structures in rural areas, would be affected.

I think, Sir, that the limit of \$30,000 is a reasonable one when due account is taken not only of changes in property values since the previous limit was introduced, but also of the changes in economic and social conditions in Hong Kong. Although 200 000 premises fall within this limit, only a small number are likely to be affected by the amendment as this will apply only when tenants improperly remain in possession after the tenancy has been determined.

Mr. LEE Yu-tai and Dr. Daniel TSE have both spoken on the wider issue of home ownership and Mr. LEE has also mentioned mortgage finance. At Members are aware the Housing Authority is currently undertaking a strategy review to consider how the overall housing needs for Hong Kong can best be met. The points which have been made today will be among those which will be considered in this review.

Since the landlord and tenant legislation was comprehensively reviewed in 1981, Government has watched developments in the rental market very carefully and since 1983 has carried out a full review on an annual basis. I am pleased to be able to assure Mr. CHAN Kam-chuen that this practice will continue and I can assure Members that the points which they have made today will be taken into account in future consideration of the Landlord and Tenant (Consolidation) Ordinance.

*Question put and agreed to.*

Bill read the Second time.

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

### **Committee stage of Bills**

Council went into Committee

### **SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1986**

Clauses 1 to 8 were agreed to.

### **LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1986**

Clauses 1 to 15 were agreed to.

Council then resumed.

**Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

SHIPPING AND PORT CONTROL (AMENDMENT) BILL 1986 and the

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1986

had passed through Committee without amendment and moved the Third Reading of the Bills.

*Question put on the Bills and agreed to.*

Bills read the Third time and passed.

**Unofficial Member's Bill****Second Reading of Bill**

**COMMUNITY CHEST OF HONG KONG (AMENDMENT) BILL 1986**

**Resumption of Second Reading (25 June 1986)**

*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 Bill**

Council went into Committee

**COMMUNITY CHEST OF HONG KONG (AMENDMENT) BILL 1986**

Clauses 1 to 3 were agreed to.

Council then resumed.

**Third Reading of Bill**

MR. HUI reported that the

COMMUNITY CHEST OF HONG KONG (AMENDMENT) BILL 1986

had passed through Committee without amendment 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 pm on Wednesday, 9 July 1986.

*Adjourned accordingly at sixteen minutes past Four o'clock.*

*Note:* The short titles of the bills listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

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**WRITTEN ANSWERS****Annex I****Written answer by the Chief Secretary to Mr. TAI'S supplementary question to Question 2.**

As I mentioned in my reply to Mr. LAU Wong-fat's question, in the last three financial years, there were five cases of loss to Government which resulted in the officers being punished for misconduct and another five cases in which the officers were surcharged. The amount of loss to Government in these cases totalled approximately \$520,000.

**Annex II****Written answer by the Secretary for Health and Welfare to Dr. IP'S supplementary question to Question 7.**

I confirm that Mr. Chambers' impression was correct. Section 3(b) of the Smoking (Public Health) Ordinance (Cap. 371) states that no person should smoke *or carry* a lighted cigarette, cigar or pipe in any public lift.