

# OFFICIAL RECORD OF PROCEEDINGS

Friday, 28 July 1995

The Council met at Nine o'clock

## PRESENT

THE PRESIDENT

THE HONOURABLE SIR JOHN SWAINE, C.B.E., LL.D., Q.C., J.P.

THE CHIEF SECRETARY

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E., J.P.

THE HONOURABLE MRS PEGGY LAM, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

THE HONOURABLE ALFRED TSO SHIU-WAI

THE HONOURABLE LEE CHEUK-YAN

**ABSENT**

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D., J.P.

**IN ATTENDANCE**

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.  
SECRETARY FOR HOME AFFAIRS

MR RONALD JAMES BLAKE, J.P.  
SECRETARY FOR WORKS

MR JAMES SO YIU-CHO, O.B.E., J.P.  
SECRETARY FOR RECREATION AND CULTURE

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.  
SECRETARY FOR TRANSPORT

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR MICHAEL DAVID CARTLAND, J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.  
SECRETARY FOR HOUSING

MR PETER LAI HING-LING, J.P.  
SECRETARY FOR SECURITY

MR BOWEN LEUNG PO-WING, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR KWONG KI-CHI, J.P.  
SECRETARY FOR THE TREASURY

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

MRS SHELLEY LAU LEE LAI-KUEN, J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR RICKY FUNG CHOI-CHEUNG

THE DEPUTY SECRETARY GENERAL  
MISS PAULINE NG MAN-WAH

PRESIDENT: Before we start, I think it would be helpful if I were to announce the arrangements for today. We have not expected to spill over into Friday with so much business left undone. As Members know, we do have an end of term dinner tonight which would be very costly to cancel. We shall go ahead with the dinner starting at about 7.30 pm, but we will compress the dinner as much as possible with no speeches, and it is expected that we ought to be able to finish dinner within about an hour and a quarter, which will be tantamount to the normal dinner break at any event. So dinner will take place upstairs as arranged, but it will be compressed to the shortest time practicable. I regret to say that there will be no lunch break, and what will be provided for the benefit of Members is snacks in the Ante Chamber so that in the event of voting, Members will be able to make it to the Chamber when the division bell rings. The Deputy has kindly consented from time to time to take the Chair when I take a short break. These breaks will occur when it is clear that there will be no voting. So we shall have to plough through the whole of the day breaking only for supper at about 7.30 pm. We shall go on as long as it is humanly possible tonight with a view to trying to finish the Order Paper today. But if that proves humanly impossible, we shall resume tomorrow morning. But I would please urge upon Members the need to get the outstanding business finished with the minimum of delay, and I would please urge Members to keep their speeches down to the essentials, that is, to speak at the Committee stage of this Bill and to speak on the remaining Bills on matters which are strictly relevant to the matter under debate.

### **Committee Stage of Bill**

Council went into Committee.

### **DISABILITY DISCRIMINATION BILL**

Clauses 5, 14, 37, 40, 41, 42, 45, 46, 49, 53, 57, 58, 61, 64, 68, 69, 72 to 75, 77, 78, 81, 84 and 85 were agreed to.

Clauses 1, 3, 4, 6 to 10, 12, 13, 15 to 19, 21 to 36, 38, 39, 43, 44, 47, 48, 50, 51, 52, 55, 56, 59, 63, 67, 71, 82 and 83

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

As I mentioned in my earlier speech, many disability groups feel that the Chinese term for disability “弱能” is not one they are happy with. In view of their concerns, the Administration has proposed 53 amendments to different clauses of the Bill, some of which are specified here, to amend the term to “殘疾” .

Clause 7 covers discrimination by way of victimization of a person who, for example, has brought proceedings against the discriminator. Our amendment will extend the definition of victimization to cover circumstances where a person is victimized because of proceedings and other actions taken by another person under the Bill. In other words, a person with a disability who has been discriminated against but has not brought proceedings himself will also be protected from any victimization which may arise from such proceedings having been brought by another person.

The Chinese text of clauses 7, 19, 21, 23, 27, 28 and 82 are amended to correct errors in the gazetted Chinese version of the Bill or to bring some of the Chinese terms used in line with those used in other Ordinances.

Clause 9 is a technical amendment to improve the definition of “therapeutic device”, “palliative device” and “auxiliary aid”.

Our amendments to clause 12(3)(b) stem from our acceptance of the suggestions made by the Bills Committee to improve the provisions relating to genuine occupational qualification. The amendments mean that in addition to an employer not being exempt if the alteration of premises he provides for employees would not impose unjustifiable hardship on him, the employer would also not be exempt if the disabled job applicant proposed to make the necessary alterations himself and undertook to restore the premises to their original condition on leaving. The intention is to make the exemptions provided under clause 12 consistent with similar exemptions provided under clauses 26 and 27 relating to the disposal and management of premises.

Another amendment to clause 12 is to delete subclauses 3(c), (d) and (f) as the exemptions provided in these three subclauses are already covered by the more general exemption of the inherent requirements of the job.

Clause 34 covers harassment in educational establishments. The provision protects, for example, a student with a disability from harassment by his teacher. Our amendment would extend this protection to the less likely but possible situation of a student harassing a teacher with a disability.

Clause 24 makes it unlawful for a person to discriminate against another person with a disability in relation to the provision of goods, services and facilities. A person is exempt only if he can prove that the provision of goods, services and facilities to people with a disability would impose unjustifiable hardship on him and, in the case of facilities, that the facilities are so designed or constructed as to be inaccessible to people with a disability. However, as some facilities are not physical in nature, for example, some banking facilities, the second exemption which involves the concept of design and construction may not be applicable. We therefore propose this technical amendment to limit the second exemption to those facilities which are physical in nature.

The amendment to clause 25 is to ensure the conduct of public examinations is covered under facilities for education.

Clause 29 exempts voluntary bodies, defined as those whose activities are carried on otherwise than for profit, from restricting their membership to persons without a disability and providing benefits, services and facilities to them. Our intention is to preserve the freedom of these organizations, who raise their own money, to choose their own members and to provide them with benefits, but as drafted, it would be technically possible for voluntary bodies subvented by the Government to take advantage of this provision to provide services in a discriminatory way. Although this is highly unlikely, our amendment will make it clear that it would be unlawful for voluntary bodies fully or partially funded by the Government to act in this way.

Although also unlikely to occur in practice, the clauses drafted would also permit a voluntary body to exclude people with a disability from membership, even though they met the membership criteria. In my remarks on the resumption of the Second Reading, I gave the example of excluding from an organization like MENSA a person with the necessary IQ on the basis that he had a disability. Our amendment will prevent organizations from placing such restrictions on membership unless they are reasonable, having regard to the main object of the body concerned.

Clause 30(1) exempts hospitals or reception centres for persons requiring special care other than those with a disability from the clauses relating to the provision of goods, services and facilities, and the disposal or management of premises. Members of the Bills Committee and disability groups believe that it is precisely those with disabilities who often have to rely on hospitals for care and treatment. These institutions should not, therefore, be exempt. We agree and are moving an amendment to delete this subclause.

Clause 39 makes it unlawful for a person to request a disabled person to provide any information if it is to be used for the purpose of doing a discriminatory act and if similar requests are not made of persons without a disability.

Disability groups, particularly those representing people with HIV or AIDS, are concerned about this clause, especially when linked to employment. They are afraid that HIV testing of all applicants for a job, which may be lawful under the existing provision, would in effect deter people with HIV or AIDS from applying for jobs.

To address their concerns, our amendment would make it unlawful for an employer to require a job applicant to provide information of a medical nature for the purposes of doing an unlawful act in relation to employment, unless he can prove that such a request is necessary, to determine, for example, whether the applicant is able to carry out the inherent requirements of the job.

Clause 56 exempts acts done for the purpose of safeguarding the security of Hong Kong. The intention is to give disciplinary forces more flexibility in dealing with emergencies. However, the Administration agrees, as Members of the Bills Committee and disability groups have suggested, that the exemption is not necessary in the context of disability. Our amendment will therefore delete the clause.

Our amendment to clause 59 is to define what we mean by “infectious diseases”. The definition will include those diseases referred to in the First Schedule of the Quarantine and Prevention of Disease Ordinance and communicable diseases as specified by the Director of Health. The Director of Health and others will have reference to these diseases when they take action, which might otherwise be discriminatory to safeguard public health.

The amendment to clause 63 is to empower the Secretary for Health and Welfare to specify the bodies which the Commission should consult in the drawing up of codes of practice to ensure that the views of disability groups are taken into account in the process.

The amendments to clause 71 will enable the Equal Opportunities Commission to issue enforcement notices requiring a person to cease specific practices that led to the unlawful discrimination concerned and to delete the requirement for the Commission to give the person both notice and an opportunity of making representations before he serves an enforcement notice on him.

Clause 82 requires a public authority which has the power to approve building, the Building Authority for example, to ensure that reasonable access for people with a disability is provided in all new buildings, taking into account whether it is practicable to provide such access and whether doing so would provide unjustifiable hardship on the developer concerned. The key words here, of course, are “practicable” and “unjustifiable hardship”. While “unjustifiable hardship” is already clearly defined in the Bill, “practicable” is not. Our amendment will specify in a non-exhaustive way, that the physical location and the immediate environs of a building should be taken into account in considering whether providing access for people with a disability is practicable in a particular case. It is, for example, practicable and reasonable to provide ramps in a building located in a normal street, but it may not if the building were located in a stepped street, where people in wheelchairs could not gain access.

Finally, our amendment to clause 83 is prompted by the concerns expressed by the Bills Committee and disability groups that people with a disability and those with a mental impairment in particular, are potentially more vulnerable in the process of giving information in the context of formal investigations conducted by the Equal Opportunities Commission. Our amendment will enable the Commission to make any arrangement necessary to assist any person with a disability to attend before it, and provide information



pursuant to section 66. This gives the Commission power to obtain information for the purposes of a formal investigation.

*Proposed amendments*

**Clause 1**

That clause 1 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 3**

That clause 3 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 4**

That clause 4 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 6**

That clause 6 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 7**

That clause 7 be amended —

- (a) in the heading, by deleting “不公平對待者” and substituting “使人受害” .
- (b) in subclause (1), by deleting “受不公平對待者” wherever it appears and substituting “受害人士” .

That clause 7(1) be amended —

- (a) by adding “or any other person (“the third person”)” after “that the person victimised”.
- (b) by adding “or the third person, as the case may be,” after -
  - (i) “knows the person victimised”;
  - (ii) “suspects the person victimised”.

**Clause 8**

That clause 8 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 9**

That clause 9 be amended —

- (a) in paragraph (a), by deleting “possesses -” and subparagraphs (i) and (ii) and substituting “possesses a palliative or therapeutic device or auxiliary aid”.
- (b) in paragraph (b), by deleting everything after “, of” and substituting “such a palliative or therapeutic device or auxiliary aid.”.

That clause 9 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 10**

That clause 10 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 12**

That clause 12 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 12(3) be amended —

- (a) by deleting paragraphs (c), (d) and (f).
- (b) in paragraph (e), by deleting “; or” and substituting a full stop.

That clause 12(3)(b) be amended —

- (a) by adding “, subject to subsection (4A),” before “are not”.
- (b) by deleting the semicolon and substituting “where the alteration of those premises to be so equipped would impose an unjustifiable hardship on the employer; or”.

That clause 12 be amended, by adding —

“(4A) Paragraph (b) of subsection (3) shall not apply in relation to the filling of a vacancy where the applicant for that vacancy, being a person with a disability, proposes to the employer that, on appointment to the vacancy, he will make reasonable alterations to that part of the premises to be occupied by him as accommodation if -

- (a) the applicant undertakes to restore the premises to their condition before alteration on leaving the premises;
- (b) in all the circumstances it is likely that the applicant will perform the undertaking;
- (c) in all the circumstances, the action required to restore the premises to their condition before alteration is reasonably practicable;
- (d) the alteration is at that applicant’s expense; and
- (e) the alteration does not involve alteration of other premises occupied by any other person.”.

### **Clause 13**

That clause 13 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 15**

That clause 15 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 16**

That clause 16 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 17**

That clause 17 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 18**

That clause 18 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 19**

That clause 19 be amended —

- (a) in the heading, by deleting “僱傭中介行” and substituting “職業介紹所” .
- (b) by deleting “僱傭中介行” wherever it appears and substituting “職業介紹所” .

That clause 19 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 21**

That clause 21 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 21(4)(a) be amended, by deleting “僱傭中介行” and substituting “職業介紹所” .

That clause 21(4)(b) be amended, by deleting “僱傭中介行” and substituting “職業介紹所” .

**Clause 22**

That clause 22 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 23**

That clause 23 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 23(2)(b) be amended —

- (a) by deleting “更改” and substituting “改動” .
- (b) by deleting “做” and substituting “造” .

**Clause 24**

That clause 24 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 24(2)(b) be amended, by adding “and to the extent that those facilities are physical in nature,” before “those”.

**Clause 25**

That clause 25(d) be amended, by adding “, including the conduct of public examinations” after “education”.

**Clause 26**

That clause 26 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 27**

That clause 27 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 27(2)(c) be amended, by deleting “改建” wherever it appears and substituting “改動” .

That clause 27(3)(a)(ii) be amended, by adding “共住” before “家庭成員” .

**Clause 28**

That clause 28(1)(b) be amended, by adding “共住” before “家庭成員” .

That clause 28(2)(a) be amended, by adding “共住” before “家庭成員” .

That clause 28(2)(b) be amended, by adding “共住” before “家庭成員” .

**Clause 29**

That clause 29(1) be amended, by deleting “This” and substituting “Subject to subsection (5), this”.

That clause 29(2)(a) be amended, by adding “where such restriction is reasonable having regard to the main object of the body” before “; or”.

That clause 29 be amended, by adding —

“(5) This section shall not apply to a body whose recurrent expenditure is funded wholly or in part by the Government.”.

That clause 29 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 30**

That clause 30 be amended, by deleting subclause (1).

That clause 30 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 31**

That clause 31 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 32**

That clause 32 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 33**

That clause 33 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 34**

That clause 34 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 34 be amended, by adding —

“(3) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to harass a person with a disability -

(a) who is, or is a member of, the responsible body for; or

(b) who is a member of the staff of,

the establishment.”.

### **Clause 35**

That clause 35 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 36**

That clause 36 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 38**

That clause 38 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

### **Clause 39**

That clause 39 be amended —

(a) by renumbering the clause as clause 39(1).

(b) by adding -

“(2) Subject to subsection (3), if, because of section 11(1), it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide information of a medical nature (whether by completing a form or otherwise) in connection with or for the purposes of the doing of the act.

(3) Nothing in subsection (2) shall render it unlawful for a person to request or require another person to provide information of a medical nature that is necessary to determine if that other person would be unable to carry out the inherent requirements of the job or would require services or facilities that are not required by persons without a disability.”.

That clause 39 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 43**

That clause 43 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 44**

That clause 44 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 47**

That clause 47 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 48**

That clause 48 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 50**

That clause 50 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

#### **Clause 51**

That clause 51 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .



**Clause 52**

That clause 52 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 55**

That clause 55(1) be amended, by deleting “within the meaning of section 54”.

**Clause 56**

That clause 56 be amended, by deleting the clause.

**Clause 59**

That clause 59 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 59 be amended, by adding —

“(3) In this section, “infectious disease” (傳染病) includes -

- (a) any disease specified in the First Schedule to the Quarantine and Prevention of Disease Ordinance (Cap. 141); and
- (b) any communicable disease specified by the Director of Health by notice in the Gazette.”.

**Clause 63**

That clause 63 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 63(3) be amended, by adding “, including any of the associations, organizations, associations of organizations or bodies specified by the Secretary for Health and Welfare by notice in the Gazette” at the end.

**Clause 67**

That clause 67 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

**Clause 71**

That clause 71(2)(a) be amended, by adding after “acts” —

“(which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof)”.

That clause 71 be amended, by deleting subclause (5).

**Clause 82**

That clause 82 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 82(1) be amended, by adding “、改動” after “改建” .

That clause 82(2)(a) be amended, by adding “, bearing in mind the physical location and immediate environs of the building” after “building”.

**Clause 83**

That clause 83(1) be amended, by adding before paragraph (a) —

“(aa) to enable the Commission to make any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 66;”.

*Question on the amendments proposed.*

DR LEONG CHE-HUNG: Mr Chairman, I rise to thank the Health and Welfare Branch for their prompt response and willingness to amend the clauses as specified to really remove the sensitive issues from the original Bill, to make it into a better Bill.

I would like to address in particular clause 39 by which, through its amendment, will give more reassurance for the disabled in relation to the requirement for information. The amended clause will make it unlawful for employers to request medical information unless it was necessary to determine whether they could carry out the intended requirements of the job.

Mr Chairman, putting it simply, in the case of AIDS testing, compulsory testing of such is illegal unless there is proof of job nature relationship, and this I also have to thank the Administration on behalf of the Coalition of AIDS Organizations against Discrimination.

DR YEUNG SUM (in Cantonese): Mr Chairman, I am especially pleased that the Administration has accepted our proposal to amend “弱能” as “殘疾”, because many people, though disabled, are not weak in their minds. By making the amendment, the Administration may change the society’s perception of the disabled. Thank you, Mr Chairman.

*Question on the amendments put and agreed to.*

*Question on clauses 1, 3, 4, 6 to 10, 12, 13, 15 to 19, 21 to 36, 38, 39, 43, 44, 47, 48, 50, 51, 52, 55, 56, 59, 63, 67, 71, 82 and 83, as amended, proposed, put and agreed to.*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, as Standing Order 46(4) and (5) stipulate that any proposed new clause shall be considered after the clauses of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4) and (5) be suspended in order that new clause 19A may be considered ahead of the amendments to clause 2.

Council then resumed.

PRESIDENT: Secretary for Health and Welfare, you have my consent.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I move that Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider new clause 19A before the amendments to clause 2.

*Question proposed, put and agreed to.*

Council went into Committee.

New clause 19A	Discrimination against commission agents
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*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 19A as set out under my name in the paper circulated to Members be read the Second time.

New clause 19A will make it unlawful to discriminate against commission agents on the ground of disability in the context of employment. Usually, commission agents would be regarded as employees or contract workers and would therefore be covered by the existing provisions of the Bill. However, there may be circumstances where a commission agent worked so independently that he or she may not be so regarded. Our new clause will make it clear that the commission agents are covered regardless of the circumstances of their employment.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 19A be added to the Bill.

*Proposed addition*

**New clause 19A**

That the Bill be amended, by adding —

**“19A. Discrimination against commission agents**

(1) This section applies to any work for a person (“the principal”) which is available for doing by individuals (“commission agents”) as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a person with a disability who is a commission agent -

- (a) in the terms on which he allows the person with a disability to do that work;
- (b) by not allowing that person to do it or continue to do it;
- (c) in the way he affords that person access to any benefits, services or facilities or by refusing or deliberately omitting to afford that person access to them; or

(d) by subjecting that person to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person with a disability at a time when if the work were to be done by a person taken into his employment being a person without a disability would be a genuine occupational qualification for the job.

(4) Subsection (2)(b) shall not apply to a principal who discriminates against a commission agent with a disability, if taking into account -

- (a) the commission agent's past training, qualifications and experience relevant to working as a commission agent;
- (b) where the person is already working for the principal as a commission agent, the commission agent's performance as a commission agent; and
- (c) all other relevant factors that it is reasonable to so take into the account,

the commission agent because of the commission agent's disability -

- (i) would be unable to carry out the inherent requirements of a commission agent; or
- (ii) would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the principal.

(5) Subsection (2)(c) shall not apply to benefits, services or facilities of any description if the principal is concerned with the provision (for payment or not) of benefits, services or facilities of that description to the public, or to a section of the public to which the person with a disability belongs, unless that provision differs in a material respect from the provision of the benefits, services or facilities by the principal to his commission agents.

*Question on the addition of the new clause proposed, put and agreed to.*

**Clause 2**

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 2 be amended as set out under my name in the paper circulated to Members.

We propose two amendments to clause 2(1). The first is to cover commission agents in the protection offered to people with a disability in the context of employment. The second is a technical amendment to improve the definition of “therapeutic device”, “palliative device” and “auxiliary aid”.

The two additional subclauses 2(9) and 2(10) will add the definition of “existing statutory provision” to the interpretation section. The definition currently provided for in clause 54 will be deleted.

*Proposed amendment***Clause 2**

That clause 2 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 2(1) be amended —

- (a) by deleting the definition of “auxiliary aid”.
- (b) in the definition of “palliative or therapeutic device” -
  - (i) by adding “or auxiliary aid” after “therapeutic device”;
  - (ii) by adding “或輔助器材” after “裝置” ;
  - (iii) by adding “or aid” after “a device”.
- (c) by adding -

““commission agent”(佣金經紀人)means commission agent as construed in accordance with section 19A;”.

That clause 2(1) be amended —

- (a) in the definition of “employment agency”, by deleting “僱傭中介行” and substituting “職業介紹所” .
- (b) in the definition of “disability”, by deleting “弱能” and substituting “殘疾” .

That clause 2 be amended, by adding —

“(9) Subject to subsection (10), in this Ordinance “existing statutory provision” (現有法例條文) means any provision of -

- (a) any Ordinance enacted before this Ordinance was enacted;
- (b) any subsidiary legislation made -
  - (i) under an Ordinance enacted before this Ordinance was enacted; and
  - (ii) before, on or after this Ordinance was enacted.

(10) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (9) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.”.

*Question on the amendment proposed, put and agreed to.*

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 2 be further amended as set out under my name in the paper circulated to Members. And I have to say that I am moving on behalf of the Bills Committee and also myself because I do not have to say I do not have a schizophrenic personality.

The proposed amendment to clause 2 defines relevant international instruments and relevant international obligations. The new definitions specify which of the international instruments and obligations applied to Hong Kong are relevant to this Bill, such as the United Nations Declaration on the Rights of Disabled Person and the International Covenant on Civil and Political Rights, as they relate to disability discrimination.

Mr Chairman, many Members of this Council said yesterday that law alone is not enough and education is essential. To give effect of the Bill, if enacted into law, with the international obligations and instruments will no doubt help in this direction.

Mr Chairman, this amendment should also be considered together with the Bills Committee proposed amendment to clause 60, which can only be moved if this amendment is agreed. The amendment to clause 60 gives two new functions to the Equal Opportunities Commission (EOC).

Firstly, the new subclause 60(1A)(a) gives the EOC an optional function of promoting observation of relevant international instruments and obligations. Despite apparent breath, the EOC's functions are limited to discrimination as defined in the Disability Discrimination Bill. The Bills Committee considered that in its role other than law enforcement such as research, promotion and conciliation, the EOC should be clearly empowered to address any matter connected with discrimination under the broad international non-discriminatory standards.

Secondly, the new subclause 60(1A)(b) gives the EOC power to examine any proposed legislation that it considers may affect equal opportunity and report the results to the legislation sponsor. The subclause is to give the EOC an express statutory role in respect of the proposed legislation. Similar provisions are provided, Mr Chairman, in the Personal Data Privacy Bill.

*Proposed amendment*

**Clause 2**

That clause 2 be amended —

(a) in subclause (1), by adding -

““relevant international instruments” (有關國際文書) means -

- (a) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly of the United Nations on 20 December 1993;
- (b) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975; and
- (c) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971;

““relevant international obligations” (有關國際義務) means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination, on the ground of disability, in particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;”.



(b) by adding -

“(9) For the purposes of the definition of “relevant international obligations”, “discrimination” (歧視) means discrimination within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 6, 7, 9 or 10, is not limited to discrimination so falling.”.

*Question on the amendment proposed.*

MS ANNA WU: Thank you, Mr Chairman. This amendment adds two new definitions for purposes of the new functions given to the Commission by the Bills Committee’s amendment to clause 60, which Dr LEONG has referred to. Taken together, the instruments and obligations listed in the new definitions amount to an international charter of the rights of people with disabilities.

I want to make it very clear to Members that all of the listed instruments and obligations are already applicable to Hong Kong. Nothing is being brought into Hong Kong law through the back door here. The amendments merely list for clarity and convenience which of Hong Kong’s international obligations are directly relevant to disabled persons.

The Administration opposes the addition of any reference to international standards in the functions assigned to the Commission. The Administration suggests that the international standards are vague and that the Commission would do better to focus on discouraging unlawful acts against the disabled as defined in much greater detail by the Bill.

The Commission should do more than merely discourage unlawful acts against the disabled, however. It should also endeavour to promote the positive recognition and development of the rights and equality of persons with disabilities. The various international standards are formulated with regard not only to law enforcement but also to more general policy and promotional considerations, and provide a better blueprint for positive promotional activity than to the negative legal prohibitions contained in the Bill itself.

The Administration correctly observes that both the proposed new functions can already be undertaken by the Commission under authority of its broader existing functions. The Administration’s observation is irrelevant, however. Many of the functions that the Administration put into clause 60 could also be undertaken without express authority, for example, function 1(e): “To keep the working of the Ordinance under review and to submit amendment proposals to the Governor”, which again Dr LEONG has referred to. The Administration put that function in the Bill because it considered the function important enough to warrant special mention, not because of any legal necessity.

The two new functions that this amendment adds are at least as important as that one, and should also be expressly authorized by the legislation. Express mention can make a difference. For example, although the Commission could examine any legislation it chooses anyway, the status of his recommendation will be much higher if they are made pursuant to an express statutory power. The Administration has not suggested any real reason to vote against the proposed amendment. I do not understand why the Administration shies away from any reference to the international standards concerning equal opportunity. In its own equal opportunity legislation, there is nothing legally irregular about such reference to international instruments.

As I mentioned previously in connection with the Sex Discrimination Ordinance, at least six Ordinances enacted in the last six months either refer to or expressly incorporate international standards. I would add that the International Covenant on Civil and Political Rights is expressly referred to in the Legal Aid Ordinance and elsewhere in our laws. The Bill of Rights itself is a verbatim repeat of the International Covenant on Civil and Political Rights. I hope the Administration is not suggesting that the Bill of Rights is itself too vague for enforcement.

Paragraph 15.39 of the 1992 Green Paper on Rehabilitation Policies and Services in fact refers to the need to have a comprehensive review which should include examination of the effect of the Bill of Rights upon disabled persons and the need to develop the various international conventions and declarations dealing with the rights and needs of disabled persons. Reference to treaties and covenants seem to be desirable and necessary.

There is no doubt that, when the Administration makes future reports to various United Nations committees, it will cite this Bill and the Commission's enforcement efforts under it as partial fulfilment of several international obligations that are listed by this amendment. It seems only fair and appropriate that those obligations be expressly mentioned in the Bill itself.

Mr Chairman, I urge Members to accept and endorse this amendment. Thank you.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, in answer to Members' comments I would like to point out that the proposed amendments are not relevant to the existing Bill as the Bill really does not refer to international treaties and instruments, as mentioned under the present amendments.

These amendments are really introduced for the purpose of another amendment to be moved by Dr the Honourable LEONG Che-hung to empower the Equal Opportunities Commission to promote the understanding, acceptance and public discussion of relevant international obligations and standards contained in the instruments, and to examine any proposed legislation that it

considers may affect the quality of opportunity and acceptance of the same international obligations and standards.

As Members know, anti-discrimination legislation is a relatively new area the whole world over. In the Administration's view and to assure the Honourable Ms Anna WU, the Equal Opportunities Commission will have all the powers necessary to focus on promoting public understanding and acceptance of this Bill and its requirements, which will have an important impact on our community than on more general international instruments. Moreover, as I explained earlier in my Second Reading speech, nothing in this Bill prevents the Commission from promoting public discussion of international instruments or examining proposed legislation if it felt it would be helpful to do so.

Mr Chairman, since we consider all the amendments referring to international treaties and instruments as unnecessary and potentially confusing, the Administration opposes this amendment.

*Question on Dr LEONG Che-hung's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Ayes" had it.

Dr LEONG Che-hung claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We seem to be four short of the head count; three short. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted against the amendment.

THE CHAIRMAN announced that there were 21 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

*Question on clause 2, as amended, proposed, put and agreed to.*

Clause 11

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman I move the amendments to clause 11, except the amendment to subclause (5) of clause 11, as set out under my name in the paper circulated to Members.

As drafted, clause 11(2) makes it unlawful for a person to discriminate against an employee with a disability by, for example, dismissing him or her or subjecting him or her to any other detriment. To bring the subclause into line with that on job applicants, we propose to amend it to make it also unlawful for an employer to discriminate against employees in the terms of employment he affords them.

*Proposed amendment*

**Clause 11**

That clause 11 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 11(2)(a) be amended, by deleting “; or” and substituting a semicolon.

That clause 11(2) be amended, by adding —

“(aa) in the terms of employment he affords that person; or”

*Question on the amendment proposed, put and agreed to.*

CHAIRMAN: Mr Fred LI has given notice to move amendments to subclauses (3), (5), (6) and (7) of clause 11. The Secretary for Health and Welfare has also given notice to move an amendment to subclause (5) of clause 11. I will call upon Mr Fred LI to move his amendments first in accordance with Standing Order 25(4) and 46(2).

MR FRED LI (in Cantonese): Mr Chairman, I move that clauses 11(3), (5), (6) and (7) be amended as set out under my name in the paper circulated to Members. These are very simple amendments, mainly on whether those firms with less than five employees should be exempted for a certain grace period. There are definite controversies over this point.

As the spokesperson of the Democratic Party on welfare policies, I propose the amendments of this Bill, which are made in response to the requests raised in the past few days to all the Members by the Hong Kong Society for Rehabilitation, the Rehabilitation Department of the Hong Kong Council of Social Service and all those who are involved in rehabilitation. We basically welcome this Disability Discrimination Bill, which is something we have been waiting for a very long time. However, in respect of protecting the disabled so that they can enjoy equal opportunity in employment, there are loopholes in clauses 11(3), (5), (6) and (7). We have had detailed discussions over this problem with the Hong Kong Society for Rehabilitation, and we think that providing a grace period for small firms would only further reduce the employment opportunities of the disabled. At a time like this when the unemployment rate remains high, it is already hard for the able-bodied to keep their rice bowls, so the difficulty for the disabled to have a job would be even greater. According to a survey on the employment situation of the disabled, it is found that their unemployment rate is almost 50%, which clearly shows the greater difficulties the disabled faced in finding a job. Moreover, if the small companies really have difficulties in employing the disabled, the Bill has already provided two “excuses”; one is “unjustifiable hardship”, and the other is “genuine occupational qualification”. What it means is that if an employer can explain that his not employing a disabled is because of the inherent problem of the job itself, and that he has actual difficulty in employing the disabled, then the employer can be exempted from being prosecuted. These two conditions have taken care of the operating condition of companies, large, medium and small. If further provision is made in respect of a grace period, the effectiveness of this Bill will be reduced and harm the spirit of providing equal opportunity and promoting full participation as envisaged by this Bill. After much detailed discussions, we proposed this amendment. If passed, this amendment will treat those companies with less than five employees like any other companies. In fact, the Secretary for Health and Welfare said yesterday that this figure was only 20%, and we feel that there is no substantial effect, so why does the Administration still want to have this grace period? If this exemption can be removed, then everyone will be equal.

The Administration also proposes an amendment by reducing the grace period from five years to three years so as to make it in line with the Sex Discrimination Bill, and the Health and Welfare Branch also submit a document, detailing, item by item, the reason for opposing the amendments of Dr the Honourable LEONG Che-hung and my amendment, but from the document I cannot see any arguments, except that it only said that more time should be given, and three years are enough, so that the small firms can learn from the big companies in how to deal with the problems. But why not four years or two years? No explanation whatsoever was given in the document. Why the grace period? Why is it especially difficult for the small firms? No explanation also. Despite that the reduction to three years seems to be a backdown on the part of the Administration, we think that it still is a violation of the principle of equality espoused by the Bill, and it does not give much significance to promoting equal opportunity and full participation for the disabled. I therefore must stress that I have sufficient reason for proposing the amendment, and it is nothing superfluous. On the contrary, the reduction of the grace period only shows that the Administration does not have any criteria to go by.

We had got in contact with a lot of disabled job-seekers, they felt despaired and were often subject to the whims of the employers, for example, the employers, seeing that they were disabled, would say that there was no vacancy, but outside on the gate was still pasted a recruitment ad; or some employers set down some very harsh conditions to scare the disabled away. Even if they were employed, the disabled were often subject to unequal treatment, for example, pay reduction, unequal pay, not promotion, and when the company was to retrench its staff or restructure, the disabled were the first to be axed.

Mr Chairman, the disabled in Hong Kong have been subject to all sorts of unequal treatment and discrimination. In the past, they could only bear all these and remain silent, but now with this Bill, we can break the silence and create equal employment opportunities for the disabled and eliminate discrimination. I sincerely hope that my colleagues here, and the Administration, would support my amendment by giving the disabled further equal employment right so that they can be self-reliant and integrate into the society. I would like to appeal to the Members that this is not my amendment, for it is in fact one made with the wish of many persons with disabilities and friends of the rehabilitation sector. I hope that you will not disappoint them. If any of you do not approve of the amendment, I hope that you can excuse yourself or abstain, but do not vote against it, or else you will be doing injustice to the friends of the rehabilitation sector and dealing them a heavy blow.

With these remarks, I move the amendment.

*Proposed amendment***Clause 11**

That clause 11 be amended —

- (a) by deleting subclause (3).
- (b) by deleting subclause (5).
- (c) by deleting subclause (6).
- (d) by deleting subclause (7).

*Question on the amendment proposed.*

DR LEONG CHE-HUNG: Mr Chairman, I am grateful for Mr Fred LI for moving this amendment, and I have to tell him that this was actually the feelings of the Members who were present at the Bills Committee meeting. The reason why the Bills Committee did not include this as one of their amendments was in the light of the “defeat” of the Sex Discrimination Bill that also had this particular amendment that we moved.

As Mr Fred LI has mentioned very rightly, the fact that the Administration is willing to change the grace period to three years is just not good enough for the disabled persons who we are facing with.

Secondly is that in the Bill itself, there is already a very specific feature to show that if there are genuine occupational qualifications, it does not impinge on the Bill itself. I do not see any reason why we cannot change this to remove the whole five-year grace period to really give the full benefit of a proper Bill to the disabled.

MR JAMES TIEN (in Cantonese): Of all the members of the Federation of Hong Kong Industries and Hong Kong General Chamber of Commerce, not one member has employed less than five staff. Of course we hope or encourage small firms to employ the disabled, but we have to understand that these small employers are not big companies like the members of the Federation of Hong Kong Industries of the Hong Kong General Chamber of Commerce. For example, I am a personnel manager. I issue a memo that an ad has to be published in such and such a way, all others just follow and people just come to apply for it. Whatever they want to say, it is up to them. However, it is different with the small employers, they may have to be a “Jack of all trades” within his company.

In passing this Bill, if we provide for a three-year grace period so as to encourage the small employers to take on the disabled and give them more opportunities, I think that having a three-year period is better than having none. As Dr the Honourable LEONG Che-hung has just said, an employer can still decline to employ on the grounds of special reasons inherent in the job. In order not to get involved in any law suit, a small employer may resort to this reason in whatever case. He would not care about anything, he just does not want to be prosecuted. I feel that such an amendment will in fact be counter-productive. Just as I said yesterday, be it the Clean Hong Kong Campaign, or any anti-discrimination legislation, educating the public is the most important thing. If it becomes a practice for the big employers, the small ones would follow. If the big employers are being prosecuted, the small ones would keep their eyes open within that three year period.

Mr Chairman, on this ground, I do not support the amendment.

DR YEUNG SUM (in Cantonese): Mr Chairman, I rise to speak in support of the Honourable Fred LI. We may think that this is only a very minor amendment, that it only removes the three-year grace period for the small firms so that no grace period is allowed. This is a small matter, but I hope that those Members present should seriously consider giving the disabled an opportunity. This is also a milestone. If we approve this Bill today, and if we also agree that the factories and companies should employ the disabled, they will be given an opportunity. If the Bill is passed, I believe that the image of the whole society will be enhanced, and psychologically, the disabled will feel that they have the respect of the society, and their disability is no obstacle to dignity or opportunity. I hope that we can give them an opportunity.

I would also like to tell the Honourable James TIEN not to worry that much. The proceedings cannot convict the employers. How can they be convicted so easily? Firstly, an employer can explain that there is occupational reason that the disabled cannot be employed. Secondly, he can invoke unjustifiable hardship as the reason to explain the problem he may have if he employs the disabled. I feel that these two reasons, as drafted in the Bill, have in fact given due consideration to the problems the employers may have. The employers can explain themselves away, can they not? If they think that it is difficult for a disabled to fill a certain job, or employing them will give rise to unjustifiable hardship, these two reasons are already very sufficient, are not they? I hope that the representatives of the industrial and commercial sectors present can think deeply, these two reasons have already accorded the employers sufficient protection, and in fact they are protection, are not they? Under reasonable condition, it is hard to convict an employer? If it is so, why not give an opportunity to the disabled while the employers can have their protection? At the same time, a milestone will be set for the whole society when we pass this Bill, signalling that Hong Kong will not allow the disabled to be treated



unfairly. I feel that this is very important. Though it is a small amendment, its significance lies in the protection it gives the employers and the opportunity it gives the disabled. Why do we not go for it?

I therefore appeal to you all, though you may have been lobbied by the Administration, I still hope that you can abstain so that we can pass this Bill. Thank you, Mr Chairman.

MR HOWARD YOUNG (in Cantonese): Mr Chairman, I feel that how advanced a society is cannot simply rely on what sort of law is passed at a certain point in time. Yesterday when we were discussing the Bill on Mandatory Provident Fund, I pointed out that some companies had already set up very comprehensive provident fund scheme long before the coming existence of the relevant legislation. Similarly, in the treatment of the disabled, there are also similar precedents. I represent the hotel constituency, and have been criticized in this Council that the hotel industry is importing labour, is doing some other thing improper. However, last week, a hotel manager talked to me. He said that he had once called the Secretary for Education and Manpower, saying that he would like to employ some disabled and asked the Secretary to refer him someone who can take up such job as a telephone operator. What was required for the job is fluency in Cantonese, it did not matter if the applicant was wheelchair bound or not, he would be just as welcomed. The manager even said that he could adapt the facilities in the hotel for easy access by the disabled, staff and guests. However, the manager could not find anyone. At that time, there was no such law. He felt that it is the responsibility due of a large corporation to employ the disabled, it is not because there is such a legal requirement.

I think that many large corporations in Hong Kong have sufficient resources, legal advisers, and also sufficient manpower and framework to implement this series of measures. For small firms, however, I feel that we have to consider carefully their hardship. Of course, the Honourable James TIEN and I come from different background. What he referred to are members of the Federation of Hong Kong Industries, employing more than five employees, and I am from a constituency that encompasses both large and small companies, and even small travel agencies run by a man and his wife. We should not have the idea that if a large corporation can do something, we can force the small ones to do the same. Large corporations should also understand the hardship of the small firms. I feel that it is good to set down a period during which the small firms can learn from the large ones. We all know that in Hong Kong, large corporations usually can provide better conditions or benefit to their staff. If these companies can employ those disabled who need a job, it should be a most welcome move.

MR VINCENT CHENG (in Cantonese): Mr Chairman, I belong partly to the rehabilitation sector because I have spent some time doing voluntary work, especially in employment. In private I have contacted a number of large and small companies. My influence on the large ones is not very much as I can see that the disabled have to face great difficulties in finding employment. I myself have also tried to do something that is within my ability, for example, I request the Hong Kong Bank to make a statement in its annual report that disabled persons will be employed. To a large corporation, it is not difficult. They have division of labour, and the employer can make clear arrangement in respect of jobs for the disabled. However, there is clear problem in the division of labour in small companies. Very often when a small company employs a person, it already has an idea what the person will do, but when there is a shortage in manpower, the company may make some adjustments. There are times that the employer actually cannot make any preparation for and he needs to have that flexibility. This may make the disabled a bit worried. I feel that for some cases “anything done under compulsion is no good.”

Under such a situation, I understand how urgently the disabled are hoping that this Bill can be passed, hoping that some legislation can be enacted to regulate people's behaviour. On this matter, I would rather have the “goodwill”, as the rehabilitation sector says; it is better to wait for the society to accept than setting it down in harsh terms that if an employer does this he would be punished. I feel that so doing would only delay the progress of the whole matter. I would prefer to give the employers three years, saying that this will be implemented and we understand their hardship, but we still hope that within the three years, they can employ more disabled. I know that they have actual difficulties, so I cannot accept the amendment of the Honourable Fred LI.

Thank you, Mr Chairman.

MR ROGER LUK (in Cantonese): Mr Chairman, I feel the same as the Honourable Vincent CHENG does. I think there is quite a large number of large corporations employing disabled persons. It is easy for these companies to do so because large corporation can adapt to the change very naturally and there are also sufficient vacancies for people to choose. Small companies employing people with disabilities should be in the minority. However, I do not mean that we should not employ people with disabilities. We may ask why we do not give immediate effect to it, but have to give a buffer of a number of years?

On the other hand, the Honourable YEUNG Sum said just now that as long as there was ground for proceedings to be instituted, then let the court adjudicate. However, going to court is a very costly option for small companies. I feel that if we pass this Bill today but provide for a buffer period, we are not discriminating against or doing injustice to the disabled; we have to protect the employer as well. A period of three years is an ideal one. Though I feel that three years may in fact be a bit too long, the only options open to us are immediate effect or three years.

Whenever we legislate, we must try to balance various interests. If the disabled are to be given equal opportunities, it should be something coming from the society spontaneously rather than being defined by law. In fact, it is also quite impossible for any legislation to accurately define where that point of balance is. Under such a situation, my personal preference is to provide for a buffer period, and at the same time, if we have similar legislation in the future, we should consider very carefully. After all, is a three-year buffer period too long?

Thank you, Mr Chairman.

MR LEE CHEUK YAN (in Cantonese): Mr Chairman, I speak in support of Mr Fred LI's .....

CHAIRMAN: Please do not exhibit that T-shirt.

MR LEE CHEUK-YAN: You mean you want me to zip up?

CHAIRMAN: Zip it up, do not show it. That is a slogan. Slogans are not permitted in this Chamber. Please zip it up.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I speak in support of Mr Fred LI's amendment.

The speeches of some of the Members seem to imply that the amendment is to force the small companies to employ the disabled, but I do not see any element of coercion in the amendment itself. Many of the small companies usually do not put out any recruitment ad. It is more often the case that they recruit through their relations with others. If recruitment is done this way, the disabled actually do not even have the chance for an interview. The amendment therefore does not cause much hardship to the small enterprises.

I also feel that we do not have to take our case to court at every turn because we have an Equal Opportunities Commission which can help settle the disputes and look into the matter. For example, many small companies often require their staff to be Jack of all trades. There may really be a genuine requirement in the job itself that a disabled person cannot be employed for the job, and this can be explained by the employer. I do not think that it is necessary to take our case to court, and therefore it does not pose any hardship for the small companies. What we want to see is that those small companies that are now having disabled people on their staff will not, because of their

disability, pick them out to be axed first when there is a necessity to dismiss any staff. I believe this amendment does not give much pressure in respect of recruitment.

Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, we agree with all that Members have said and we want to point out that we will do absolutely all we can to give people with a disability equal opportunities in employment. This is what the whole Bill is all about. At the same time, we also need to do all we can to encourage the entire community to support the spirit of the Bill.

This is why the Administration will be proposing an amendment to reduce the grace period from five to three years. The equivalent grace period for small firms was also recently set at three years in the Sex Discrimination Ordinance. I stress again that 80% of all employees would be unaffected by such a grace period, and that most persons with a disability are in practice employed by larger firms.

The amendment proposed by the Honourable Fred LI would delete the grace period in its entirety. We believe small firms may encounter difficulties in this and, they should be positively encouraged to adjust to the new requirements, and we consider three years to be a reasonable period.

Mr Chairman, therefore, the Administration objects to this amendment and will vote against it.

*Question on Mr Fred LI's amendment put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Mr Fred LI's amendments to subclauses (3), (5), (6) and (7) of clause 11 have not been agreed, I will now call upon the Secretary for Health and Welfare to move her amendment to subclause (5) of clause 11.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that subclause (5) of clause 11 be amended as set out under my name in the paper circulated to Members.

Presently, under clause 11(5) of the Bill, a five-year transitional period is given to small business establishments, that is to say, those with five or fewer employees. Our intention was to help small firms adapt to the changes in practice and behaviour that would be required by the legislation.

As many Members have already pointed out, this Bill represents a big step forward for our community in eliminating discrimination against people with a disability. Some, however, not because they are unwilling to comply, do need time to adjust to the new way of doing things.

SHAKESPEARE once said "balance is all". We have to get the right balance. A long grace period could lead to inertia. No grace period could lead to real difficulties. Members of the Bills Committee and disability groups have already expressed their concern over this issue.

Having considered carefully their views and to bring this Bill in line with the Sex Discrimination Ordinance, we propose an amendment to reduce the grace period from five to three years.

*Proposed amendment*

**Clause 11**

That clause 11(5) be amended, by deleting “5th” and substituting “3rd”.

*Question on the amendment proposed.*

MR FREDERICK FUNG (in Cantonese): Thank you, Mr Chairman. Just now I supported the amendment of the Honourable Fred LI, and I thought that there is no need for a grace period. Now his amendment is not passed, the amendment of the Administration will reduce the grace period from five years to three years; this amendment certainly is better than the original, but is still not as good as Mr Fred LI's. I hope that the Administration can make itself clear why at first it wanted a five-year grace period, but now reduces it to three years, but not two years or two and a half years. What is behind the Administration's change of mind?

SECRETARY FOR HEALTH AND WELFARE: Basically we were given the advice through the Education and Manpower Branch about why it was set initially at five years, but we have, through long discussions with the Bills Committee, reached the view that reduction from five to three years is reasonable.

*Question on the amendment put and agreed to.*

*Question on clause 11, as amended, proposed, put and agreed to.*

**Clause 20**

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 20 be amended as set out under my name in the paper circulated to Members.

Clause 20 covers harassment in the context of employment. It protects, for example, an employee with a disability from harassment by her boss, but it did not cover all potential cases of harassment. We now propose to amend it to cover the harassment of an employee with a disability by an employer, the harassment of a commission agent with a disability by someone who lives in the same home as the employer.

*Proposed amendment***Clause 20**

That clause 20 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 20 be amended, by adding —

“(9) It is unlawful for the principal, in relation to work to which section 19A applies, to harass a person with a disability who is a commission agent.

(10) It is unlawful for a commission agent to harass a person with a disability who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a person with a disability at an establishment in Hong Kong to harass that person.

(12) It is unlawful for a person residing in any premises to harass a person with a disability -

- (a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and
- (b) carrying out in those premises all or part of that person’s work in relation to that person’s employment (and whether or not that person also resides in those premises).”.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 20, as amended, proposed, put and agreed to.*

**Clause 54**

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 54 be amended as set out under my name in the paper circulated to Members.

This amendment is related to my earlier amendment to clause 2. The purpose is to move the reference to “existing statutory provision” to the definition section of this Bill.

*Proposed amendment*

**Clause 54**

That clause 54 be amended, by deleting subclauses (3) and (4).

That clause 54 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

*Question on the amendment proposed, put and agreed to.*

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 54 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment is to the effect that exceptions permitting exclusion of disabled persons from jobs covered by Schedule 3 and exempting protective legislation and acts done for the protection of a person with a disability will expire in one year, subject to extension by Legislative Council resolution for another year.

The Bills Committee considers that current regulations intended to protect a person with a disability may be outdated and might become inadvertent restrictions. At present, no items of legislation have yet been placed in the Schedule. A time-limit should therefore be set for the Administration to review the Schedule and associated exception; one year in the first instance, subject to extension by Legislative Council resolution.

I would like to remind Members that a parallel amendment was approved by this Council for the Sex Discrimination Bill.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, a similar amendment was passed by Members of this Council in respect of the Sex Discrimination Ordinance last month, and our own Schedule relating to existing legislation concerning the protection of persons with a disability is empty. In the light of these considerations, we have no objection to the amendment and will vote for it.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 54, as amended, proposed, put and agreed to.*

Clause 60

CHAIRMAN: Dr LEONG Che-hung, as your amendment to clause 2 has been negated, you can no longer proceed with your amendment to clause 60.



SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 60 be amended as set out under my name in the paper circulated to Members.

The amendment is to change the Chinese term for disability from “弱能” to “殘疾” in this clause.

*Proposed amendment*

**Clause 60**

That clause 60 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

*Question on the amendment proposed.*

MR VINCENT CHENG (in Cantonese): I personally object to this amendment because I feel that this translation is worse than “弱能” . “弱能” only refers to the fact that one’s certain ability is not as good as others’, it is just feebleness. However, with “殘疾” , “殘” in Chinese, refers to a condition pretty bad, it is 10 times worse than “弱” . Sorry, I should have used Chinese all through. “殘” refers to something even worse than “弱” . “疾” in Chinese means a disease, that is a frequent illness. However, a person with disability is not always one with a frequent illness. I therefore object to this translation.

MR HOWARD YOUNG (in Cantonese): Mr Chairman, I have also thought about this word. In a sense, “弱能” is not so good, but now with so many voluntary agencies relying on fund-raising campaigns to raise funds for their operations, I think “弱能” can help them in this respect. The Honourable Vincent CHENG has rightly said that “殘疾” in Chinese can be quite unacceptable. On this issue, I think that it is not worth supporting.

MR ROGER LUK (in Cantonese): Mr Chairman, translation is a very demanding job, requiring very exact correspondence in meaning, but with respect to the word itself, it may not be best translation for another word. To use “殘疾” to translate “disability” of course is very appropriate. But referring to the “殘疾人士” , sorry, I still have to use the term, they may not have any deep feeling about it.

I can give you another example for your consideration. When the Scout Association organized activities for these people, they were referred to as “弱能人士” , now they are said to be “特能人士” . Where does this term come from? In English, we never use “disability scouting”, but use “extension scouting”, that is, we extend services to this group of people, and we term it “展能童軍” .

I want to point out one thing. With the use of words, different places or different languages may use different words to refer to the same thing, but with legislations, I believe that “殘疾” is more appropriate. I do have the same feeling like the Honourable Vincent CHENG has, but this is law-making and not scouting, we should not use a beautiful word to gloss over things. Legislating should fit very strict standard. I will support “殘疾” .

DR LEONG CHE-HUNG: Mr Chairman, I do agree that it is very difficult to have a translation which explains all and which encompasses all. The change in the Chinese word has actually been fully discussed amongst the Bills Committee and, in particular, in consultation with the deputations which came to us. And I think the ultimate Chinese, the choice of the Chinese words, was after approval by these particular groups. There are examples of using such a Chinese term, for example, in Taiwan. But it is not a main issue.

I do feel that since it is these groups of people who are being affected, the disabled that is, I think we should honour their likes and their decisions.

DR YEUNG SUM (in Cantonese): Mr Chairman, I thought that the discussion has finished already. But since the Honourable Vincent CHENG has raised it, perhaps we can have another go at it. “殘疾” is only describing a fact, without any moral judgment involved, whereas “弱能” has a bit of moral judgment in it, implying one’s ability is lower than that of others. I therefore hope that you can all support the amendment. In fact, the Administration has accepted the views of the rehabilitation groups, most of which suggest using “殘疾” .

MR ALLEN LEE (in Cantonese): Mr Chairman, Dr the Honourable LEONG Che-hung and I had once attended an “open seminar” together, discussing this term with the groups for the disabled. This is the term they wished to use. I feel that “disability” does not necessarily mean weak in ability, so they want to change the term. I believe that this Council should respect their choice.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, “殘疾” of course is not the best word, but while considering the translation, we want “殘疾” also to encompass those who are sick. Very often, for some who fall sick, they do not seem to require any special attention. That is why we have this translation. I appeal to the society and the Members of this Council, if there is any better translation, please raise them so that we can make improvement in the future.

MR VINCENT CHENG: Mr Chairman, I would like to make an apology that I did not really bring my view forward to the Committee when we are discussing this and this is only my personal feeling. I am not going to call a division on this. Thank you. *(Laughter)*

CHAIRMAN: The Clerk has just drawn my attention to the fact that this new version has already been approved in clause 2.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 60, as amended, proposed, put and agreed to.*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, as Standing Order 46(4) and (5) stipulate that any proposed new clause shall be considered after the clauses of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4) and (5) be suspended in order that new clause 83A may be considered ahead of the amendments to clause 62.

Council then resumed.

PRESIDENT: Secretary for Health and Welfare, you have my consent.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I move that Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider new clause 83A before the amendments to clause 62.

*Question proposed, put and agreed to.*

Council went into Committee.

New clause 83A	Regulations to empower Commission to bring certain proceedings
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*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 83A as set out under my name in the paper circulated to Members be read the Second time.

The effectiveness of this Bill in combatting discrimination against people with a disability will be undermined if people who suffer discrimination do not realize that their rights have been infringed or if there is a sector-wide discriminatory practice which is difficult for an individual to confront. On the first, the Commission will need to promote understanding of the Bill through public education. On the second, it is important that the Commission be given the right to bring proceedings in its own name so that the problem can be

tackled. It could also use such proceedings to establish points of principle as well as in the process educate the public. We propose, therefore, to empower the Secretary for Health and Welfare to make regulation to allow the Equal Opportunities Commission to bring proceedings in its own name. The purpose of doing this through regulations is to set out in detail in the law under what circumstances the Commission would exercise its power.

*Question on Second Reading of the clause proposed.*

MS ANNA WU: Thank you, Mr Chairman. The Administration is proposing this clause in response to the Bills Committee's request that the Commission be enabled to bring proceedings in its own name. However, the Administration's proposed clause enables the Commission to do so only at some future date as provided by subsidiary legislation.

Such an important Commission power should properly be provided in the principal Ordinance not by subsidiary legislation. That is why the Bills Committee is proposing new clause 70A instead. The Administration has also suggested that the power to bring proceedings raise various procedural problems that still need to be considered, hence the need for future subsidiary legislation. It is entirely possible, however, to provide for such details by subsidiary legislation after setting out the main power in the Ordinance itself. The Administration can defer commencement of the clause until the necessary subsidiary details are ready if it is worried that the Commission would otherwise rush to bring proceedings prematurely.

There is a second and more important problem with the Administration's proposal, namely, that it does not clearly enable the Commission to bring Bill of Rights challenges against laws that discriminate against the disabled. There are several exceptions in this Bill that permit discriminatory acts against a disabled that would be unlawful except that they are authorized by law under this Bill. Such laws may often be inconsistent with the non-discrimination provisions of the Bill of Rights, and the Commission should be able to pursue that possibility.

It is well-established that the United Kingdom Commission can use judicial review proceedings to challenge laws relied on by public bodies. Judicial review proceedings, however, involve procedural obstacles that are unnecessary in this context. Each time the United Kingdom Commission seeks judicial review, it must obtain leave of court to do so, which will only be granted once the court is satisfied that the Commission has a sufficient interest in the matter. The time limits to bring judicial review proceedings are also much more strict than those applicable to most civil proceedings, measured in months rather than years. To avoid these procedural hurdles, it is desirable that the Commission be given a clear right to bring ordinary Bill of Rights proceedings against laws that discriminate on the ground of disability. The Bills Committee's new clause 70A does so whereas the Administration's proposed clause does not.

I would like to mention that there is a decision in the United Kingdom. It is a House of Lords case under the name *Equal Opportunities Commission and another versus Secretary of State for Employment*, in which it was decided that the Commission could bring proceedings in its own name and join in proceedings seeking declaratory order relating to breach of community law and judicial review of the Secretary of State's refusal to introduce amending legislation. This is a precedent for Hong Kong. If the Commission has that power then it would be desirable to make that power specific and avoid any challenges to locus standi and save ourselves a lot of time and resources.

I therefore urge Members to support the Bills Committee's new clause 70A instead of this clause. Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: We would like to assure Members that we will introduce regulations as soon as practicable. We think it is important that the Equal Opportunities Commission should have set out clearly for it the circumstances under which it could exercise this important power. Being subsidiary legislation, the regulations will come before this Council for approval.

*Question on Second Reading of new clause put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

THE CHAIRMAN announced that there were 29 votes in favour of the motion and 24 votes against it. He therefore declared that the motion was carried.

Clause read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 83A be added to the Bill.

*Proposed addition*

**New clause 83A**

That the Bill be amended, by adding —

**“83A. Regulations to empower Commission to bring certain proceedings**

- (1) The Secretary for Health and Welfare may make regulations -
  - (a) where any person may bring proceedings under section 70(1) but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;
  - (b) specifying which of the remedies referred to in section 70(3) shall be obtainable by the Commission in any such proceedings;
  - (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.”.

*Question on the addition of the new clause proposed, put and agreed to.*

Clause 62

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 62 be amended as set out under my name in the paper circulated to Members.

This is a technical amendment which requires the Equal Opportunities Commission not to delegate its functions under the regulations made by the Secretary for Health and Welfare relating to its power to bring proceedings in its own name contained in new clause 83A.

*Proposed amendment*

**Clause 62**

That clause 62 be amended —

- (a) by deleting “59” where it twice appears and substituting “67”.
- (b) by adding -

“(aa) any provisions of any regulations made under section 83A which are specified in the regulations as provisions which shall not be subject to section 67 of the relevant Ordinance;”.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 62, as amended, proposed, put and agreed to.*

Clause 65

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 65 be amended as set out under my name in the paper circulated to Members.

The amendment enables the EOC to carry out an investigation to named persons or organizations for any purpose connected with its functions. The amendment deletes the statutory requirement that the EOC only investigates if it believes unlawful acts have occurred. The proposed amendment is in line with a key recommendation of the United Kingdom Equal Opportunities Commission.

The Commission in practice is unlikely to investigate a person unless it believes that person has discriminated.

Clause 65(4), as it is now, however requires the EOC to incorporate that belief expressly in the investigation's terms of reference. But this undesirably restricts investigations. If the investigation uncovers discrimination outside the EOC's initial belief, the EOC must redraft the terms of reference and restart the investigation. In the United Kingdom, for example, this has caused unreasonable delay to the EOC's investigations.

*Proposed amendment*

**Clause 65**

That clause 65 be amended, by deleting subclause (4) and substituting -

“(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act which a person so named may have done, the Commission shall -

- (a) inform that person of its proposal to investigate the act; and
- (b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),

and a person so named who avails himself of an opportunity under this subsection of making oral representations may be represented -

- (i) by counsel or a solicitor; or
- (ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.”.

*Question on the amendment proposed.*

MS ANNA WU: Thank you, Mr Chairman. This amendment follows important recommendations made by the United Kingdom Equal Opportunities Commission on the basis of its many years of practical experience. The amendment deletes the requirement that the Commission suspects a person of having committed an unlawful act before it decides to investigate the person.



The Administration opposes the amendment because it believes the deleted restriction is an important check on the abuse of the Commission's power. In practice, however, the restriction has no such effect. First, with or without the restriction, it is common sense that the Commission will not investigate someone unless it believes that there is something to investigate. Leaving all legal requirements aside, it is difficult to envision the Commission squandering its resources investigating people at random. Second, if the restriction is deleted, ordinary principles of administrative law will still require the Commission to have reasonable grounds before deciding to investigate a person.

A decision to investigate someone made without a reasonable basis can always be quashed by judicial review with or without the deleted statutory language.

In fact, this restriction that we are seeking to remove only came to be in the United Kingdom law because of a parliamentary drafting error. All of what appears in this Bill as subsection 65(4) was a last-minute addition to the United Kingdom law on which this provision is based, inserted into the law by a Private Member's Amendment in the House of Lords. The amendment was intended to insert a new section providing an opportunity to be heard for persons who came under suspicion of unlawful activity, not prior to an investigation but during an investigation, and I emphasize it was intended to insert a new section for the purpose of investigation during that time and not prior. This was a drafting error. This makes much more sense that talking about suspicions before any investigation has been done.

However, when the amended United Kingdom Bill was transferred from the House of Lords into the House of Commons the new section was inserted into this Bill in the wrong place as a subsection. Such mistake can happen, as we saw earlier on this month with the Sex Discrimination Ordinance. The result of the error in the United Kingdom is that, contrary to the amender's original intention, subsection 65(4) applies before an investigation begins and has been interpreted by the courts as a restriction requiring the Commission to form suspicions before it has done any investigation.

The United Kingdom Commission has found that this statutory language originally inserted in error seriously hampers its investigations. Subsection 65(4) not only requires advance suspicion of particular unlawful acts, it also requires that these suspicions be incorporated in the Commission's terms of reference for an investigation. Should the investigation eventually reveal acts that were not suspected in advance in the terms of reference, it must hold another round of hearings, at which the suspected persons can oppose the new terms with assistance of counsel if they wish. The result is interminable delay in getting investigations started and in expending them as they progress.

In regard to formal investigations in the United Kingdom, Lord DENNING remarked: "I am very sorry for the Commission, but they have been caught up in a spider's web, spun by Parliament, from which there is little hope of escaping." There are two commissions in the United Kingdom that suffer under the burden of such clauses, and both have recommended that the language of clause 65(4) be modified or deleted.

Finally, with regard to the period of 28 days provided for a person to make representations against a proposed investigation of him, that is the length of time recommended by the United Kingdom Commission on the basis of its experience.

Members, I urge you to support this particular amendment. It is important to make the procedure relating to investigations simple, effective and easy for the disabled persons to use. What we have is a very complicated procedure in the United Kingdom transplanted to Hong Kong under error. I cannot see how that could be right. I urge you to support the amendment of the Bills Committee.

Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, under the present provisions, the Equal Opportunities Commission can initiate a formal investigation into the activities of a particular person only if it believes that the person may have done an act made unlawful under the Bill and has informed the person of its belief of its proposal to investigate the act. One of the effects of Dr the Honourable LEONG Che-hung's amendment is to remove these requirements so that the Commission could investigate on an act which may not be unlawful under this Bill and need not state its belief that an unlawful act may have occurred.

Like the public, the Administration does not want the Commission to be a toothless tiger. It does need teeth, or powers, to fight against discrimination on the grounds of sex and disability. But we also do not wish to see the Commission being made so powerful that it becomes a shark preying on the innocent. Mr Chairman, before these metaphors expand into a zoo, I will return to the point. Since those being investigated could be injured by the adverse publicity arising from an investigation by the Commission, it is important that it be made incumbent upon the Commission to state the grounds for its investigation and that its investigation should be in relation to acts made unlawful in the Bill.

Dr the Honourable LEONG Che-hung's amendment also sets a time limit of 28 days for the person being investigated to make written or oral representations. The existing provision does not provide such a time limit since we believe the Commission should be given the flexibility to take into account the circumstances of each case, including its complexity and the availability of

the person being investigated. We believe the Commission should have the discretion to decide what time limit is appropriate on a case-by-case basis.

In response to the Honourable Ms Anna WU, we also believe that the Commission will act reasonably. That is why we do not believe it would allow strategic delay on the part of those being investigated. It could set its own time limit as appropriate to the circumstances of the case, but the defendant does have the opportunities to make representation. The clause as drafted in the Bill only gives him or her this opportunity. It does not give him or her the right to veto or to delay proceedings interminably through arguments about the terms of reference.

Mr Chairman, for the reasons given above, the Administration objects to this amendment and will vote against it.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the “Noes” had it.

Dr LEONG Che-hung claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr

Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mrs Peggy LAM and Mr Roger LUK abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 65 be amended as set out under my name in the paper circulated to Members. The amendment is to correct an error in the gazetted Chinese version of the Bill. It changes the term “行爲” to “行爲” .

*Question on the amendment proposed, put and agreed to.*

*Question on clause 65, as amended, proposed, put and agreed to.*

Clause 66

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 66 be amended as set out under my name in the paper circulated to Members.

This is a basically consequential amendment to the amended clause 65.

*Proposed amendment*

**Clause 66**

That clause 66(2)(b) be amended, by deleting everything after “formal investigation” and substituting “confine it to activities of persons named in them.”.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the “Noes” had it.

Dr LEONG Che-hung and Mr WONG Wai-yin claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are three short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr Roger LUK abstained.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

*Question on clause 66 standing part of the Bill put and agreed to.*

Clause 70

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 70 be amended as set out under my name in the paper circulated to Members.

Clause 70 states what kind of claims can be made the subject of civil proceedings under this Bill. Two references are made in error to clause 44, which relate to serious vilification. Since this is a criminal offence, the Administration's amendment would delete these references.

*Proposed amendment*

**Clause 70**

That clause 70 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That clause 70(1)(c) be amended, by deleting “or 44”.

That clause 70(6) be amended, by deleting “or 44”.

That clause 70(1)(b) be amended, by adding “針對該申索人的並” after “作出” .

*Question on the amendment proposed, put and agreed to.*

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 70 be further amended as set out under my name in the paper circulated to Members.

First, the proposed amendment to clause 70(3) and (4) empowers the District Court to order appropriate remedy, including reinstatement.

During the scrutiny of the Sex Discrimination Bill, the Administration initially accepted this in principle. However, subsequently, it proposed to deal with this in the next Session in accordance with recommendations of its recent general review of labour relations. The Bills Committee considers that since this has been accepted in principle, the provision should be amended without delay.

The Bills Committee considers that because of the scarcity of jobs available for disabled persons, reinstatement is particularly important for this particular Bill. The remedy should therefore be made available now, at the discretion of the court.

I would like to mention, Mr Chairman, that a few days ago, a few Members of this Council actually met a deputy of somebody suspended from work because he was found to be positive for HIV. What he told us was that he has no grievance towards his employer and he actually mentioned this, “my priority is to get my job back, for my living and for my dignity.”

Mr Chairman, let us not forget that a disabled person is not asking for sympathy, but is asking for a chance of equal opportunity.

Mr Chairman, the second thing is that clause 70(5) provides that there shall be no award of damages if the indirect discrimination was unintentional.

This subclause is to be deleted as in the case of similar restrictions in United Kingdom law which have been repealed after being found inconsistent with European human rights standards. It is preferable to leave the court flexibility to take account of intentions by varying the amount of damages it awards.

*Proposed amendment*

**Clause 70**

That clause 70 be amended —

- (a) in subclause (3), by deleting everything after “District Court” and substituting “and where the court is satisfied that the respondent has committed an unlawful act of discrimination, vilification or harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.”.

- (b) by deleting subclause (4) and substituting -

“(4) Without limiting the generality of the power conferred by subsection (3), the District Court may -

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance, and order that the respondent shall not repeat or continue such unlawful conduct or act;
- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;

- (d) order that the respondent shall promote the claimant;
  - (e) order that the respondent shall pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
  - (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
  - (g) make an order declaring void in whole or in part either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.”.
- (c) by deleting subclause (5).

*Question on the amendment proposed.*

MS ANNA WU: Mr Chairman, I would just like to add to what Dr LEONG has indicated insofar as reinstatement is concerned. I would like to emphasize that reinstatement is a discretionary remedy. That is, the court may take into account all circumstances before an actual order is made. It is not a mandatory remedy. It is entirely up to the court. But where you are dealing with those individuals who are disabled, when getting a job is so difficult, being deprived of a job for the wrong reason is that much worse as I have indicated yesterday.

To give the disabled person some degree of dignity and some recognition of that, reinstatement would only be the appropriate remedy where the circumstances are practicable. For instance, if the job is available then that person could be reinstated. Where the job is no longer there, then obviously the court could no longer do so, and ordering damages would be a better course.

This is something that I would like to emphasize. It is something that, for the disabled persons, is particularly helpful and I would like to draw Members' attention to the requests made by the Joint Council for the Physically and Mentally Disabled Groups and the Rehabilitation Division of the Hong Kong Council of Social Services. They have strongly urged that Members of this Council support reinstatement as a measure of remedy for the disabled.

Thank you, Mr Chairman.



MR VINCENT CHENG: I have confidence the Judiciary will come up with impartial judgment on this, and therefore I support this as an option.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I rise in support of Dr the Honourable LEONG Che-hung's amendment. During the Second Reading of the Bill yesterday, I had specially emphasized how the disabled could be integrated with the society and how they could have the respect of the others. Having a job is very important for the disabled. Without a job, they would be misunderstood to have problems with their ability or otherwise. As having a job is so important to the disabled, when discrimination arises and the court judgment is in favour of them, it would be very unfair to them if they cannot return to their job. We specially stressed this point yesterday. It is already very difficult for the disabled to find a job, if they cannot be reinstated after being dismissed, it would be even harder for them to find a job in another organization after their going through the legal wrangles. I therefore feel that reinstatement is very important.

Mr Chairman, I also hope that Members of this Council can brush aside whatever thoughts they might have in respect of the recently passed Sex Discrimination Bill. I have listened to the many amendments proposed by the Secretary for Health and Welfare, but she has not given sufficient reasons for all these amendments. All that she can give is that they are recommended by the Education and Manpower Branch, or since the Sex Discrimination Bill has been passed, this Bill should also be passed similarly. I do not think we need to do so, in fact, while the Sex Discrimination Bill was being debated, the Honourable Mrs Peggy LAM suddenly proposed an amendment to set the damages ceiling at \$150,000. At that time, many of us supported this sudden proposal, though it had not been discussed by the Bills Committee, and the Administration had not given any deep thoughts to it. Now no one has proposed any similar amendment, but I hope that those who might have given their support by mistake last time will consider the hardship the disabled face in finding an employment.

Finally, Mr Chairman, I hope that the Honourable PANG Chun-hoi, who has been named by the Honourable James TIEN and the Honourable Allen LEE as the one who cares most about the benefits of the workers, will support this amendment in respect of reinstatement. Thank you, Mr Chairman.

MR PANG CHUN-HOI (in Cantonese): Mr Chairman, just now I have been named by the Honourable WONG Wai-yin, and I would like to speak about my feelings. I always think that this is a well-intentioned Bill, but it would be counter-productive if too many amendments are needed. Just now he mentioned that it is very difficult for the disabled to find a job, now the disabled cannot be dismissed. If a disabled is dismissed, the matter would be brought before court so that he could be reinstated. He said that the labour sector did not support the disabled, but what about the social worker sector from which he comes? Have

they helped the disabled? Must the labour sector help the workers? There are three millions workers in Hong Kong, most of them, I believe, are employed. You are not the employer, just the employed, but would like to do something worthwhile. But if you just charge on, what good do you bring to the workers, or to the society as a whole? For workers, they all want to make a bit more money, have a bit less work, and be a bit easier with their living. This is every one's hope.

Now I am over 70, I just hope that you can look a bit further on and hope that you will all remain unchanged. I do not want to offend anyone, but a lot of people have changed and they do not even realize it themselves. I do not want to point out anyone, but if the 4 June incident of 1989 did not occur, would the situation develop into something like this now? The future Chief Executive should be from one of us here, but the 4 June incident has crashed everything. I therefore think that one should open one's eyes and look; before we can have a clear picture of the situation, we must listen to the hot-headed words of young men, we must also listen to those who have nothing to fear. However, we should keep the whole picture in view.

I shall vote against the amendment.

MRS PEGGY LAM (in Cantonese): Mr Chairman, I should thank many of my colleagues in this Council for their often mentioning my name in their speeches. I am puzzled because when I suggested the \$150,000 ceiling, I had twice explained the rationale behind it, and I am not going to repeat it again. If they have forgotten my rationale, I shall refer them to the official record of the proceedings of the Legislative Council. I have not suggested setting any ceiling in respect of the Disability Discrimination Bill because I do not think it would be a situation of frequent occurrence. Some people have suggested that I should make the suggestion, but I think there is no such need.

I would support the amendment of Dr the Honourable LEONG Che-hung because if the disabled, especially those with AIDS, were dismissed for the wrong reasons, they should be given the opportunity for reinstatement. I support the amendment of Dr LEONG Che-hung.

MISS EMILY LAU (in Cantonese): Mr Chairman, I want to respond to the Honourable PANG Chun-hoi's speech. He said that there were people making stinging remarks and asked us to keep the whole picture in view and look further ahead. I think not many of us need the admonishment from Mr PANG Chun-hoi.

Many of us (sadly not the absolute majority of us) were voted into office by the citizens, on an one-person-one-vote basis, unlike some who were on a number of times automatically elected. I also wonder how a person, claiming to be a representative of the labour sector, can have such a strange stand. I hope

that those of the labour functional constituency and the public in general, when casting their votes on 17 September, should open wide their eyes and see who do not know switching allegiance, and who really care about protecting the citizens' interests.

Finally, Mr Chairman, some people said that I am too radical, or some people like to give me labels. However, I would like to know if the Honourable Mrs Peggy LAM could be described as radical, or if the Honourable Vincent CHENG is radical? They all said that they would support this proposal. I therefore hope that you can see clearly and listen carefully, it does not matter we differ on our views, but I feel very offended to see that we can so easily pin a label on anyone. Thank you, Mr Chairman.

CHAIRMAN: We are straying into more irrelevancies. Mr PANG was invited to speak. He spoke on a matter that was strictly irrelevant and it is not going to be compounded by further speeches of that nature.

DR YEUNG SUM (in Cantonese): Mr Chairman, the Honourable Vincent CHENG and I have confidence in the judicial system of Hong Kong. However, if we do not make the legislative change so that the workers can be reinstated, a judge cannot pass the necessary judgment. I therefore hope that while maintaining the integrity of the judicial system, we can make the legislative change so that the workers can have the right for reinstatement.

MR ERIC LEE (in Cantonese): Mr Chairman, my speech will be very brief. I have been listening very carefully, and I also support this amendment, because I would not support an amendment that is inconsistent with the general interests of the society. Though I think the disabled are a minority worthy of our assistance, I would not let emotion rule my head.

I think that allowing the disabled the right of reinstatement is not simply a matter of dignity. From my more than 20 years' experience working with them, I understand very well that they really want to help themselves and do not want to rely on the society. If we help a disabled to get a job, he would not need to rely on the society for his living, thereby without taking up some of the resources of the taxpayers. I think that even my colleagues from the commercial and industrial sector would agree that this amendment is consistent with the general interests of the society.

I would also like to have a word on behalf of the Honourable Mrs Peggy LAM. When this Bill was introduced, as the Honourable Ms Anna WU and I had already mentioned, Mrs Peggy LAM and I immediately proposed the amendment concerned. Right in front of me, she phoned the official concerned, saying that she would not support that amendment, instead she would support the amendment of Dr the Honourable LEONG Che-hung. I therefore think that

Mrs Peggy LAM has done a lot for this Bill, and we should not have so much grumbling and stinging remarks against her.

MR JAMES TIEN (in Cantonese): Mr Chairman, the Honourable WONG Wai-yin reminded us once again that I had praised the Honourable PANG Chun-hoi yesterday. Yesterday he reiterated that if the communists were to heap praises on him, he would get very apprehensive. However, from the views expressed by the Democratic Party in respect of clause 65, I believe that if the communists prosecute Mr WONG Wai-yin without giving him any reason but only 28 days to respond, he would feel even more apprehensive.

MS ANNA WU: Thank you, Mr Chairman. Mr Chairman, I would like to speak a second time simply to remind Members that we are talking about the Disability Discrimination Bill. It is important to remember that the plight of the disabled is different from the plight of the women under the gender discrimination laws. It is particularly helpful for Mrs Peggy LAM to make that distinction between the disabled and the gender issues.

She has not raised the issue of \$150,000 ceiling of damages in the case of the disabled, and I am sure the Members of the Bills Committee, including in particular myself, were extremely grateful for that measure. I am, of course, equally happy that the Government does not feel it necessary to raise that particular quantum, but I would like to mention again that we are talking about remedies for the disabled. Their plight are somewhat unusual. Their plight is particularly difficult to remedy, and reinstatement in many cases does give them that measure of dignity which is sometimes required. And furthermore, the reinstatement remedy together with the general principles of disability discrimination provides the self-help mechanism and arrangements that anybody suffering from discrimination needs, and I would ask Members to consider those particular aspects. It is a discretionary remedy of the court again.

May I also remind Members that the Government had initially accepted that in principle. I would urge Members to support that and not be drawn away by their decisions under the Sex Discrimination Bill, for whatever reason.

Thank you, Mr Chairman.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I hope my colleagues can all calm down a bit. Let us make it clear to ourselves that this amendment is to provide the disabled with the opportunity for employment, I hope that you all can support.

I know that when the Secretary for Health and Welfare, in her speech to be made later, will mention that in the review on labour relations carried out by the Secretary for Education and Manpower, the option of reinstatement as a

remedy has been studied, the result will be tabled at the Legislative Council next year. However, I would like to tell you that in the conclusion of the study of the Secretary for Education and Manpower, there would not be reinstatement as a remedy for unions being discriminated against. That is why we only have discussion about the disabled now. Do not think that after the detailed review by the Secretary for Education and Manpower, there will be the right of reinstatement. If we vote against this right today, the Secretary for Education and Manpower will still say that there will not be any right of reinstatement next year.

I hope that we can keep in mind that the discussion we have today is about the disabled. I agree to many Members that they are “special”, I therefore appeal to you that for this one “special” time, please treat them “specially”. Thank you.

MR MARTIN LEE (in Cantonese): Mr Chairman, I hope that the three government officials can show “special” mercy.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the amendment proposed by Dr the Honourable LEONG Che-hung is to empower the District Court to order, amongst other things, reinstatement or promotion as a remedy in a discrimination case brought under this legislation.

Now, it is available in the United Kingdom in unfair dismissal cases and in Australia for discrimination cases. Experience in these places has shown that there are many enforcement problems. It is thus rarely used. In general, where a case of alleged unfair dismissal is brought to the court, the relations between the employee and the employer would have broken down to such an extent that reinstatement by force would not be a welcome remedy to either party. Compensation should, therefore, be the appropriate remedy.

As the Honourable LEE Cheuk-yan quite rightly said, this question has been fully addressed in a review of labour relations conducted by the Secretary for Education and Manpower, and legislative proposals taking into account the outcome of the review will be introduced into the Legislative Council in the next Session. It would be premature to our minds to predict the results of this review or to include this provision in the Disability Discrimination Bill.

Moreover, if a change to the remedies available to the court were deemed to be appropriate in Hong Kong in the context of this review, we believe it would be better introduced generally rather than only in respect of this Bill.

The Honourable Ms Anna WU, the Honourable WONG Wai-yin and Dr the Honourable LEONG Che-hung have all suggested that reinstatement would restore the dignity of a person with a disability who had been discriminated against. We are less sure that there is dignity in the position of someone going

back to his work place under these circumstances. We do feel compensation is the more appropriate remedy.

The amendment proposed by Dr the Honourable LEONG Che-hung also makes the award of damages possible in relation to the application of a discriminatory condition or requirement by a person even if the application were not intentional. The Administration objects to this idea. Where a person, an employer for example, can prove that the application of a discriminatory condition and requirement were unintentional, the remedy should be to order the employer to remove the discriminatory requirement or condition rather than to pay damages.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: Mr Chairman, I am actually very grateful for Mr Vincent CHENG and Mrs Peggy LAM for supporting the remedy, in particular Mrs LAM because of her feelings, having worked as the Chairman of the Hong Kong AIDS Foundation as my predecessor.

I am also extremely grateful, actually, and I mentioned that yesterday, for the Health and Welfare Branch for not moving an amendment to put a ceiling on compensation, but I am disturbed that by trying to do our best today for the disabled group, we have moved apparently into a political angle. Mr Chairman, this is not. I am also not a radical person and I move this amendment not just on behalf of the Bills Committee but also on behalf of myself, and I fully endorse the fact that it should receive the reinstatement.

Mr Chairman, if Members have talked enough to the disabled people, to the chronically ill person, to people, for example, with AIDS, who have been discriminated, you will find that they are not there to take you to court. They are not angry. They are not aggrieved and try to really do something harmful. They repeatedly will be telling us that their main thing is that they want to get their jobs back. Their priority is to get their jobs back for the reason of making a living and for the reason of dignity, and they feel very strongly that reinstatement is an important remedy that should be made available to them, all of them, who have been discriminated.

So, I do hope Members will vote “yes” this time for this particular amendment. Thank you.

MR RONALD ARCULLI: Thank you, Mr Chairman. I just felt that we should say a few words about this issue since the Liberal Party is not going to support the amendment.

I would like to emphasize that it is not a decision that we have taken easily or lightly. I suspect that, in terms of reinstatement as a remedy, it is not a unilateral decision and, in terms of the relationship between a disabled person and his employer, or former employer, one is hesitant to actually interfere with it, and I suspect perhaps the best reason really is that in terms of our disabled, they also deserve dignity.

Now, if dignity is taken into account, maybe different disabled people would behave differently but if conciliation, as it were, fails and one has to resort to court to order reinstatement, then we wonder what the practical effect of that future relationship would be. And we think that in those circumstances, the better course of action would really be compensation and perhaps assistance in relocating that particular person to a somewhat more sympathetic employer.

So, I think it is really on that basis that — it is not out of lack of sympathy for the disabled person or out of sympathy for the employer — that we do not support the amendment.

MR MARTIN LEE: Mr Chairman, the Secretary says that such a remedy is rarely used in other jurisdictions that have it. I can perfectly understand why because if I were a disabled person and I was wrongfully sacked, I would not like to continue to work for the same employer who wrongfully sacked me. I would rather seek a new job, but if I am a disabled person it is not exactly easy for me to find that other employer. And that is why, if I really want to have job satisfaction, to have the dignity to be employed, I would take the alternative, if there is one, so that I can be reinstated. Damages is not the answer. Money may not be that important to me.

So, all that we are asking for is an alternative. So damages will cover the period of wrongful dismissal but reinstatement will make sure that I, as a disabled person, if in such a case, will get my job back. It is not an ideal situation but it will still give me my job back.

MR VINCENT CHENG: Thank you, Mr Chairman. I have spoken too much already, I think, but I just want to address the practical side of this issue to ease some of the Members' concerns.

I think for small employers, there is this problem that Mr ARCULLI has mentioned that the relationship will be quite strained because for small employers there are more, sort of, day-to-day personal contact between the employee and the employer himself. But for large corporations, I think there

are ways out because there are certainly more jobs available that could be mutually agreed between the disabled person and the personnel manager, for example.

So, I think it is not as black and white as some of us are making out here. There will be so many cases and examples with different reasoning and whatnot, but I think as an option, I am just saying as an option, we should be able to consider it.

Thank you, Mr Chairman.

MR JIMMY McGREGOR: Mr Chairman, I rise actually to support the amendment and the point made by Mr Martin LEE and Dr LEONG Che-hung.

Very late last night, I was outside this Chamber and had the opportunity to have discussion with one of the disabled, rather seriously disabled person who was supported by others, who, as you know, are now more or less camping outside this building while the legislation is being discussed. I was very struck by the response given to me by that disabled person who is actually here today. The sincerity with which he spoke, the predicament in which he stated he found himself and others find themselves, I think it is not simply a matter of sympathy for the disabled people. It is a matter, I would agree entirely, of restoring and giving them the chance to have a life in dignity.

Employers, I think small employers particularly, would be reluctant in the very first place, to take on the responsibility of having disabled people within the staff who they cannot cope with, or who they may feel are not quite able to do the job. In many cases where such disabled people are taken in by smaller companies, there is a sort of a feeling of wanting to help by the employer and that feeling will carry on when the person is employed and carries out his or her work. But the larger companies, the very large companies in particular, have policies towards this as Mr Vincent CHENG has accurately remarked. They have policies which will allow them, in fact, which makes it a policy of the company to employ a number of disabled people as a matter of social service, quite apart from anything else, and to give these people the chance of a dignified life.

I think the fact that there is a legal requirement which will permit reinstatement will in itself cause employers to think very carefully about taking on disabled people and secondly dismissing them if they find that the quality of their work is not quite up to the standard they are looking for. So, I do think there should be remedy in law. I do not think it is necessary for employers to have such a protection that they can take on somebody who is disabled, dismiss that person, or who becomes disabled but who can still do the job. For instance, the AIDS patients, the AIDS people who have been remarked on by Dr LEONG Che-hung. I think this is a very tragic situation where an employer would be so afraid that he would dismiss a person coming to his attention as having the AIDS



virus when apparently there is no need and he can do the work perfectly well and can continue to have work. In fact, that would be part of the need by the person concerned, I guess, to have work that he can continue to do and to fight this infection without danger to anybody else around him or her.

So, I do believe that although I have gone along with the Government in a wide range of opposing various amendments in this Bill, and may continue to do so in other amendments, I think in this particular one there is a very strong social case for agreeing to the amendment put forward by Dr LEONG Che-hung, and therefore I will support it and I would ask, especially all the independents and I think a good many of the independents already are beginning to swerve that way to vote for the amendment.

Thank you, Mr Chairman.

MR SZETO WAH (in Cantonese): Mr Chairman, I do not agree to the Honourable Martin LEE's asking the three official members to give mercy just now. We are not at a time when one can bestow mercy on another. I hope that all of us, whether official members or unofficial members, can show some benevolence. Confucius said, "To be benevolent is human." A man with benevolence will treat others like himself, with dignity. This is equality. Confucius also said, "Neither do you angle with a net, nor shoot homing birds with a string tied to an arrow." What he said was that he only fished with line and hook, and not with a big net, and when he hunted, he would not kill those birds which were returning home. When we hunt, we would hunt with such care as not to exterminate the fish and the birds, why can we not do the same to the disabled? Like ourselves, they are also dignified human beings. They feel that being able to be reinstated is a dignity for which no money can buy. Why not give them this dignity?

MR TSO SHIU-WAI (in Cantonese): Mr Chairman, I am also an employer myself, I understand that if a disabled loses his job on the ground of discrimination, besides any money compensation, his having the right and the channel to get reinstatement has great significance to him. I think that it is a reasonable system to allow a court to mediate between an employer and his employees in respect of the conflict in their relationship and to set the appropriate time for the disabled to be reinstated. Such a system is worthy of our support. I will support the amendment of Dr the Honourable LEONG Che-hung. Thank you, Mr Chairman.

MR ANDREW WONG (in Cantonese): Mr Chairman, in the discussion in respect of the Sex Discrimination Bill, I supported the right of reinstatement, today I will vote similarly. I appeal to the Administration to allow the official members to vote as they see fit. Could the Liberal Party also allow its Members

to vote freely, that is, they do not need to be as rigid as an iron slab? I believe this is something that should be done with our conscience.

CHAIRMAN: I hope we are not going to have repetitive speeches.

MS ANNA WU: Thank you, Mr Chairman, for your indulgence. I simply would like to mention again that this is an optional remedy which can be used and ordered by the court where appropriate. Obviously where a court sees that it is going to create friction then it would not be an appropriate remedy and the court is not bound to order that particular remedy.

Mr Vincent CHENG has talked about large commercial establishments. What I would like to draw Members' attention to are major public bodies, universities and the Government as employers. In these particular institutions, there are many departments and tens of thousands of employees. The personal factor is far less strong. It is not going to create friction where a disabled person is given the remedy of reinstatement.

In the case of the Government, in particular, the issue is quite simple. There is no other equivalent government employer and this would be an appropriate remedy in many cases because it would not create additional friction in any event.

I am simply urging Members to consider that as part of the remedy that ought to be made available as a discretionary option.

Thank you, Mr Chairman.

MR MARTIN LEE (in Cantonese): The Honourable Andrew WONG, Members of the Democratic Party can vote freely.

MR MAN SAI-CHEONG (in Cantonese): Mr Chairman, as the largest employer in Hong Kong, the Government, should take the lead and set itself an example for the employers in Hong Kong. I urge the three official members to support the amendment or abstain.

*Question on Dr LEONG's amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Ayes" had it.

Dr YEUNG Sum claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are one short of the head count. Are there any queries? If not, the result will now be displayed.

Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU, Mr Alfred TSO and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi, Dr Samuel WONG and Dr Philip WONG voted against the amendment.

Mr Allen LEE, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN abstained.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and six votes against it. He therefore declared that the amendment was carried.

*Question on clause 70, as amended, proposed, put and agreed to.*

Clause 76

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 76 be amended as set out under my name in the paper circulated to Members.

The proposed amendment is to empower the court additionally to make an order imposing a non-criminal financial penalty of \$10,000 for the first contravention and \$30,000 for a second and subsequent contraventions in publishing unlawfully discriminatory advertisements.

A parallel amendment was approved by this Council for the Sex Discrimination Bill.

*Proposed amendment*

**Clause 76**

That clause 76 be amended, by adding —

“(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 40, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”.

*Question on the amendment proposed.*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, since a similar amendment to the Sex Discrimination Ordinance was passed by Members of this Council last month, the Administration has no objection to the amendment and will vote for it.

*Question on the amendment put and agreed to.*

*Question on clause 76, as amended, proposed, put and agreed to.*

Clause 79

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 79 be amended as set out under my name in the paper circulated to Members.

This is a technical amendment which will facilitate the Equal Opportunities Commission in the provision of assistance to complainants in proceedings before the District Court.

*Proposed amendment*

**Clause 79**

That clause 79(3) be amended, by adding “except to the extent permitted under rules made in accordance with section 73C of the District Court Ordinance (Cap. 336)” at the end.

*Question on the amendment proposed, put and agreed to.*

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 79 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment enables the EOC to take over proceedings in its own name even if a claimant receiving EOC assistance withdraws from proceedings.

The Bills Committee considers that where the EOC has already provided assistance to a person litigating an important case under the Disability Discrimination Bill, the EOC should be able to pursue the case in its own name if the person withdraws.

*Proposed amendment*

**Clause 79**

That clause 79 be further amended, by adding —

- “(5A)(a) Where any person, who has received assistance in respect of proceedings under this Ordinance under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.
- (b) As from the date of any such taking over of proceedings under paragraph (a), the Commission shall be deemed to be a party to those proceedings in place of the person who has withdrawn therefrom.”.

*Question on the amendment proposed.*

MR JAMES TIEN (in Cantonese): Mr Chairman, according to clause 79, if an employer discriminates against a disabled person, the Equality Opportunities Commission can initiate proceedings. We support this arrangement. However, we have been emphasizing that with respect to the relation between the employer and the disabled, we really hope that they can resolve any dispute themselves. If they can come up with a resolution, reinstatement of course would not be a problem and they can maintain a cordial relationship. However, the amendment of Dr the Honourable LEONG Che-hung gives the initiative to the Equal Opportunities Commission to deal with the case, without allowing the concerned parties to enter into any negotiation and without obtaining the consent of the person being discriminated against. So doing would only aggravate the conflict, and how can the disabled enter into any negotiation with his employer? Even if reinstatement is contemplated, they still need to negotiate before any reinstatement can be possible. Otherwise, when they just put on a look of displeasure towards each other, there will not be any point in working at all. I therefore feel that it is important to give them a chance to talk with each other. If an agreement can be reached, the whole matter is resolved, but if the talk breaks down, the disabled can still ask the Equal Opportunities Commission to prosecute the employer. This is something we support absolutely.

The Administration also proposes that the subsidiary legislation that provides for the power of the Equal Opportunities Commission shall have to be approved by the Legislative Council. The amendment of Dr LEONG Che-hung indicates that such a requirement is not needed. Yesterday when we had debates on the Mandatory Provident Funds Bill, though the Administration expressed that all legislations should have the approval of the Legislative Council, as to the commencement date, the Members were still in a deadlock when it was time to press the buttons to vote, thinking that the legislations must be approved by the Legislative Council. Now, what their proposal amounts to is that even if the subsidiary legislations have to have the approval of the Legislative Council, they would not support. On this basis, the Liberal Party and the industrial and commercial sectors will not support the amendment of Dr LEONG Che-hung, but will support that of the Administration instead. I hold the same view in respect of clauses 70A and 70B, and I shall not repeat the reasons. Thank you, Mr Chairman.

MS ANNA WU: Thank you, Mr Chairman. As specified in subsection (2A) of this particular clause, the Commission will sometimes assist a claimant because the case raises a question of principle. When it does so the Commission is investing its resources in the assistance because it wants to develop a particular legal issue that is of significance for people with disabilities. Indeed, the Commission would only take on a case if that issue is important in the first place. In many instances, this type of assistance could help to prevent other problems later on, so the case itself would be of importance.

The Commission's investment should not be lost and the important legal issue abandoned simply because the assisted person drops out for his own

reasons part way through the proceedings. If that happens, this amendment enables the Commission to take over and maintain the proceedings in its own name.

Again, I wish to emphasize that this is a matter for the Commission to decide. It is not mandatory in any event. Where this is important in terms of a preventive measure out of the public interest, we should allow the Commission to take on that role if it sees fit.

It should be emphasized also that this amendment does not give the Commission control over an assisted person's litigation while that person still has an interest in it. The Commission can only take over proceedings if and when the assisted claimant abandons them.

I also want to emphasize that this does not empower the Commission to overturn or undo settlements made by an assisted claimant. Once a claimant reaches a settlement there are no longer any proceedings left for the Commission to take over, and this amendment will not apply.

I therefore urge Members to consider this option and allow the Commission that particular flexibility and support the amendment. Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the amendment proposed by Dr the Honourable LEONG Che-hung would empower the Commission to take over proceedings even though the plaintiff concerned has decided to withdraw from such proceedings for whatever reason. As I said in the Second Reading debate, we believe that where a person decides to withdraw from proceedings the Commission should respect rather than interfere in his or her right to do so. If the Commission wishes to establish a point of principle, it could achieve this aim through a formal investigation or a test case, where the individual was content to be involved.

Mr Chairman, the Administration objects to this amendment and will vote against it.

MR JIMMY MCGREGOR: Am I allowed to speak on this issue at this time?

CHAIRMAN: Yes, in the Committee stage, you can.

MR JIMMY MCGREGOR: Well, I simply want to say that I do point out that, the background to Dr LEONG Che-hung's amendment is that no employer need to fear this kind of legal authority because the case will be taken by the Commission on a basis of whether a case exists or not and whether it is strong

enough to proceed. Therefore I agree entirely with Ms Anna WU and her summing up of when a case would be taken.

An employer should not feel any difficulty if the employee withdraws himself or herself from the case and the Commission takes it over because there would have to be a matter of considerable principle or the protection of that particular employee.

We have seen in Hong Kong people withdrawing themselves from cases for different reasons, and I think it is quite possible that a litigant may become frightened of the outcome or the length of the case or the importance of the case. That litigant may be an ordinary working person who finds himself or herself bound up in some very important issue and becomes very frightened of the outcome or frightened of carrying it any further, and may then wish to withdraw. The case itself may be of such importance that the legal issues should be taken before the courts and decided by the courts.

So, it seems to me that there is a strong case and I would simply point out one more thing, Mr Chairman, if I may, is that over a very long period of discussion of this Bill and in the Bills Committee, many of those issues came up for discussion repeatedly. There was an option, an ability for those who wished to make these points to make them then and have them fully considered at that point. I have to say that the attendance record for this particular Bills Committee was abysmal throughout the whole length of time the issues were being held. So, it is a strange thing sometimes that we reach this point in debate and find that Members have very strict and very severe disagreements with some of the points being made.

So, for these reasons, Mr Chairman, I would like to ask for support for this particular amendment. Thank you.

MR PETER WONG: Mr Chairman, I do not normally speak on these subjects, but I think that we are treading a very dangerous path if we follow this amendment because it would allow a very zealous Commission to embark upon lines of enquiries which are very interesting, could be very useful, but does not relate to any particular case.

Justice is there for the individual who claim that they have not received a fair deal. But to embark on ventures like this would be coming to like America where lawyers would take charge and start a case, and with nobody being wrong. It was just a class action and it was there for the benefit of the lawyers and nobody else.

I am very much against this line.



MS ANNA WU: Thank you, Mr Chairman, for allowing me to speak very briefly for a second time.

I would like to emphasize that any Commission, be it this one or anything else, and I am sure the Government would agree, would owe a duty to the public to account for the use of their resources and monies. And I would also like to emphasize that any resources given to the Commission would, of course, be controlled and vetted and reviewed by the Government as well as appropriated by the Legislative Council.

There is no way, absolutely not, how the Commission can misuse its funds or its power. I would hope that we give it a particular credible standing before it gets started.

Thank you, Mr Chairman.

*Question on the amendment put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 26 votes against it. He therefore declared that the amendment was negatived.

*Question on clause 79, as amended, proposed, put and agreed to.*

Clause 80

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 80 be amended as set out under my name in the paper circulated to Members.

This amendment is to extend the time for bringing proceedings under the Ordinance from 12 to 24 months. It also provides for a period of two years for those who, after publication of a formal investigation report, realize that they have been discriminated against to bring proceedings. The Bill as drafted, in any case, provides for the District Court to consider any claim which is out of time if it considers that it is just and equitable to do so.

*Proposed amendment*

**Clause 80**

That clause 80 be amended, by deleting subclause (1) and substituting —

“(1) The District Court shall not consider a claim under section 70 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning -

- (a) when the act complained of was done; or
- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 67,

whichever is the later.”.

That clause 80(2)(a) be amended, by deleting “12” and substituting “24”.

That clause 80(6) be amended —

- (a) by deleting “subsection (2)(a) or (b)” and substituting “subsection (1)”.
- (b) by deleting “any” and substituting “the”.

That clause 80 be amended, by adding —

“(7) In this section, “relevant report” (有關報告), in relation to an act referred to in subsection (1), means a report -

- (a) published or made available for inspection under section 67; and
- (b) from which it can reasonably be construed (and whether or not the report mentions, or was in any way prepared in consequence of, the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part III, IV or V.”.

*Question on the amendment proposed, put and agreed to.*

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 80 be further amended as set out under my name in the paper circulated to Members.

The proposed amendment is to the effect that the period within which proceedings under the Ordinance may be brought to provide that time in conciliation will not be taken into account.

The Bills Committee considers the Disability Discrimination Bill should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant undergoing conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation fails.

*Proposed amendment*

### **Clause 80**

That clause 80 be further amended, by adding —

“(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 78(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 78 was conducted, as certified in writing by the Commission, shall be disregarded.”.

*Question on the amendment proposed.*

MS ANNA WU: Thank you, Mr Chairman. This amendment is a technical improvement on the Bill as it stands. The Administration suggests that clause 80 already empowers and encourages the District Court to allow a late claim to be made if it has run out of time because of lengthy conciliation.

The existing provisions however leave the matter to the discretion of the Court. Once a time has passed a legal right is in fact lost there and then. Careful claimants will not be willing to rely on the discretion and may instead file their claims while conciliation is on going in order to be absolutely sure that they will not be time-barred. This can have an adverse effect on the conciliation efforts and certainly it will be wrong to make an applicant willing to undergo conciliation run the risk of losing a legal right. A discretionary remedy after the time has run out does not guarantee that person the right to go back to the courts. And if it is not granted subsequently that right will be absolutely lost without any kind of remedy to the individual. If you look at it in the context of the disabled in particular, those who are suffering from mental illness or mental impairment, we should make every effort to ensure that they feel comfortable with the conciliation procedure and not to have force them into litigation if we do not have to.

This amendment simply removes an uncertainty by providing that time in conciliation will simply not be counted against the time available to file claims. This amendment does not ask for longer time, it simply removes that uncertainty that while conciliation is on going and there is a prospect of conciliation succeeding, then time should be given to the conciliation process and that time should not be counted towards the 24 months. That is all the amendment is seeking to do.

May I also remind Members that at the last sitting when this matter was raised under the Sex Discrimination Bill the vote was extremely tight, it was almost passed. However, I do urge Members to consider in particular the disabled persons in the event that they should seek conciliation. Every encouragement should be made and every effort should be made to ensure that no time will bar them from bringing proceedings in court. Thank you, Mr Chairman.

MR RONALD ARCULLI: Thank you, Mr Chairman. I hear what the Honourable Ms Anna WU says but in my view far from introducing certainty by allowing the conciliation time to, as it were, be discounted, it increases the element of uncertainty because conciliation is not a cut and dried process. It could go quite far one day and yet looks wonderful today and six months later might look terrible.

So I think for those Members who spoke out earlier about giving their faith in our judicial system perhaps they should consider this that in this instance

they should give the discretion to the court to allow the court to decide. And I would take this opportunity, Mr Chairman, to remind Members that not so long ago when we considered another piece of legislation here in terms of the family inheritance provisions where persons entitled to lodge claims could only do so within six months of grant of probate or administration. And any period beyond that was left really to the discretion of the court.

Now I think all of us, particularly the lawyers, understand how the discretion of the court works and I am quite sure that in conciliation process if the disabled person was advised properly, it may well be that the employer wanting to achieve something in the conciliation process would be quite happy to extend, as it were, on his own or her own the period and therefore not take the point in court.

So, I think this sort of flexibility does create better atmosphere for better conciliation. And I think the way the position is left, if the government position is maintained does not in my view, actually prejudice and I hope it does not — I do not think it is intended to prejudice the disabled person because it is left to the discretion of the court. Thank you, Mr Chairman.

MR JAMES TIEN (in Cantonese): Mr Chairman, the time limit, as drafted in the Bill, is 12 months. An extension from 12 months to 24 months is a bit too long for many employers. If the conciliation time is taken into account, the time required maybe as long as two and a half or three years. During this period, would the disabled change his mind, or would the situation of the employer change? During the two-year period, the job may have been taken up by another disabled. The industrial and commercial sector thinks that any problem should be resolved as soon as possible. We feel that our support is stretched to the limit with an extension from 12 months to 24 months. Thank you, Mr Chairman.

MS ANNA WU: Thank you again for the indulgence, Mr Chairman. I would simply like to remind Members that as lawyers I would say that where a discretion is given to the court to grant extra time, that discretion is only exercised where there are exceptional circumstances. This is not a general rule and therefore it is only in exceptional circumstances where the court would give extra time to an individual applicant. And this being the case an applicant may easily find himself or herself out of time and therefore a legal right completely lost, and when that occurs conciliation would have failed, there would not have been any settlement, there would not have been any remedy and the person could not go to court. That is a consequence of the events for that particular individual.

Now in the case of the mentally impaired and the mentally ill in particular, one can easily imagine investigative processes by the Commission taking an awful lot of time. We are talking about 24 months. That could easily

lapse and investigation could take easily a year, 18 months and it may take a person who is suffering from particular forms of mental illness or mental impairment at least some months if not a year or so to even file a complaint. These individuals do not have the skills to necessarily help themselves and that is the reason why I am urging Members that if we must err, please err in favour of the victim, not in favour of convenience of the others. Thank you.

MR MOSES CHENG: Mr President, I have never intended to speak on this particular point but with respect to the Honourable Ms Anna WU, that speech she just made does not tally with the experience that I have gained in my practice as a lawyer.

A discretion granted to court would be exercised in favour of a case which is reasonable and justifiable and it does not lead in exceptional case to require the court to exercise the discretion in favour of the applicant. I just want Members to have a clear understanding and would not sort of being swayed by some sort of misunderstanding. Thank you, Mr Chairman.

MR RONALD ARCULLI: Thank you, Mr Chairman. Very briefly to reply to the Honourable Ms Anna WU. As I said earlier, introducing or supporting the amendment would increase the uncertainty. Lawyers have limitation periods so that if in fact you are talking, you are trying to conciliate and you know that tomorrow the time is up, you would issue proceedings today, and you can carry on talking.

This way, the disabled person is actually protected rather than be under the illusion that conciliation can go on after the two-year period when in fact the employer says that conciliation terminated before. So what you will be litigating firstly if the amendment is supported, is you are arguing in the first instance whether or not conciliation has ended. And that will do the disabled person more injustice than having a fixed period of time. Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I reiterate the Administration has already proposed to extend the period during which proceedings may be brought from 12 to 24 months. More importantly, the District Court may consider any claim or application which is out of time if it considers that it is just and equitable to do so.

An aggrieved party who spent more than two years in conciliation and was not satisfied with the outcome could bring his case to the court and ask for it to be actioned. But we do not envisage conciliation taking more than two years and to reassure the Honourable Ms Anna WU in the likely event that it did, the court would have regard to that fact in considering a claim that was out of time.

We do not therefore see the need to make a provision to state explicitly in the Bill that the time taken for conciliation should not be taken into account.

Mr Chairman, the Administration objects to this amendment and will vote against it.

DR LEONG CHE-HUNG: Yesterday, it was a debate and today we have a legal debate. I just wish all Members will support this amendment.

MS ANNA WU: Thank you, Mr President. I would be very brief. I would like to explain that the amendment insofar at the point when conciliation ends, is specifically stated in that amendment that it should be certified in writing by the Commission. That removes the uncertainty that was earlier discussed. Thank you, Mr Chairman.

MR MARTIN LEE: Mr Chairman, this amendment is really to be made out of caution. I heard with dismay from Mr Ronald ARCULLI saying “Well, the employer of course could extend the period”. Now if he should rely on the kindness of the employer and yet those who oppose the Bill on behalf of the employers would not agree with this amendment. So it really makes me think if they are really so generous about it why do they not accept the amendment, support it. As for time of limitation of course I know that — I too am a later, and, Mr Chairman, for fraud for instance, the limitation period would be extended in case of fraud. And of course very often the judge would have to decide whether or not there is fraud and how it impinges on the limitation period. So we are not introducing something new. This is something known to the court. They are able to cope with it. There is certainty and I urge Members to support it.

*Question on Dr LEONG Che-hung's amendment put.*

The Chairman said he thought the “Noes” had it.

Mr WONG Wai-yin claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr Eric LI abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

*Question on clause 80, as amended, proposed, put and agreed to.*

Heading before	Government
New clause 19B	

New Clause 19B	Government
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*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the heading before new clause 19B and new clause 19B as set out in the paper circulated to Members be read the Second time.



That the Government should be bound by and not above the law is a principle underlying the relationship between the Government and the community. The principle is best reflected in the Bill of Rights Ordinance which amongst other things binds the Government not to discriminate in its activities. The Government will also be bound by the Disability Discrimination Ordinance by virtue of clause 5. Clause 19B is added at the suggestion of the Bills Committee to make it unlawful for the Government to discriminate against a person with a disability in the performance of any of its functions subject to certain limited exceptions. The same explanation applies also to clause 33A which I will move later.

*Question on Second Reading of the clause proposed.*

MS ANNA WU: Mr Chairman, the Administration is proposing this clause and the new clause 33A because the Bills Committee requested it to eliminate ambiguity about the Bill's intention to cover all government activities whether or not they fall within the ordinary categories of activity that the Bill covers such as employment or provision of services.

The Administration's proposed new clauses however remain dangerously vague. The Administration's proposals also add new exceptions that this Bill originally did not contain. The Bills Committee is therefore proposing an alternative new clause 33B.

The need for express coverage of government activity arises because of the interpretation of the United Kingdom laws on which this Bill is based. Clauses 24 and 25 — the Bill's clauses dealing with services appear to cover all kinds of government activities since they could all be regarded as services to the public. But the interpretation by the United Kingdom Court was however somewhat different. The word "services" in a case in the United Kingdom in relation to government was interpreted to only include those government activities which are analogous to market place activities in the private sector.

To date, certain government activities have already been held by United Kingdom Courts to be outside the law because they are not services within the definition of services under this particular Bill.

The logic of the United Kingdom Court's decision suggests that other matters may also be outside the law such as certain activities of customs and excise officers, possibly licensing authorities outside the Government to provide services to the disabled in respect of vehicle licensing or driver's licensing, and so on. Ambiguity may also arise when administrative activities are contracted out or delegated to the private sector such as the operation of camps.

The Bills Committee's proposed new clause 33B expressly resolves all these ambiguities.

Finally, the Bills Committee's proposed clause but not the Administration's expressly ensures that the exercise of prerogative powers is covered. I really see no reason why prerogative powers should be excluded. It is one of the very items that ought to be covered by any Bill of Rights provisions.

I hope Members will therefore support new clause 33B proposed by the Bills Committee either instead of or in addition to the Administration's proposals. Thank you, Mr President.

*Question on the Second Reading of the new clause put and agreed to.*

*Clause read the Second time.*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the heading before new clause 19B and new clause 19B be added to the Bill.

*Proposed addition*

**New clause 19B**

That the Bill be amended by adding —

**"Government**

**19B. Government**

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a person with a disability not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a person with a disability if it was necessary for that act to be

done in order to comply with a requirement of an existing statutory provision.”.

*Question on the addition of the new clause and Heading before new clause 19B proposed, put and agreed to.*

Heading before Government  
New clause 33A

New clause 33A Government

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the heading before new clause 33A and new clause 33A as set out in the paper circulated to Members be read the Second time for the same reason that I explained in moving clause 19B. I commend new clause 33A to Members.

*Question on the Second Reading of the new clause proposed, put and agreed to.*

Clause read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the heading before new clause 33A and new clause 33A be added to the Bill.

*Proposed addition*

**New Clause 33A**

That the Bill be amended, by adding —

**”Government**

**33A. Government**

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a person with a disability not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision.”.

*Question on the addition of the new clause and Heading before new clause 33A proposed, put and agreed to.*

Heading before New clause 33B	Laws and Government programmes
New clause 33B	Discrimination in the administration of laws and Government programmes

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

DR LEONG CHE-HUNG: Mr Chairman, I move that heading before new clause 33B and new clause 33B as set out in the paper under my name circulated to Members be read the Second time.

The proposed new clause prohibits discrimination in administration of laws and government programmes.

The same amendment was proposed for the Sex Discrimination Bill. The Administration accepts this in principle, but subject to exception for any act done under immigration legislation and any act done to comply with an existing statutory provision. The Bills Committee considers that the Administration’s version, which was passed for the Sex Discrimination Bill, incorporates new and unnecessary exceptions. The Bills Committee prefers the wording in clause 27 of the Equal Opportunities bill.

Now that clause 19B and 33A have been approved and added, I urge Members to also approve new clause 33B, too.

*Question on Second Reading of the clause proposed.*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, as I said earlier when I was making our amendment on binding the Government, the Government is already bound by the Bill of Rights Ordinance not to discriminate in its activities. It is also bound by this Bill by virtue of clause 5. Our amendment makes it unlawful for the Government to discriminate against a person with a disability in the performance of any of its functions subject to certain limited exceptions.

The amendment proposed by Dr the Honourable LEONG Che-hung is much broader and its impact less clear. In drafting legislation, it is important to have a clear understanding of what its effect will be on the community before enacting it. We are not unsympathetic to what we believe he is trying to achieve through this amendment. But we do believe that the approach adopted is too much of a blunt tool. Dr the Honourable LEONG Che-hung's amendment as drafted, could apply to any person, including a private individual who performs a function or exercises a power under any law, even one which may not be for the purposes of a government programme. It is thus so wide reaching in its scope that its impact cannot be assessed with any clarity.

In particular, the amendment proposed by Dr the Honourable Leong Che-hung provides for no exceptions. Under the Bill of Rights Ordinance, an exception is provided for the exercise of immigration control under immigration legislation. This exception reflects a reservation entered for Hong Kong in respect of the International Covenant on Civil and Political Rights. The amendment would therefore go beyond the ICCPR as applied to Hong Kong.

Mr Chairman, the Administration objects to the new clause and will vote against it.

*Question on Second Reading of the clause put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Dr LEONG Che-hung and Mr WONG Wai-yin claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negated.

New clause 70A	Commission may bring proceedings in its own name
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New clause 70B	Commission may intervene in proceedings
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*Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

DR LEONG CHE-HUNG: Mr Chairman, I move that new clauses 70A and 70B as set out under my name in the paper circulated to Members be read the Second time.

New clause 70A empowers the EOC to bring proceedings in its own name with respect to any act or practice made unlawful by the Ordinance. This has been well detailed by Ms Anna WU when the Secretary for Health and Welfare moved new clause 83A.

This point has been agreed by the Administration in principle but it has proposed to empower the Secretary for Health and Welfare to make regulations, subject to Legislative Council's approval. The Bills Committee considers that it will be more proper to make a new clause for this provision in the principal Ordinance.

New clause 70A(2) gives the EOC the function of applying to court for declaration that legislation has been repealed by reason of inconsistency with the Bill of Rights Ordinance as it relates to disability discrimination.

Unlike the Bill of Rights Ordinance (BORO), the DDB does not expressly repeal inconsistent laws. The proposed amendment therefore empowers the EOC to challenge discriminatory laws by using the BORO.

New clauses 70B empowers the EOC to act by leave of court as *amicus curiae* in relation to claims under section 70(1) of the Ordinance.

The Bills Committee considers that where an individual is litigating an importing test case under the DDB, the EOC should be able to participate (to the extent permitted of course by the court) in order to assist in shaping the law's development. Mr President, similar provisions exist in Australian equal opportunity laws.

*Question on Second Reading of the clauses proposed.*

MS ANNA WU: Mr Chairman, I simply wish to reiterate that the United Kingdom case which I have mentioned, the House of Lords case, had decided that the Commission would have the *locus standi* to bring proceedings in its own name and join in proceedings seeking, amongst other things, declaratory orders relating to the status and validity of any domestic law. However, in that particular case, the Commission had to fight all the way up to the House of Lords to get that standing cleared and confirmed. There is no need for any Commission in Hong Kong to have to waste that kind of time or that type of resource to bring those proceedings.

I would urge Members to confirm that particular standing for the Commission to bring the proceedings in its own name or to join in proceedings for those functions described by Dr LEONG. Again, I wish to emphasize that in the case of the disabled where we are talking about the mentally ill or the mentally impaired, for example, a proactive Commission will help them a long way. Last year, May Members perhaps would remember that Mr BRIAN, the Federal Commissioner of the Australian Human Rights and Equal Opportunities Commission, came out to Hong Kong and he mentioned specifically that in the case of the mentally ill and the mentally impaired, they do not have the skills to help themselves and they do need a very proactive Commission to help them. And on this basis, I would urge Members to please support these two amendments of the Bills Committee. Thank you, Mr Chairman.

MR VINCENT CHENG: Mr Chairman, on the wholesale bringing in sort of foreign practices into our society, I am also a bit wary of a Commission having too much power. But I do have a concern which is some disabled people like mentally handicapped could not really bring legal proceedings by themselves.

Now I would like to hear the Administration on this point. But as a matter of principle, I do not like the Commission having too much power because power corrupts people.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, as I mentioned earlier in the Second Reading debate, while we agree that the Equal Opportunities Commission should have the power to bring proceedings in its own name, we would wish to set out in regulations under what circumstances it should exercise its power. Our amendment has already been passed by Members. We believe our approach is better than that proposed by Dr the Honourable LEONG Che-hung, where the power is in the principal Ordinance and could give the Commission the right to interfere in an individual's decision. It could allow, for example, the Commission to bring proceedings even though the aggrieved person does not wish to do so because he or she is in the process of reaching a settlement with the defendant. His amendment also does not address certain legal issues, for example, the appropriate remedy in proceedings where there is no claimant.

In addition, this new clause would also enable the Commission to seek a declaration that legislation was inconsistent with the Bill of Rights Ordinance even if it were consistent with the Disability Discrimination Ordinance. We do not see this as an appropriate function for the Commission since its role is to implement the Disability Discrimination and Sex Discrimination Ordinances and to work towards the elimination of discrimination as defined in those Ordinances. I hope I have explained this clearly to the Honourable Vincent CHENG.

Mr Chairman, for the reasons given above, the Administration objects to these new clauses and will vote against them.

MS ANNA WU: Mr Chairman, I simply wish to clarify that the United Kingdom Court has decided that the Commission has those powers in any event. But if we have those powers specifically spelt out in our laws, it would avoid litigation. It would avoid someone challenging the authority of the Commission here and thus wasting a lot of time and a lot of money. I wish to emphasize that these are powers that are already available in the United Kingdom to a Commission, but we need to ensure that no resource and time are wasted when someone does challenge the standing of the Commission.

The second point that I would like to emphasize again is that the Government has proposed a clause which meets part of those problems but does not go all the way and that is where for instance a disabled person wishes to challenge a law as discriminatory or a law that is considered to be invalid under the Bill of Rights, the declaratory order is not available under the current government proposal. If we add that specifically to the current provisions, the Commission can step in and bring the proceedings in the name of the disabled



person who in most cases cannot help himself. And that is what I am asking Members to do and that is to entrench the powers and the functions that are already available under the court interpretation in the United Kingdom. But to avoid and to ensure that no resource of time is wasted by someone challenging the jurisdiction. This is not adding a new power as such but simply to confirm those powers which ought to be there. And in the case of the Bill of Rights, the declaratory order would certainly help the disabled person a great deal if the Commission can bring that action rather than the disabled person who may not be able to bring that proceeding in his own name. Thank you, Mr Chairman.

MR JAMES TIEN: Mr Chairman, I think the objective of the Disability Discrimination Bill is obviously to help the disabled. But the Honourable Ms Anna WU just used the term “proactive Commission”. That sounds to me more like a trigger-happy commission. What will really happen to the disabled if this proactive Commission keeps stirring things up and becomes really that triggerhappy. I do not think it is really good or really helpful for the disabled.

I wonder if the Honourable Ms Anna WU, citing the case in England could show that having this proactive Commission actually helps the employment of disabled people in England. Thank you, Mr Chairman.

*Question on Second Reading of the clauses put.*

*Voice vote taken*

THE CHAIRMAN said he thought the “Noes” had it.

Dr LEONG Che-hung claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum,

Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the motion and 30 votes against it. He therefore declared that the motion was negatived.

Schedules 1, 3, 4 and 5 were agreed to.

Schedules 2 and 6

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that Schedules 2 and 6 be amended as set out in the paper circulated to Members.

Our amendment to Schedule 2 is a technical one to add auxiliary aids to the schedule. Our amendments to Schedule 6 allow the District Court to relax the rules of evidence in relation to proceedings brought under this Bill. They also empower the District Court to vary the rules of costs, with no award of costs being the general rule.

*Proposed amendments*

**Schedule 2**

That Schedule 2 be amended, by deleting the Schedule and substituting —

“SCHEDULE 2 [ss. 2, 61 & 84]

DEVICES OR AIDS SPECIFIED AS  
PALLIATIVE OR THERAPEUTIC  
DEVICES OR AUXILIARY AIDS

Item	Description of device or aid (including trade or manufacturer's name if applicable)
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1.	Optacon reading aid for persons with visual impairment
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2. Braille writing device
3. Low vision aid
4. Hearing aid
5. A telecommunications device for persons with hearing impairment
6. Wheelchair or buggy
7. Prosthesis
8. Orthosis
9. Walking aid
10. Aid for dialysis therapy
11. Speech aid
12. Oxygen unit
13. Aid for any activities of a personal nature, including a feeding aid and an aid in respect of toilet needs
14. Urinary bag
15. Stoma bag”.

### **Schedule 6**

That Schedule 6 be amended, in item 4, in the proposed section 73C —

- (a) in subsection (2), by deleting “rules as to proceedings by or against the Crown.” and substituting -

“rules -

- (a) as to proceedings by or against the Crown;
- (b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;

- (c) to make special provision for any proceedings in the Court where regulations made under section 83A of the Disability Discrimination Ordinance ( of 1995) apply to the proceedings.”;

- (b) by adding -

“(2A) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance ( of 1995) shall bear its own costs unless the Court otherwise orders on the ground that -

- (a) the proceedings were brought maliciously or frivolously; or
- (b) there are special circumstances which warrant an award of costs.”;

- (c) in subsection (3) -

- (i) in paragraph (c), by deleting the semicolon at the end and substituting a full stop;
- (ii) by deleting paragraph (d);

- (d) by adding -

“(3A) The Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance ( of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.”;

- (e) in subsection (4), by deleting “Any” and substituting “Subject to subsection (3A), any”;

- (f) in subsection (6), by adding -

“(aa) where there is any conflict or inconsistency between -

- (i) any rules made under subsection (2)(b); and

- (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings therein,

then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;”.

That Schedule 6, section 1 be amended, by deleting “弱能” wherever it appears and substituting “殘疾” .

That Schedule 6, section 2 be amended, in the proposed subsection (4), by —

- (a) deleting “並” ;
- (b) deleting “移交” and substituting “轉移” .

That Schedule 6, section 3 be amended, in the proposed subsection (4), by deleting “移交” and substituting “轉移” .

*Question on the amendments proposed, put and agreed to.*

*Question on Schedules 2 and 6, as amended, proposed, put and agreed to.*

Long title

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, last but not least, I move that the long title be amended as set out in the paper circulated to Members.

The amendments are to correct an error in the gazetted Chinese version of the Bill and to change the Chinese term for “disability”.

*Proposed amendment*

**Long title**

That the long title be amended, by deleting “的擴大” and substituting “擴大” .

*Question on the amendment proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

**DISABILITY DISCRIMINATION BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**Second Reading of Bill****MEDICAL REGISTRATION (AMENDMENT) BILL 1995****Resumption of debate on Second Reading which was moved on 7 June 1995**

*Question on Second Reading proposed.*

DR PHILIP WONG: Mr President, The Medical Registration (Amendment) Bill 1995 seeks to revise the composition of the Medical Council and its procedures for transacting business and the system of registration and examination of medical practitioners.

A Bills Committee, of which I am the Chairman, was set up to study the Bill. The Bills Committee has held four meetings with the Administration and met deputations from five organizations to listen to their views on the Licensing Examination.

The Bills Committee has received a total of 14 submissions from interested individuals, groups and organizations. In view of the controversial nature of some of the provisions of the Bill, Members agreed at the first meeting of the Bills Committee that it was impossible to scrutinize all the provisions within the time limit of less than two weeks. After taking into consideration the views of Members and the Administration, the Bills Committee decided to give priority to the provisions relating to the Licensing Examination and Limited Registration. All other provisions would be deleted and be re-introduced in the next Legislative Council Session.

I will briefly describe the main issues considered by the Bills Committee.

The proposal to introduce a Licensing Examination is aimed at providing a level playing field for those who seek to enter the medical profession in Hong Kong. It will remove the present discriminatory practices of allowing automatic registration of those medical practitioners who have received their training in the United Kingdom and certain Commonwealth countries and will bring Hong Kong into line with the requirement of the General Agreement on Trade in Services (GATS). As it will take about one year to make preparatory arrangements for the examination, it is necessary to have legislation in place to enable the introduction of the examination before 1997.

The proposed section 7(4) in clause 7 empowers the Medical Council to accredit any medical education programme, in Hong Kong or elsewhere, or any examination in medicine, surgery and midwifery set by a licensing body outside Hong Kong, if the Council is satisfied that the completion of such programme or the passing of such examination shows the achievement of a standard not lower than that achieved by the passing of the Licensing Examination.

The Medical Council, considers that, through the Licensing Examination, the standard and competence of individuals rather than the reputations of the institutions could be assessed. In order to avoid giving preferential treatment to any institutions, local or overseas, or to any particular countries, the Council has proposed to delete the new section 7(4). With the proposed deletion of the new section, local medical graduates of the two universities would also be required to sit the Licensing Examination. However, the Council has proposed a grace period of five years for these graduates to enable the universities to properly inform new candidates for admission into the medical schools.

While the Hong Kong Medical Association fully supports the Council's proposals, the Deans of the Faculties of Medicine of The University of Hong Kong and The Chinese University of Hong Kong consider that exemption should be given to their graduates as originally recommended by the Medical Council.

They point out that the standard set by the Licensing Examination must be that of the local universities which teach medicine. The examinations of the Faculties of Medicine of the two universities are recognized internationally as equivalent standard to that of Europe through recognition by the General Medical Council of Britain. Therefore to require local medical graduates to take the Licensing Examination will be a duplication of efforts and an unfair burden to the graduates.

They also point out that while licensing examinations are necessary in some countries or states to ensure standard of different medical schools, this is not the case in Hong Kong. In Hong Kong, the two Faculties of Medicine are both supported by public funds, both teach their students at large regional hospitals with the same patient mix, have similar curricula and examination schemes, and very often engage the service of the same external examiners and advisers. The clinical academic staff of both faculties co-operate to help organize the present Licentiate Scheme lectures and the Licentiate Examination

for the Medical Council. They also supervise the internship programme for local medical graduates and the internship programme for prospective licentiates. A uniformity of standards is thus maintained for all the medical practitioners trained and qualified in Hong Kong.

Members of the Bills Committee consider the above to be valid reasons for allowing exemption for the two local medical schools. They note that although the Medical Council has proposed to delete the new section 7(4) to avoid possible political pressure if it is given too much discretion over recognition of medical institution other than those in Hong Kong, it would be prepared to accept exemption for graduates of the two local Faculties of Medicine.

As regards compliance with GATS, the Administration has advised that although some World Trade Organization member countries have made specific commitments regarding compliance, Hong Kong has not done so and therefore the proposed exemption of the graduates of the two local Faculties of Medicine would not be in breach of GATS.

After taking all factors into consideration, Members support the exemption for medical graduates from The University of Hong Kong and The Chinese University of Hong Kong. They agree that the two universities should be specified in a new Schedule and the Medical Council may, with the approval of the Legislative Council, amend the Schedule by notice in the Gazette.

The second main topic considered by the Bills Committee is the provision for Limited Registration as set out in clause 18 of the Bill.

At present, there are 142 unregistrable medical practitioners practising in 124 exempted clinics

The historical background of this group can be traced back to the early post-war years when there were not enough doctors and a number of China-trained doctors came to Hong Kong to serve in clinics operated by non-profit making organizations and thereby providing a much needed service, especially to the low-income group.

The Administration supports their request for limited registration with the Medical Council on the condition that:

- (a) the practitioners shall remain within the existing scope of practice of primary care in exempted clinics; and
- (b) only the recognized practitioners already on the present list of unregistrable medical practitioners of exempted clinic shall be considered.



The Bills Committee agrees that the unregistrable medical practitioners working in exempted clinics have made an important contribution to Hong Kong over the past 30 years by providing a much needed service at a low charge. Members share the view that it is reasonable and appropriate to give them recognition by allowing them limited registration under the Medical Registration Ordinance.

At present, at the request of the Administration, the Bills Committee has agreed to include clause 44, a non-controversial clause which seeks to increase the penalties for contravention of the provisions relating to the treatment of the diseases of the human eye.

Finally, I would like to take this opportunity to thank my colleagues on the Bills Committee, representatives of the Administration and staff of the Legislative Council Secretariat for their strong support and hard work, without which it would not have been possible to complete scrutiny of the two provisions so expeditiously in a very busy period of time for all of us.

Mr President, with these remarks, I commend the Medical Registration (Amendment) Bill 1995 to Honourable Members.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair

DR LAM KUI-CHUN (in Cantonese): Madam Deputy, not only is the Medical Registration (Amendment) Bill 1995 worth supporting, but there is also a pressing need to have it enacted as law. With the birth of the World Trade Organization this year, the special relationship with regard to academic qualifications subsisting between Hong Kong and other Commonwealth countries will soon terminate. Hong Kong must set up its own medical accreditation system and let it get off to an early start.

This concept of a new accreditation system has recently come under attack from people outside this Council who misunderstand it. One rather fierce attack has come from those who graduated and qualified in China but have not been granted a licence to practise as a medical practitioner in Hong Kong. They contend that, since 1997 will mean full sovereignty reversion, the privilege of registering as a medical practitioner without the need to sit an examination hitherto enjoyed by Commonwealth medical graduates should as a matter of course pass to China-trained medical graduates with effect from 1 July 1997. Yet, the present Bill does not propose to grant them the privilege they think they are entitled to.

In this respect, Hong Kong has to face two facts. First, under the General Agreement on Trade and Services, no region shall be permitted to adopt a policy that favours one region but discriminates against another. In other words, hereafter Hong Kong shall cease to grant special favours to Commonwealth medical graduates but shall equally treat medical graduates from China, the United States, and African countries. This new policy is a new arrangement on a global basis. It is unrelated to the 1997 question nor does it imply that there is something remiss about Hong Kong's sovereignty reversion.

The second fact is that the numbers of medical practitioners in Hong Kong and China differ vastly. In Hong Kong there are only 7 000-plus registered medical practitioners while in China there are over 300 000 medical practitioners who graduated and qualified in China. According to a rough estimate by a Mainland medical graduate who succeeded in getting himself qualified to practise in Hong Kong, if China-qualified doctors can practise once they arrive in Hong Kong then about 100 000 Mainland doctors will be very keen to come to Hong Kong. When this 100 000-strong army arrives, there will be an acute shortage of doctors in China and a huge surplus of doctors in Hong Kong. A diverse range of social problems will emerge, including poor career prospects for local medical graduates and inadequate supervision of the standard of practising doctors. This will not be in the public interest.

Another criticism levelled by society against the present Bill is that Hong Kong, which is under colonial rule, only recognizes the qualifications of Commonwealth graduates and refuses to recognize even the qualifications of medical graduates from reputable non-Commonwealth universities. As Hong Kong is about to leave the Commonwealth, it should therefore discard such unjustifiable discrimination against medical graduates from reputable non-Commonwealth universities. I am afraid this is a specious argument which betrays insufficient knowledge of the question at issue on the part of those who advance it.

Two points related to this question should be clearly explained. The first point is: Not that Hong Kong specially recognizes the qualifications of Commonwealth doctors, but that Commonwealth medical colleges have adopted a system of sending to each other panels of examiners to assess the standard of teaching so as to ensure that Commonwealth college standards are more or less the same. That is why the colleges recognize the qualifications of each other's graduates. If any one of the colleges ceases to partake in this scheme of sending visiting panels of examiners, there will be no mutual recognition of qualifications between it and other colleges. Examples would be Canada and India after independence. As these two countries refuse to have their medical college standards scrutinized by visiting examiners from other regions, there is no mutual recognition of qualifications between their medical graduates and those of other Commonwealth colleges even though the two countries are still members of the Commonwealth. There has been no mutual sending of visiting panels of examiners between Hong Kong and non-Commonwealth countries such

as the United States and France. Therefore, there is no mutual recognition of medical qualifications between Hong Kong and these countries. This is a question of reciprocity, not a question of colonial privilege.

The second point is: There are numerous medical colleges throughout the world. Not only do standards vary from college to college, teaching standards also vary within a college from time to time. It would be technically impossible for Hong Kong's medical sector to draw a line in relation to these colleges and, in the absence of monitoring, openly recognize or refuse to recognize on a permanent yet justifiable basis the qualifications conferred by certain universities or colleges. Therefore, the fairest and most feasible way would be not to grant special recognition from now on to colleges or universities outside the territory. In this connection, the present Bill originally contained a provision to confer power on the Medical Council to exempt individual overseas doctors from sitting the required examination and to grant them registration direct. However, the Medical Council requested that it be given no such power on the ground that there would be enforcement difficulties. This serves to prove that it would not be feasible to pick and choose among medical graduates from colleges outside of Hong Kong which are not subject to regular qualification assessments.

Since overseas graduates have to sit a licensing examination, it would only be fair that local graduates be required to sit the same examination as well. This was originally the proposal of the Medical Association and the Medical Council too. Unfortunately, the medical schools of the two universities rejected the arrangement to require their own graduates to sit an open licensing examination. There would be practical difficulties in holding an open licensing examination if the two medical schools refused to participate. The Chairman of the Medical Council was invited to attend before the Legislative Council to make a submission. But I was surprised to hear the Chairman's views because they were the same as those held by the two medical schools and contrary to those held by the Medical Council. Eventually, the Bills Committee accepted the proposal of the two universities to allow their medical graduates to be exempted from sitting the licensing examination. Though it could be said to be a pragmatic move, it in fact meant knuckling under pressure.

Madam Deputy, in enforcing this Ordinance in future, there is one important result I would be most concerned about. Taking advantage of the mutual recognition between Commonwealth medical colleges, Hong Kong has been sending graduates to the United Kingdom and Australia to undergo further clinical training. This has been instrumental in introducing advanced medical technologies into Hong Kong. History has proven this to be an effective way to maintain Hong Kong's medical standards at world class level. Now Hong Kong and other Commonwealth countries are about to terminate their relationship of mutual recognition of academic qualifications. I would like to urge the Hong Kong Government and Hong Kong specialist medical schools to do everything they can to keep this historical and long-standing avenue open for medical practitioners to further their studies so that international links can be

maintained, Hong Kong's medical standards can be raised and the public's health can be protected.

Finally, I agree that practitioners in exempted clinics run by societies should be accorded appropriate recognition. They have garnered dozens of years of experience practising medicine in Hong Kong and have contributed vastly to Hong Kong's medical services. Today, dozens of years on, they must have become accomplished practitioners no matter what their standards had been when they first embarked on their career. They are doctors in their own right. Moreover, it has been proven that the way they practise medicine is both effective and safe.

Madam Deputy, with these remarks, I support the Second Reading of the Bill.

DR LEONG CHE HUNG: Madam Deputy, I rise to support the Medical Registration (Amendment) Bill 1995 and the amendments to be moved at the Committee stage on behalf of the medical profession.

I would like to put it on record the appreciation of the medical profession for the Bills Committee, in particular the Chairman, for the willingness to indulge in this rather complicated Bill even towards the end of the Legislative Session and to bring to fruition the scrutinizing of the main part of the Bill. I must also thank the Administration for responding and compromising so much with Members at the eleventh hour and to agree to delay parts of the Bill to a later stage.

Having expressed our thanks, I must raise our extreme disappointment at the Administration in handling the whole procedure of coming up with this Bill.

Madam Deputy, the need for major revamping of the Medical Registration Ordinance (MRO) was conceived as early as 1988-89. The principles and the policy behind were agreed in principle by the profession, the Medical Council and the Health and Welfare Branch.

For some four to five years no action was taken on the part of the Government. There was neither a wave nor even a ripple. Frustration mounts within the profession and with the belief that the Administration has too much Bills to go through as 1997 draws near, the profession at its own accord and resources draw up the amendment Bill with an aim to this Council for a Private Member's Bill.

The then Secretary for Health and Welfare advised against this and proposed that it should be introduced by the Government. The Bill was thus given lock stock and barrel to the Administration some 21 months ago.

Reassurance was given on repeated occasions both verbally and in writing by the Health and Welfare Branch to the profession that this Bill would be introduced before July 1994, November 1994 and before April 1995. These were of course not honoured. The final straw came two months ago when the MRO (Amendment) Bill was not amongst the Legislative Programme on the list of Bills the Government intended to introduce to the Legislative Council this Session.

The profession was flabbergasted, my hands were forced. I had to introduce a Private Member's Bill. This was made known to the House Committee of the Legislative Council which responded positively.

The Government, to cover its embarrassment in haste, introduced this Bill that we are reading today. So rush was this Bill that the Medical Council, the organ to carry out the Bill, was not even given the chance to discuss the content of the whole Bill in total. So rush was this Bill that the Government blundered a clause 42 restricting the use of the title "doctor" for use by the medical profession only when it is obvious to all that thousands of "doctorates" exist in Hong Kong.

More problems are yet to come. Madam Deputy, at the beginning, I did say that the objective of introducing the amendment Bill is to revamp the whole MRO which is outdated. The Bill is understandably a very substantive Bill which covers a few areas:

- (1) To introduce a medical registration system that is fair to all and to comply with the spirit of the World Trade Organization;
- (2) To enlarge the size of the Medical Council to cope with the workload; and
- (3) To enlarge the function of the Medical Council to introduce amongst others, specialists registration, an ethic committee, a fitness to practise committee.

The late introduction of the Bill and the subsequent low priority the Government gave the Legislative Council to this Bill makes it very obvious that proper scrutiny of the whole Bill before the end of this Legislative Session becomes wishful thinking. Yet it is obvious to all that part of this Bill, in particular, the part in introducing a universal licence examination for registration to practice medicine in Hong Kong has a timeframe. Examination details have to be set up and the first such examination takes place before June 30 1997 to ensure that a "Hong Kong registration system" be enshrined.

I am therefore most grateful to both the Legislative Council and the Government for their willingness to study this part of the Bill this Session. Yet, I would like to have the assurance from the Government that the rest of the Bill or at least the substance behind it be reintroduced to this Council as the first priority when this Council reconvened. I would like to put it on record too that failing this, the representative of the Medical Functional Constituency will have no choice but to introduce a Private Member's Bill despite opposition from the Government.

I now come to the text of the Bill, Madam Deputy.

The current MRO empowers that three types of medical graduates can be registered to practise medicine in Hong Kong.

These are:

- (1) graduates of the medical schools of the University of Hong Kong and Chinese University of Hong Kong;
- (2) graduates of most Commonwealth medical schools recognized by the General Medical Council; and
- (3) non-Commonwealth graduate who have passed a Licentiate specified by the Medical Council.

This clearly will not do in the future as the criteria so determined violate the spirit of the international General Agreement on Trade in Services, as there is an element of discrimination. Furthermore, common sense will tell us that it will not traverse 1997.

The introduction of a universal examination for all therefore must be the step in the right direction.

During the Bills Committee deliberation, we have received deputation from a group of medical graduates from China who have discredited an examination system arguing that it would be impossible to judge the competency of a medical graduate by just an examination. Yes, the examination is never ideal. But short of sending teams from Hong Kong to assess the thousands of medical schools round the world whose graduates may wish to come to Hong Kong to practise medicine, an examination system for all must be the fairest way to ensure that those who will be allowed be at least at a minimal standard that we can recommend to our public.

Furthermore, the Medical Council has the right to reject candidates from participating in the examination unless it is satisfied that a candidate has actually gone through a medical course of study acceptable to the Medical Council.

The same deputation has stressed that after 1997 when Hong Kong becomes part of China, graduates from China, the sovereign country, should be given the right to register to practise in Hong Kong directly.

I strongly refute this. Let me point out to the group and its followers that the practice of medicine to save life is based on standard and of which sovereignty plays no part. Let me remind them too that the Joint Declaration enshrines the basic concept of “one country, two systems”. In essence, this means that medical graduates from Beijing who want to practise in Hong Kong must abide by the Hong Kong system and vice versa. Article 142 of the Basic Law sets this in concrete when it said: “The Government of the Hong Kong Special Administrative Region shall, on the basis of maintaining the previous systems concerning the professions, formulate provisions on its own for assessing the qualifications for practice in the various professions ..... these (professional) organizations may, on their own, assess and confer professional qualifications.” This has been repeatedly reconfirmed by the Chinese leadership and this is what “one country, two systems” is all about.

Madam Deputy, having established the licensing examination, the original Bill also provides discretion power to the Medical Council to grant registration otherwise. Whilst this may be seen as a good move to empower a professional body the flexibility to grant licence, the fact remains that our Medical Council, unlike professional councils of the lawyers, the Bar, the engineers, the architects, and so on, is not a genuine professional body. Instead it is a quasi-governmental body with all the members appointed by the Governor.

It is thus a welcome move that the Administration is willing to move an amendment to delete section 7(4) of the Bill to remove this all encompassing discretionary power. This has the support of the whole medical profession and the Medical Council itself.

Madam Deputy, the establishment of the licensing examination calls into question the status of graduates of our two local universities. There were those who feel that all medical graduates should undergo the same test. The two medical schools were understandably against it. The Medical Council and even the Chairman herself is split in views. I would have supported the issue of examination for all if not for the fact that in the Bill itself, the Medical Council will be empowered to inspect the two medical schools and vet their curriculum and training to ensure that standards are maintained.

Madam Deputy, clause 9 and the new Schedule brings to the effect that the two medical schools' graduates will not have to sit the examination. Furthermore, proposed changes to the Schedule has to be tabled in the Legislative Council to prevent uncontrollable expansion of the Schedule in the future.

There are two areas which are still outstanding. Firstly, it is the date that this Bill together with the amendments will take effect, which I hope the Administration will respond.

Secondly, what would those medical graduates who have passed the licensing examination be denoted by? How would the public differentiate two medical graduates from the same medical school where one has the right to practise in Hong Kong because he has succeeded in the licensing examination and the other have not. The medical profession would suggest the term “Licentiate of the Medical Council of Hong Kong” or “LMCHK”, which is currently used, still be used in the future.

I support the amendment bill and its the amendments.

DR HUANG CHEN-YA (in Cantonese): Madam Deputy, I believe Members would agree that the principle underlying the registration of a medical practitioner in Hong Kong should be : Whether the registered person is capable of providing medical services of an adequate standard to the public. The focus of our concern should be the health of the public which is a matter of paramount importance. Therefore, I feel that we should consider the present Bill from this perspective.

Point one. When we consider this Bill, we should absolutely not cherish any protectionist sentiment. Dr the Honourable LAM Kui-chun and I both understand that if too many doctors take up practice in Hong Kong, it will certainly cause career and economic problems to local practitioners. However, notwithstanding these difficulties that we may face, if there are more doctors in Hong Kong who are of an adequate standard, more patients may be able to receive less expensive medical services. From the patient’s perspective, what in fact matters is that he can receive high quality medical services. Therefore, I feel that we need not say if there will be a surplus of doctors in the event of a 100 000-strong army of medical practitioners coming to the territory. If we say this, it will cause misunderstanding on the part of some people, particularly China-trained doctors who have arrived in Hong Kong. They will think that we are looking at the question from a protectionist angle and deliberately placing obstacles in their way to make it impossible for them to practise in Hong Kong.

Point two. We should absolutely not act in such a manner as to favour one and discriminate against another. For historical reasons, Hong Kong indeed used to treat medical practitioners from outside the territory in such a way as to favour one and discriminate against another. In other words, doctors from the United Kingdom or Commonwealth countries were, in most cases, exempted from sitting a licensing examination in Hong Kong. This indeed made many people feel that the system was unfair, particularly doctors from North America. They thought their medical skills were in no way inferior to those of Commonwealth doctors and, in some instances, their skills might even be superior. And yet they were not exempted from sitting a licensing examination.



They felt aggrieved. It is a good thing that we are now abolishing this practice of favouring one and discriminating against another.

Point three. As I said a moment ago, we should take the health of the public as the foremost factor for consideration. Therefore, the purpose of holding an examination is neither to put obstacles in the way of any person nor to bar him from sitting the examination by means of a protectionist measure. Neither is an examination a means to disqualify a candidate from another country or region. In this respect, I have always felt that the original provisions of the Bill, that is to say, the provisions to give effect to the Medical Council's proposal to require the medical graduates of Hong Kong's two universities to sit a licensing examination, were the most wise or prudent. Indeed, many people, particularly China-trained medical graduates, have all along felt that the current arrangement is discriminatory against them and a deliberate move to keep them from joining the ranks of medical practitioners in Hong Kong. If we hold a common examination which all medical practitioners in Hong Kong are required to sit before they are allowed to practise, this misunderstanding or complaint will disappear. Moreover, the medical students of Hong Kong's two universities are of a very high standard and they can provide the benchmark for examination questions to be set and results assessed. This will set people's mind at ease and assure them that doctors practising in Hong Kong can indeed provide good and adequate service. This will also enable us to ensure that Hong Kong people will receive top quality medical service. Therefore, from my point of view, the two universities are rather short-sighted and this is disappointing. It is because their refusal to let their own graduates sit the licensing examination will deprive these graduates of the chance to provide the necessary benchmark. This will perpetuate the misunderstanding on the part of overseas doctors, particularly China-trained doctors, with regard to the Hong Kong examination system. I believe complaints will never cease. I am most disappointed.

Nevertheless, in whatever light we may view this Bill, I think it represents an improvement. Therefore, I will support the passage of the present Bill.

MR MARTIN BARROW: Madam Deputy, I rise to give my qualified support to this Bill. Since I first joined this Council in 1988, I have repeatedly expressed my concern that certain of Hong Kong's professions did not match our overall profile of an open and international city.

Colleagues, the life-blood of Hong Kong is our position as an international commercial centre on the coast of China. Why is it that our medical and legal professions have fought year after year to maintain a closed shop? Do we really think that this is in the interests of the community as a whole? Our value to China will continue as a gateway to the rest of the world and this means ensuring access for those wishing to work here as well as meeting our GATT or World Trade Organization (WTO) obligations.

It has been argued that many countries and territories also have tight control over the professions and that there should therefore be reciprocity. But that, Madam Deputy, is not the point. Hong Kong's position is unique and we should be uniquely open.

I recall, Madam Deputy, at the height of the Vietnamese boat people crisis in 1988 that there were highly qualified volunteers from overseas willing to come to Hong Kong at no cost and no risk to the Hong Kong taxpayer to help in the camps, indeed, as a saving for taxpayers as we would not need to send as many Hong Kong doctors into the camps. But they were prevented from doing so by Hong Kong's medical profession. What a nonsense that was.

More recently, there was a standoff for several years over the role of foreign lawyers. But eventually with pressure from one of our Bills Committees a compromise was reached. Now at last we have a modest step forward with this Bill but will it really result in more openness? Why for example should not Japanese children at the Japanese school be looked after by a Japanese doctor? I wonder if the passage of this Bill really will result in progress of that sort.

Furthermore, here is once again evidence that the Government and the medical profession are ganging up to the disadvantage of the chiropractors. My support for this Bill will depend on a categorical assurance from the Secretary that none of the subsequent moves are going to disadvantage chiropractors.

In conclusion, Madam Deputy, I support any move to bring Hong Kong in line with GATT, or WTO requirements. Hong Kong will be the loser if we do not. Thank you.

DR CONRAD LAM (in Cantonese): Madam Deputy, today I speak in support of the Second Reading of the present Bill. I would like to respond to a remark made by Dr the Honourable LAM Kui-chun a moment ago. Dr LAM said that to exempt the medical graduates of the two local universities from sitting the licensing examination meant knuckling under pressure. I disagree.

As a matter of fact, we had discussed this question in the Bills Committee. Committee members had been of the view, and indeed some Members expressed similar sentiments a while ago, that the purpose of holding an examination is to ensure that future medical practitioners will have attained a certain level of professional standard in order to protect the health of the public. All had agreed in the Bills Committee that the professional standard of the two local medical colleges is beyond question. Hong Kong has a system in place to monitor the operation of the two medical colleges so as to ensure that their standard will not fall below expectations. That being the case, do we really need to duplicate work and require the graduates of the two colleges to sit one examination after another within a short span of time? We will be doing something for the mere purpose of letting other people see it. And this

something will not be serving any practical purpose at all. These 200 to 300 graduates are required to sit one examination after another just because we are worried lest China and other regions should criticize us for favouring our own students. I believe we should not do things just to let other people see them but what we do must serve some practical purpose.

MR TAM YIU-CHUNG (in Cantonese): Madam Deputy, I speak in support of the Medical Registration (Amendment) Bill. I would like to focus on the question of granting limited registration, as proposed in the present Amendment Bill, to practitioners in exempted clinics operated by societies.

As a matter of fact, this question has been a long-standing one. There are currently about 140 practitioners who serve in exempted clinics run by societies. When I first joined the Legislative Council in 1985, these people argued that the existing law was most unfair to them. They contended that they had contributed vastly to Hong Kong's medical services at a time when such services were most inadequate. In point of fact, their work during the past dozens of years has proved that they are up to the required standard. They also passed the examination required by the then Medical and Health Department. Therefore they are of the view that the Government should allow them to register as full-fledged doctors.

With regard to this question, I feel that it is an outright misnomer to call them "practitioners in exempted clinics" instead of "doctors" since they have been allowed to practise medicine and treat patients for so long. Today, we are proposing an amendment to have this misnomer corrected. I feel that this is a step in the right direction which will rectify what has been an unreasonable arrangement. Of course, the question has not yet been completely resolved. We are now proposing to grant them only limited registration. This will, in effect, be just a relaxation of the rules and there are still numerous restrictions. For instance, their present scope of practice will still be restricted.

I would like to point out that, as far as the practitioners in these exempted clinics are concerned, they and the clinics will stand or fall together. If the clinics were closed down or if the societies that run them folded up, these practitioners would have nowhere else to go. I feel that this would be unfair to them as well. After the passage of the present Bill, I would still urge the Government to continue to study and consider the question of the current scope of practice to which these practitioners are subject, that is to say, the question of how to maintain a measure of flexibility.

With regard to the several thousand China-trained medical graduates who have already come to Hong Kong, their demand for recognition of their professional qualifications is becoming more and more strident with the imminent approach of 1997. While some of them are willing to sit the licensing examination we are proposing to hold, some others are unwilling to sit it because they think they are already amply qualified and recognized by the

Chinese Government. I believe it would not be easy to resolve this problem because it would bear on the questions of local doctors' interests, the protection of patients, the accreditation of medical qualifications and monitoring of medical standards. I believe this problem will continue to plague the Government.

Madam Deputy, with these remarks, I support the Bill.

SECRETARY FOR HEALTH AND WELFARE: Madam Deputy, I should like to thank the Chairman and Members of the Bills Committee for their careful scrutiny of those provisions in the Bill which the Committee identified as priorities to be passed within this Session. These provisions concern mainly the introduction of a universal licensing examination, referred to in the Bill as the Licensing Examination, and Limited Registration.

If the Bill is passed by this Council, the provisions for the introduction of the universal licensing examination will provide a level playing field to all those wishing to practise medicine in Hong Kong, irrespective of where they received their training. To reassure the Honourable Martin BARROW, this will ensure that Hong Kong meets its obligations under the General Agreement on Trade in Service fully and in a timely manner.

The provisions regarding Limited Registration pave the way for medical practitioners in charge of exempted clinics, who have, as both Dr the Honourable Conrad Lam and the Honourable TAM Yiu-chung have pointed out, who provided a useful service to the community for many years, and this will enable them to apply for limited registration.

Since we have not been able to address a number of other issues contained in the original Bill, we intend to bring them forward again early in the next Legislative Session.

Some Members have raised issues outside the revised scope of the Bill, and which I am tempted, I will not comment on these issues here. However, I am grateful to Dr the Honourable LEONG Che-hung for the points which he has raised, and at the same time I must refute allegations that we have delayed introduction of this Bill. We have been consulting the medical profession in detail over various important provisions in the Bill, and we are receiving additional proposed amendments until early this year.

When will the universal licensing examination take effect?

If the Bill is passed, provisions concerning the introduction of the universal licensing examination will come into effect on a date to be appointed by the Secretary for Health and Welfare and published in the Gazette. Before this can be done, the format of the examination will need to be finalized.

Obviously we wish to provide a level playing field for all those entering the profession as soon as possible. We will therefore encourage the Medical Council to finalize the format and content of the universal licensing examination so that it can be implemented as soon as practicable.

Madam Deputy, we shall fully consider the other points raised in the context of this Bill and refer them for the consideration of the Medical Council as appropriate.

With these remarks, I recommend the Bill to Members.

THE PRESIDENT resumed the Chair.

*Question on the Second Reading of the Bill 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.

### **MEDICAL REGISTRATION (AMENDMENT) BILL 1995**

Clauses 1, 8, 11, 12, 13, 16 and 44 were agreed to.

Clauses 2 to 7, 9, 10, 14, 15, 17 to 43 and 45 to 48

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

It is necessary to amend clause 2(a) to retain certain existing definitions and to delete a number of clauses which fall outside the present reduced scope of the Bill.

The amended clause 2 provides for the definitions of qualifying examination and Licensing Examination.

The purpose of amending clauses 3 to 6 is to remove provisions concerning the future composition and structure of the Medical Council. Also, provisions concerning the register need to be amended consequent to the introduction of the proposed Licensing Examination.

The amended clause 7 provides for the introduction of a Licensing Examination, which will provide a level playing field to those seeking to enter the medical profession in Hong Kong.

By amending clause 9, it is specifically provided that a person with a degree in medicine and surgery from a university in Hong Kong as specified in the Schedule, together with the necessary experience, is qualified to be registered as a medical practitioner in Hong Kong.

Amendments to clauses 10 and 14(1) are necessary with the introduction of the Schedule for the purpose of registration.

With the reduced scope of the Bill, clauses 14, 15 and 17 need to be deleted.

The purpose of amending clauses 18 and 18(2) is to pave the way for medical practitioners-in-charge of exempted clinics to apply for limited registration.

Clause 19 is proposed to be deleted as it is outside the present reduced scope of the Bill.

With the introduction of the proposed Licensing Examination, consequential amendments to clause 20 concerning the register are necessary.

Clauses 21 to 43 and 45 should be deleted as they are outside the present reduced scope of the Bill.

The amended clause 46 provides for the new Schedule for the purpose of registration.

Clause 47 is outside the reduced scope of this Bill and needs to be deleted.

The purpose of amending clause 48 is to provide for the transfer of personal particulars on the register as a transitional measure, with the introduction of the Licensing Examination.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 2**

That clause 2(a) be amended, by deleting ““Committee”,”, ““qualifying examination”,” and “, “register””.

That clause 2 be amended, by deleting paragraphs (b) and (c) and substituting —

“(b) by repealing the definition of “qualifying examination” and substituting -

““qualifying examination” means an examination which has to be passed in order to qualify for the award of a degree specified in section 8(1)(a);”;

(c) by adding -

““Licensing Examination” means the examination set by the Council under section 7;”.”.

**Clauses 3 to 6**

That clauses 3 to 6 be amended, by deleting the clauses and substituting —

**“3. Register**

Section 6(1) is amended -

- (a) in paragraph (a), by adding “under section 14” after “registered”;
- (b) in paragraph (b), by adding “under section 14” after “registered” where it secondly occurs;
- (c) by repealing paragraphs (c) and (d);
- (d) in paragraph (e), by repealing “V” and substituting “III”. ”.

**Clause 7**

That clause 7 be amended, by deleting the clause and substituting —

**“7. Section substituted**

Section 7 is repealed and the following substituted -

**“7. Council to set Licensing Examination**

(1) The Council shall set an examination, called the Licensing Examination, the passing of which shows the achievement of a standard acceptable for registration, under section 8(1)(b), as a medical practitioner.

(2) Without prejudice to section 7A, the Council may impose such conditions as it thinks fit, being conditions which are relevant to the assessment or improvement of a person's professional knowledge and practice in medicine, surgery and midwifery which a person must comply with before the Council allows him to take the Licensing Examination or any part thereof.

(3) The Council may prohibit a person from taking the Licensing Examination if the person has taken any one part of the Licensing Examination 5 consecutive times and has failed each time.

(4) Subject to subsection (5) and such conditions as the Council thinks fit, the Council may exempt a person from taking any part of the Licensing Examination.

(5) The Council shall not exempt a person from taking any part or parts of the Licensing Examination in respect of medical knowledge unless the person satisfies the Council that he has substantial experience of the practice of medicine and surgery, or, as the case may be, medicine, surgery and midwifery.

(6) The Council may delegate any or all of its functions under this section to the Committee.””.

**Clause 9**

That clause 9 be amended —

- (a) by renumbering the proposed section 8 as section 8(1).



(b) by deleting the proposed subsection (1)(a) and substituting -

“(a) he has been awarded a degree of medicine and surgery by a university in Hong Kong specified in the Schedule and is also certified under section 9 that he has had the experience specified in that section;”.

(c) in the proposed section 8 by adding -

“(2) The Council may, with the prior approval of the Legislative Council, by notice in the Gazette, amend the Schedule.”.

### **Clause 10**

That clause 10 be amended, by deleting the clause and substituting —

#### **“10. Certificate of experience**

(1) Section 9(1) is amended, by repealing “8(a)” and substituting “8(1)(a)”.

(2) Section 9(2) is amended -

(a) by repealing “the University of Hong Kong or to The Chinese University of Hong Kong” and substituting “the university specified in the Schedule which awarded him the degree of medicine and surgery”;

(b) by repealing “the University” in both places where it occurs and substituting “the university”.

(3) Section 9(5)(a) is amended, by repealing, “the University of Hong Kong or The Chinese University of Hong Kong” and substituting “a university specified in the Schedule”.

### **Clause 14**

That clause 14(1) be amended, by deleting “or completed or passed an education programme, course of study or examination approved under section 7(4)” and substituting “or a qualifying examination”.

That clause 14 be amended, by deleting subclause (3) and substituting —

“(3) Section 12(2) is amended by repealing “or who has had his name recorded in Part IV of the register”.”.

### **Clause 15**

That clause 15 be amended, by deleting the clause.

### **Clause 17**

That clause 17 be amended, by deleting subclauses (2) and (4).

### **Clause 18**

That clause 18 be amended, by adding —

“(1A) Section 14A(2) is amended by repealing “Where” and substituting “Subject to subsection 2(A), where”.

(1B) Section 14A is amended by adding -

“(2A) A person who does not satisfy the Council that he fulfils the requirements of subsection (2)(b), (c) or (d) but satisfies the Council that he fulfils the other requirements of subsection (2) may, if the Council so directs, be registered as a medical practitioner with limited registration subject to such restrictions and conditions regarding his practice as specified by the Council.”.”.

That clause 18(2) be amended, by adding before paragraph (a) —

“(aa) by adding “or (2A)” after “(2)”.”.

### **Clause 19**

That clause 19 be amended, by deleting the clause.

### **Clause 20**

That clause 20 be amended, by deleting the clause and substituting —

**“20. Publication of register and evidence  
of registration, etc.**

(1) Section 15(1) and (2) is amended, by repealing “, Part III or Part V” and substituting “and Part III”.

(2) Section 15(5) is amended -

(a) by repealing “, III or V” and substituting “or III”;

(b) by repealing “or recorded in Part IV of the register”.

**Clauses 21 to 43**

That clauses 21 to 43 be amended, by deleting the clauses.

**Clause 45**

That clause 45 be amended, by deleting the clause.

**Clause 46**

That clause 46 be amended, by deleting the proposed Schedule and substituting —

“SCHEDULE

[ss. 8 & 9]

UNIVERSITIES IN HONG KONG SPECIFIED  
UNDER SECTION 8

1. The University of Hong Kong.
2. The Chinese University of Hong Kong.”.

**Clause 47**

That clause 47 be amended, by deleting the clause and the 2 headings before it.

**Clause 48**

That clause 48 be amended, by deleting paragraphs (a), (b) and (c) and substituting —

- “(a) in Part III of the register kept immediately before the commencement of section 9 of this Ordinance, to Part I of the register;
- (b) in Part IV of the register kept immediately before the commencement of section 9 of this Ordinance, to Part II of the register;
- (c) in Part V of the register kept immediately before the commencement of section 9 of this Ordinance, to Part III of the register.”.

*Question on the amendments proposed.*

DR LEONG CHE-HUNG: Thank you, Mr Chairman. With your permission, I would like to say a few words and also mention certain things about some of the clauses that we moved on the amendment basis. Firstly, in response to what Mr Martin BARROW said just now, I do believe the introduction of a universal examination is a direction for openness so that every single graduate, bona fide graduate of around the world who wants to come to Hong Kong to practise can do so. He mentioned just now what about allowing Japanese doctor to come and look after the Japanese children. Well what about asking Filipino doctors to come to Hong Kong to look after the Filipino maids and what about asking Russian doctors to come and look after Russian patients.

Well, Mr Chairman, I would like to stress to Mr BARROW that the practice of medicine should not be based on race, sex or nationality. It should be based on standards, and standards is what the universal licensing examination is all about.

Mr Chairman, I am very grateful for the amendments that the Administration is moving. But as I did mention just now, the reason for deleting clause 7(4) was that the current basic Medical Council is still a quasi-government body. I do hope in the course of time, the Government will look into this and perhaps grant the possibility of the Medical Council to go in parallel with the other councils of other professions to be a pure professional body.

The third thing I want to mention, Mr Chairman, is concerning clause 18 which concerns the limited registration for the so-called clinic doctors. The medical profession will not object to the amendment moved to give provisions for practitioners who are currently working in standard clinics be given the right to limited registration in the Medical Clinics Ordinance. Due recognition must be given to this slowly shrinking group as I call them, for their many years of service devoted to the Hong Kong public.

There are, however, three outstanding issues which I hope the Administration will address. Firstly, the current situation for these licensed practitioner are that their activities are under the code of practice as denoted by the Director of Health in accordance with the Medical Clinics Ordinance. Will it be obligatory for all these licensed practitioners to take up the limited registration whereby they will come under the purview of the Medical Council? If not, there will therefore be two sets of registration, or rather regulation to regulate these groups. Some will be under the purview of the Medical Clinics Ordinance whilst the others will be under the Medical Registration Ordinance. Secondly, if all these licensed practitioners take up limited registration, what then will be the value of the Medical Clinics Ordinance which was enacted, for those who are old enough to remember, to accommodate these licensed practitioners?

Finally, it would be extremely important for the protection of the public that doctors in the category of limited registration be strongly advised to take up medical protection insurance and that it is the role of the Government to ensure that the insurance companies will make provisions to cover them. I support the amendments.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Medical Clinics Ordinance empowers the Registrar of clinics, namely, the Director of Health exempt clinics established before 1963 from the statutory requirement to employ registered doctors.

The presumption is that all practitioners in charge of the exempted clinics will apply for a limited registration under the Medical Registration Ordinance. However, they are not obliged to do so. If this proves to be the case, we will review the relevant provisions under the Medical Clinics Ordinance and make consequential amendments as necessary.

*Question on the amendments put and agreed to.*

*Question on clauses 2 to 7, 9, 10, 14, 15, 17 to 43 and 45 to 48, as amended, proposed, put and agreed to.*

New clause 45A                      Amendment of Schedule

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the new clause 45A as set out in the paper circulated to Members be read the Second time.

Clause 45A arises from our proposed amendments to clause 9 of the Bill which provides that any amendments to the Schedule will need to get the recommendation of the Medical Council and the endorsement of the Legislative Council before being published in the Gazette. We therefore propose the addition of a new clause to clarify the position.

Mr Chairman, I beg to move.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 45A be added to the Bill.

*Proposed addition*

**New clause 45A**

That the Bill be amended, by adding —

**“45A.                      Amendment of Schedule**

Section 34 is repealed.”.

*Question on the addition of the new clause proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

**MEDICAL REGISTRATION (AMENDMENT) BILL 1995**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

## **Second Reading of Bill**

### **INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995**

#### **Resumption of debate on Second Reading which was moved on 28 June 1995**

*Question on Second Reading proposed.*

MR ANDREW WONG: Mr President, on 30 June 1995, a Bills Committee was formed to study the Interpretation and General Clauses (Amendment) Bill 1995. The Bills Committee had held a total of three meetings with the Administration. The Bills Committee has also considered views from the Hong Kong Journalists Association and the Foreign Correspondents' Club, Hong Kong.

The Bills Committee supports the objective of the Bill, that is, to provide additional protection to journalistic material and procedural safeguards against unreasonable search of premisses and seizure of journalistic material for the purposes of investigation.

In studying the Bill, the Bills Committee has considered a number of issues. In response to Members' various concerns, the Administration has agreed to re-draft the main provisions of the Bill. I would like to highlight the deliberations of the Bills Committee on the major issues.

#### *Mode of hearing on an application for warrant*

The Bill requires an enforcement agency (including the police and Customs and Excise) to apply for a warrant for any entry and search for journalistic material. The Bill also requires a judge to be satisfied that a number of conditions are met before the warrant can be issued.

An area in which Members of the Bills Committee have expressed considerable concern is on the mode of hearing for application of warrant. In order to ensure that a search warrant is issued fairly and in the public interest, Members feel that inter partes hearing on an application for warrant in an open court should be provided in the Bill.

To address Members' concern, the Administration has agreed to introduce a three-tier approach for seeking to obtain journalistic material in the course of a criminal investigation:

- (i) an *inter partes* application procedure for a production order (not a warrant) in all general cases;
- (ii) an *ex parte* application for a warrant (if the production order is not complied with or it is not practicable to apply for a production order) which requires the sealing of any material seized pending the outcome of an application for the return of the material through an *inter partes* hearing; and
- (iii) an *ex parte* application for a warrant which authorizes the officers concerned to seize and use the material seized in urgent cases immediately.

The Administration has also agreed with Members' suggestion that *inter partes* hearings should be held in open court unless the judge directs otherwise. The Administration will move the necessary Committee stage amendments to introduce the new provisions.

#### *Provisions on entry, search and seizure*

The intention of section 83 of the Bill is to bring under it all the 106 provisions in various Ordinances which empower a law enforcement agency to enter premises to either search the premises or persons found on the premises for materials of whatever description. In the course of the deliberation of the Bills Committee, the Administration agrees that it will be necessary to amend section 83 and other related sections so that the procedural safeguards relating to applications for production order, "search and seal" warrant, and "search and use" warrant provided under the three-tier approach will also apply to journalistic material found on persons in the premises being searched. The amended provision will not give the law enforcement agencies the power to search persons found on the premises if they would not or could not have been authorized to do so by an empowering Ordinance. Similarly, it will also be necessary to qualify the words "any material" to ensure that the various descriptions of material which can be searched for and seized under all the 106 provisions are covered. The Administration will move the necessary Committee stage amendments to give effect to the proposals.

#### *Scope of protection*

The Bills Committee has considered the scope of the protection provided under the Bill, an area of considerable concern to the journalists.



The definition of “journalistic material” is taken from the United Kingdom Police and Criminal Evidence Act 1984 (PACE). It was a conscious decision on the part of the Administration not to define the expression in specific terms because it may have the undesirable effect of reducing the scope of protection for journalistic material. Similarly, “journalism” should be construed according to its ordinary and natural meaning; the scope of protection might be reduced by defining it.

The Administration also explains that the Bill aims to protect journalistic material, not journalists. So long as the material meets the criteria set out in the Bill, the safeguards provided in the Bill will apply.

On whether journalistic material obtained in confidence should be accorded exemption from search and seizure, the Bills Committee agrees with the Administration that journalistic material should not have absolute immunity. On whether the means of obtaining material will have any bearing on the protection given under the Bill, the Administration confirms that the Bill targets material, not acts. The Administration further advises that, under the proposed three-tier approach, the judge has to take into account the “circumstance under which a person in possession of the material holds it”, in considering an application for a production order by an enforcement agency or an application for return of the material seized by the person from whom the material was seized. This formulation should address Members’ concern.

The Administration has agreed to move an amendment to cover materials held in computers or in other electronic forms in the Bill.

I understand that the Policy Secretary will say a few words to address the various concerns of the journalists and to reassure them how this Bill could provide additional protection and safeguards in relation to search and seizure of journalistic material.

*Exemption of the Drug Trafficking (Recovery of Proceeds) Ordinance and Organized and Serious Crimes Ordinance from the provisions of the Bill*

Clauses 5 and 6 are consequential amendments to the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance to stipulate that these two Ordinances will be exempted from the provisions being proposed in the Bill. The two Ordinances have more stringent requirements than those proposed in the Bill.

However, with the three-tier approach for hearing applications for production order/warrant now proposed for the Bill, the Bills Committee is concerned whether the new thresholds would be higher than those provided in the two Ordinances. The Bills Committee feels that, for the sake of consistency, the proposal to exempt the two Ordinances from the provisions of the Bill might need to be reconsidered.

While the Administration considers that the thresholds under the two Ordinances, albeit different, should not be lower than that proposed for the Bill, it has agreed to review the subject and report the outcome of the review to the Legislative Council Panel on Security in the next Legislative Council term.

Mr President, this Bill is of great significance in that it is the first time in our legislative history that journalistic material is given protection against unfair or unnecessary search and seizure by law enforcement agencies. Although presented as an amendment to the Interpretation and General Clauses Ordinance, the amendment will have impact on all existing and future legislation which empower law enforcement agencies and government departments to enter premises and to search or seize materials. I believe the proposals strike the balance between the need to protect press freedom and the need of our law enforcement agencies in their performance of duties.

Mr President, with these remarks, I support the Bill.

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of the Interpretation and General Clauses (Amendment) Bill and the amendments to be proposed by the Secretary for Security later.

Press freedom does not only mean the media's freedom to cover and report news stories, it also includes the trust the public reposes in the press, knowing that information supplied to the press will only be for news and no other purpose. Only thus will the public be willing to disclose to the media confidential information which it is in the public interest to disclose. Through this avenue, the media can give full play to their monitoring functions. Therefore, the press and many members of the public are concerned about the excessive power conferred on the police under section 50(7) of the Police Force Ordinance to search and seize journalistic material.

One reason for such concern aroused by the Police Force Ordinance is that in October 1989, four months after the Beijing massacre, police officers, in exercise of the powers conferred under the Police Force Ordinance, entered the offices of Hong Kong's two television stations, searched and seized a number of news videotapes. These videotapes contained footages of the clash between the police and democratic activists. The police stated then that they had to view those tapes to decide whether to press more serious charges against the demonstrators.

The incident had serious repercussions among the community. Some were worried lest information or material provided to the media should be searched and seized by the Government whenever it pleases and the identity of the providers be known. The material seized could even be used by the prosecution as evidence against the accused persons. This worried them very much.

Mr President, such excessive powers possessed by the police would directly affect the independence and credibility of the press. It was not until very recently that the Government became willing to address this question and tabled the present Bill the Second Reading of which resumes today. The Bill provides that the police or other law enforcers shall not search and seize journalistic material except by way of a more stringent procedure. Formerly, a police officer of whatever rank could apply to the court for a warrant to seize journalistic material. This failed to provide protection for the media and jeopardized the principle of keeping the source of information secret.

Mr President, when the principle of protection of press freedom clashes with the principle of effective enforcement of the law by the disciplined forces, it is very important for an appropriate balance to be struck between the two. I think that the law should provide that the Government may apply for a search warrant only when such an application is in the public interest. Besides, when the Government applies for a search warrant, the news agency concerned should be represented at the hearing. I believe this will be fairer. The judge will want to know why the law enforcer need to search the news agency concerned and why the agency does not want to surrender the required material. The judge will decide after hearing arguments from the two sides. I am glad that the Government is willing to accept Members' proposals and that the present amendments are seeking to establish a three-tier system of hearing, as observed earlier on by the Honourable Andrew WONG.

The first tier will be applicable under general circumstances when the presence of both parties will be required at the court hearing to enable the Government to apply for an order to surrender the required material in accordance with the procedure governing the Application for an Order to surrender Journalistic Material. The second tier will be applicable if the news agency concerned refuses to surrender the required material or if an application for an order to surrender is not possible. The Government may then apply *ex parte* for a warrant. However, the journalistic material so seized shall be kept under sealed cover pending a disposal order to be made by a judge when both parties are able to appear before him. The third tier will be applicable if the circumstances are such as to allow the Government to apply *ex parte* for a warrant and to use the seized material even though such use may seriously jeopardize the investigation.

I support the amendments proposed by the Government. This represents a compromise between the Government and Members. But I have to remind the Government never to abuse this power. It is because a judge will only permit the third-tier procedure to be applied in emergency situations albeit with the likelihood that the use of the seized material would jeopardize investigations. I hope the Government will brief this Council whenever it has resorted to the third-tier procedure to apply for a warrant so that this mechanism will not be abused. If in the future Members should discover any abuse of this third-tier mechanism by the Government and, if I were fortunate enough to be still sitting

on this Council then, I would consider tabling a Private Member's Bill to abolish this third-tier procedure in respect of the application for a warrant.

Mr President, I welcome the Government's acceptance of Members' proposals and its tabling of the present amendments. The amendments expressly provide that, unless the judge otherwise directs, hearing shall be held in open court. I believe this is a very basic principle of the rule of law. Unless there are compelling reasons, hearings should be conducted in open court. As I said at the beginning of this speech, Mr President, public concern about the Police Force Ordinance arose out of a 1989 incident when videotapes were seized from television stations. Since then, Members have been requesting the Government to amend the Police Force Ordinance. Not only has the Government sought to amend the Police Force Ordinance, it has further tabled a Bill whose Second Reading resumes today. The reason is that, apart from the Police Force Ordinance, similar powers are conferred on the police under 108 other Ordinances. Therefore, the Bill the Government is presenting today seeks to add a new part to the Interpretation and General Clauses Ordinance to cover other Ordinances under which the Government's power to seize material from the press will be restricted.

Mr President, Members will recall that, in his policy address last October, the Governor promised that 37 amendments in respect of 53 provisions in 27 Ordinances, particularly provisions jeopardizing press freedom, would be tabled to this Council before the current Legislative Session was out. These amendments of course would include the present Bill whose Second Reading resumes today. Other amendments will cover the Official Secrets Act, the Crimes Ordinance and the Telecommunications Ordinance. Mr President, today the current Legislative Session is about to end but the Governor's promise has not been fully realized. Last Tuesday the Secretary for Home Affairs reported to the Legislative Council Information Policy Panel that about 20% of the promise had yet to be fulfilled, and a most important 20% into the bargain. According to the Secretary, it was not until recently that information relating to the Official Secrets Act and the Crimes Ordinance was passed to the Sino-British Joint Liaison Group for discussion. The Government totally failed to give a commitment as to the timetable for the required amendments to be passed. With regard to interception, eavesdropping or other aspects of the Telecommunications Ordinance, the Government only said that the Law Reform Commission would probably table a report next year.

Mr President, I am very disappointed with and regret the Governor's failure to fulfill all of his promises. This also reflects the Government's failure to do its best to protect press freedom. I hope the Secretary for Security, in his response later, will give us a clear message. What the Government has promised must be fulfilled and there must be a clear timetable to go with it to ensure that all laws on Hong Kong's statute books inconsistent with press freedom will be repealed.

With these remarks, I support the Second Reading of the Bill.

MR JAMES TO (in Cantonese): Mr President, I deliberately choose to speak after the Honourable Miss Emily LAU has spoken because I knew her speech would be very detailed and I would not need to repeat the arguments after her. I just want to add a couple of points. Following the 1989 incident of seizure of videotapes, I proposed to amend the Police Force Ordinance to make it consistent with the Bill of Rights. At that time, the amendments I proposed were similar to the present amendments. But, unfortunately, the proposed amendments failed to gain the support of some Members. I recall that Miss LAU cast an abstention vote. I was very disappointed. Yet I understood the reason that prompted her to abstain. Anyway, though it took a long time coming, spring has eventually arrived. Yet I am still worried about some aspects of the law as amended.

First, I affirm in principle that the Administration has put in a lot of efforts in the present amendment exercise, particularly in the course of consultation with Members during Bills Committee proceedings where representatives of the Administration showed good faith and sincerity in listening to Members' views and examining them in detail. The Bill was ably, speedily and concisely drafted by the Law Draftsman. Yet I still have a number of points to make.

The definition of journalistic material covers information gotten hold of or obtained in the course of journalistic activities. I am worried that in the future the Administration, not necessarily the present Secretary for Security or the present Administration, may argue in court proceedings that journalistic material must mean material gotten hold of through lawful means. For example, disclosure of shady dealings or documents leaked by officials or disclosure to the press of government bungles or government employees' disaffection may, in most instances, be in breach of the Official Secrets Act or, if not in breach of the Act, at least in breach of internal procedures. If that should be the case, then what I am most worried about would be that the Administration might in the future argue before the court that the purpose of the Ordinance is to protect journalistic material from seizure unless an application is made to and granted by the court but that such protection does not extend to material obtained otherwise than through lawful means. If that be the case, the efficacy of the Ordinance in protecting press freedom would be substantially eroded.

I am not encouraging the press to obtain material or information otherwise than through lawful means. Nor am I encouraging other people to unlawfully get hold of, steal or snatch material and pass same to the press. But the question is this: We cannot deny that, in most instances, if shady dealings or big scandals were to be exposed, many people would be willing to take risks, even to the extent of breaking the law, in order to expose these. There are numerous examples of these throughout the world. In the process of striking a proper balance, I hope the Administration will state more clearly that this Ordinance will extend protection to journalistic material however obtained.

One last point I would like to make is this: Most of the provisions in this Amendment Bill are derived from the Police and Criminal Evidence Act 1984 of the United Kingdom. As a matter of fact, the Law Reform Commission already fully examined the applicability of this statute to Hong Kong. And the Legislative Council held a motion debate on it two years ago. I would like to remind the Administration that this happened two years ago and, therefore, apart from protecting press freedom, I hope the Administration will as soon as possible introduce into Hong Kong part of the provisions of the Police and Criminal Evidence Act as are applicable. In this regard, the Administration should as soon as possible table the relevant Bill to this Council in the next legislative year so that the law enforcement agencies, particularly the police force, will have better procedures for gathering evidence to ensure that a more appropriate balance will be struck between human rights, the rule of law and maintenance of law and order.

SECRETARY FOR SECURITY: Mr President, I would like to thank the Chairman of the Bills Committee, the Honourable Andrew WONG, and Members of the Bills Committee for their thorough and efficient study of the Interpretation and General Clauses (Amendment) Bill 1995. I am pleased that they fully support the principles of the Bill. And the amendments that I will move at the Committee stage also have the support of the Bills Committee.

The purpose of the Bill is to provide additional protection to press freedom by making existing powers of entry and search or seizure, when exercised in relation to journalistic material, subject to special requirements. The Bill demonstrates the Government's strong commitment to encourage a free and vigorous press. It strikes a good balance between the protection of press freedom and the need for effective law enforcement. And it meets the Governor's undertaking in his 1994 policy address to take action on provisions which infringe on press freedom.

We accepted almost all the suggestions of the Bills Committee to improve the Bill. We also take into account the comments and representations of the Hong Kong Journalists Association and the Foreign Correspondents' Club, Hong Kong. The provisions in the Bill, together with the Committee stage amendments that I will move later, provide for a three-tier approach to tackle the issue of access to journalistic material by law enforcement agencies.

*Tier One: production order, inter partes hearing*

Tier One deals with all general cases. An officer may apply to a District Court or High Court Judge for a production order, requiring the person who possesses the journalistic material to produce it or to give the officer access to it. An application for the order shall be made *inter partes*, that is, with both sides present. The officer has to satisfy the judge that a number of conditions are met before an order can be made. The conditions include, *inter alia*, that the material is likely to be of substantial value to the investigation of an

arrestable offence, and that is in the public interest to grant the order, having regard to the likely benefit to the investigation, and the circumstances under which the journalistic material is held, such as whether it is given in confidence. It is an offence for not complying with a production order, or for destroying or altering the material after a notice of an application has been served.

*Tier Two: warrant application, seize and seal*

Tier Two provides that an officer may make an ex parte application to a District Court or High Court Judge for a warrant authorizing him to enter premises and to search for or seize journalistic material. Such application shall not be made unless it has been approved personally by a directorate disciplined officer. This is to ensure that the decisions are made at a high level and that the grounds for resorting to this course of action are thoroughly considered and fully justified. The applicant will have to satisfy the judge:

- that a production order has been complied with; or
- that, in addition to meeting most of the Tier One conditions, it is not practicable to apply for a production order or that the service of a notice to the other party for an inter partes hearing may seriously prejudice the investigation.

Any journalistic material pursuant to the warrant has to be sealed. The person from whom the material was seized may make an inter partes application for the return of the material. Unless the judge is satisfied that it would be in the public interest that the material be made use of by the authorities, he shall order it to be immediately returned to the person from whom it was seized.

*Tier Three: warrant application, seize and use*

In exceptional circumstances, an officer may go for Tier Three, that is, to make an ex parte application for a warrant and for the immediate use of the journalistic material seized. Apart from satisfying all the additional requirements in Tier Two, the officer has to prove to the satisfaction of the judge that the investigation may be seriously prejudiced if immediate access to the material is not permitted.

During the discussions of the Bills Committee, the question arose as to whether “journalistic material” should be more precisely defined. After considering the various options, we have decided to adhere to the present definition in the Bill which follows the relevant provision in the United Kingdom Police and Criminal Evidence Act 1984. This will ensure that any case law on the United Kingdom definition can be availed of in Hong Kong. We believe, and the Bills Committee agrees, that the advantage of defining “journalist material” generally, as we do in the Bill, and not, for example, to make reference to the way in which the material was acquired, created or possessed, will provide the best protection to bona fide journalistic material. I

can assure the Honourable James TO that the Bill targets material, not acts of acquiring this material.

The Bill does not apply to the exercise of search and seizure powers under section 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 5 of the Organized and Serious Crimes Ordinance. This is because those provisions already contain elaborate and stringent safeguards which provide adequate protection for journalistic material. We have, however, accepted the suggestion of the Bills Committee to review later, in the light of experience, whether the two provisions in the Ordinances should be brought within the scope of the Bill.

With this three-tier approach, we have gone a long way to ensure the protection of press freedom, but without undermining our ability to enforce the law and to protect public order and safety.

Finally, I should like to assure this Council and the media that our law enforcement agencies never look upon journalists or journalistic material as their normal means of acquiring evidence for the purposes of criminal investigations. The revised regime for access to journalistic material under this Bill and the amendments which I will propose later provide a series of different levels of hurdles which must be overcome before journalistic material can be searched or seized. The law enforcement agencies have rarely exercised their powers to search or seize journalistic material in the past and I have no doubt that they will rarely seek to do so in the future. They will also draw up detailed operational guidelines on how to exercise such powers to ensure that these powers will not be used unless the circumstances fully justify it.

Mr President, with these remarks, I commend the Bill to Honourable Members.

*Question on the Second Reading of the Bill put and agreed to.*

Bill read the Second time.

### **Committee Stage of Bill**

Council went into Committee.

### **INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995**

Clauses 1, 4, 5 and 6 were agreed to.

Clauses 2 and 3



SECRETARY FOR SECURITY: Mr Chairman, I move that clauses 2 and 3 be amended as set out in the paper circulated to Members.

The main reasons for these amendments have been explained in my earlier speech on resumption of the Second Reading debate. They set out a three-tier approach described in that speech and a number of consequential and other technical amendments also supported by the Bills Committee.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 2**

That clause 2 be amended —

- (a) in the proposed section 83, by deleting “search for or seize any material” and substituting -

“to search the premises or any person found on the premises or to seize any material (whether of a general or particular kind and whether or not the word “material” is used in that provision)”.

- (b) by deleting the proposed section 84 and substituting -

**“84. Application for production order  
in respect of journalistic material**

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the High Court or District Court for an order under subsection (2) in relation to material which is known or suspected to be journalistic material.

(2) If on an application under subsection (1) a judge is satisfied that the conditions in subsection (3) are fulfilled he may make an order that the person who appears to be in possession of journalistic material specified in the application shall -

- (a) produce it to the applicant to take away;  
or

- (b) give the applicant access to it.

not later than the end of the period of 7 days from the date of the order or the end of such longer period as the order may specify.

(3) The conditions to be fulfilled for the purposes of subsection (2) are that -

- (a) there are reasonable grounds for believing -

(i) that an arrestable offence has been committed;

(ii) that there is material which consists of or includes material known or suspected to be journalistic material on premises specified in the application;

(iii) that the material is likely to be -

(A) of substantial value to the investigation of the arrestable offence; or

(B) relevant evidence in proceedings for the arrestable offence;

- (b) but for section 83 the applicant would be or could have been authorized under the provision mentioned in subsection (1) to enter onto the premises specified in the application and to search the premises or a person found on the premises or to seize the material specified in the application;

- (c) other methods of obtaining the material
  - 
  - (i) have been tried and failed; or
  - (ii) have not been tried because they were unlikely to succeed or would be likely to seriously prejudice the investigation; and
- (d) there are reasonable grounds for believing that it is in the public interest that an order should be granted, having regard to -
  - (i) the benefit likely to accrue to the investigation; and
  - (ii) the circumstances under which a person in possession of the material holds it.

(4) An application for an order under subsection (2) shall be made *inter partes*.

(5) Any person who without reasonable cause fails to comply with an order made under subsection (2) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

**84A. Application for warrant to seize journalistic material**

(1) A person on whom there is or may be conferred under a provision in any Ordinance, being a provision to which section 83 applies, the power to enter any premises and to search the premises or any person found on the premises or to seize any material, may apply to a judge of the High Court or District Court for the issue of a warrant under subsection (3) authorizing him to enter those premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

(2) An application for a warrant under this section shall not be made unless it has been approved by a person specified in Schedule 7 to be a directorate disciplined officer.

(3) If on an application under subsection (1) a judge -

(a) is satisfied -

(i) that the conditions specified in section 84(3)(a), (c) and (d)(i) are fulfilled; and

(ii) that one of the further conditions set out in subsection (5) is also fulfilled; or

(b) is satisfied that an order under section 84 relating to the material has not been complied with,

he may, subject to subsection (4), issue a warrant authorizing the applicant to enter onto the premises and to search the premises and any person found on the premises and to seize any material.

(4) A warrant issued under subsection (3) shall not authorize any entry, search or seizure other than such entry, search or seizure as, but for section 83, would be or could have been authorized under the provision mentioned in subsection (1).

(5) The further conditions mentioned in subsection (3)(a)(ii) are -

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;

(b) that while it might be practicable to communicate with a person entitled to grant entry to the premises, it is not practicable to communicate with any person entitled to grant access to the material;

- (c) that service of notice of an application for an order under section 84(2) may seriously prejudice the investigation.

(6) Subject to subsection (7), it shall be a term of any warrant issued under this section that a person who seizes journalistic material pursuant to the warrant shall seal the material upon seizure and shall hold the sealed material until otherwise authorized or required under section 84C.

(7) Subsection (6) shall not apply where the judge is satisfied that there may be serious prejudice to the investigation if the applicant is not permitted to have immediate access to the material.

(8) Any person empowered by a warrant issued under this section may -

- (a) use such force as may be necessary to enter the premises specified in the warrant;
- (b) on the premises, seize such material, including journalistic material, as may be found and as but for section 83 he would be or could have been authorized under the provision mentioned in subsection (1) to take possession of;
- (c) detain for a reasonable period any person found on the premises who may have such material in his possession or under his control and who if not so detained may prejudice the purpose of the search.

**84B. Further provision for warrants under section 84A**

(1) A warrant issued under section 84A, other than a warrant to which subsection (7) of that section applies, shall -

- (a) specify the name of the applicant and the court issuing the warrant;

- (b) contain a statement setting out -
  - (i) the terms of the warrant applying by virtue of subsection (6) of that section;
  - (ii) the rights conferred under section 84C to apply within a specified period for the immediate return of journalistic material seized under the warrants and the consequences provided for in that section of not so applying.
- (2) A person executing or seeking to execute such a warrant shall -
  - (a) where the occupier of the premises being entered is present, supply the occupier with a copy of the warrant;
  - (b) where the occupier of the premises is not present but some other person who appears to be in charge of the premises is present, supply that person with a copy of the warrant;
  - (c) if there is no person present who appears to be in charge of the premises, leave a copy of the warrant in a prominent place on the premises.
- (3) Where pursuant to such a warrant material is seized which is required to be sealed and held, the person executing the warrant shall make an endorsement on the warrant setting out details of such material and shall return the warrant to the court from which it was issued.

**84C. Procedure in relation to sealed material**

- (1) A person from whom journalistic material has been seized pursuant to a warrant issued under section 84A, other than a warrant to which subsection (7) of that section applies, or a person claiming to be the owner of such material, may within 3 days of such seizure apply to the court

from which the warrant was issued for an order under subsection (2).

(2) On an application under subsection (1), unless the judge is satisfied that it would be in the public interest that the material be made use of for the purposes of the investigation, he shall order that the material be immediately returned to the person from whom it was seized; and in making a determination under this subsection the judge shall have regard to, among other things, the circumstances under which the material was being held at the time of its seizure.

(3) If on an application under subsection (1) the judge determines not to grant an order under subsection (2), or where no application has been made under subsection (1) within the period specified in that subsection, the material may be unsealed.

(4) For the purpose of determining an application under subsection (1) a judge may require the person who seized the material to produce it to the judge for examination by him.

(5) An application for an order under subsection (1) shall be made *inter partes*.

**84D. Provisions supplementary to section 84**

(1) In relation to material consisting of information contained in a computer -

- (a) an order under section 84(2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under section 84(2)(b) shall have effect as an order to give an applicant access to the material in a form in which it is visible and legible.

(2) Notice of an application for an order under section 84(2) may be served on a person either by delivering it to him or by leaving it at his proper address or by sending it by post to him in a registered letter.

(3) Such a notice may be served -

- (a) on a body corporate, by serving it on a person who is an officer of the body within the meaning of section 2(1) of the Companies Ordinance (Cap. 32); and
- (b) on a partnership, by serving it on one of the partners.

(4) For the purposes of section 84, the proper address of a person -

- (a) in the case of an officer of a body corporate, shall be that of the registered or principal office of that body;
- (b) in the case of a partner of a firm, shall be that of the principal office of the firm; and
- (c) in any other case, shall be the last known address of the person to be served.

(5) Where notice of an application for an order under section 84 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except -

- (a) with the leave of a judge; or
- (b) with the written permission of the applicant, until -
  - (i) the application is dismissed or abandoned; or
  - (ii) he has complied with an order under section 84 made on the application.



(6) Any person who knowingly contravenes subsection (5) commits an offence and is liable to a fine at level 6 and to imprisonment for 1 year.

**84E. Miscellaneous**

(1) The costs of any application under this Part and of anything done or to be done in pursuance of an order made under it shall be at the discretion of the judge.

(2) For the avoidance of doubt, it is declared that nothing in this Part shall be construed as requiring a judge to make an order under this Part where he considers that, in all the circumstances of the case, it would not be in the public interest to make that order.

(3) Unless a judge otherwise directs, proceedings inter partes under this Part shall be held in open court.

(4) Rules of court may provide for the practice and procedure applying to proceedings under this Part.”.

**Clause 3**

That clause 3 be amended, by deleting “84(2)” where it twice occurs and substituting “84A(2)”.

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2 and 3, as amended, proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

**INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1995**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

*Bill read the Third time and passed.*

## **Second Reading of Bill**

### **DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (AMENDMENT) BILL 1995**

#### **Resumption of debate on Second Reading which was moved on 26 April 1995**

*Question on Second Reading proposed.*

MR JAMES TO: Mr President, the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995 was introduced into the Legislative Council on 26 April 1995. It seeks to amend the Drug Trafficking (Recovery of Proceeds) Ordinance to:

- (a) introduce provisions to lower the standard of proof for confiscation proceedings to the standard of proof applicable to civil proceedings;
- (b) introduce powers for authorized officers to seize specified property reasonably suspected to represent the proceeds of drug trafficking which is about to be imported into or exported from Hong Kong;
- (c) remove ambiguities and overcome practical difficulties revealed by the operation of the Ordinance since its enactment in 1989; and
- (d) introduce provisions to enable Hong Kong to comply more fully with the latest international standards and recommendations.

A Bills Committee, of which I was elected Chairman, was set up to study the Bill. The Bills Committee has held five meetings with the Administration. It has received two submissions from the Law Society of Hong Kong.

Let me briefly go into the main issues considered by the Bills Committee.

The first of these issues is the proposal in clause 3 to adopt the civil standard of proof for confiscation proceedings. Members support the proposal. They note that in addition to the United Kingdom, most common law jurisdictions now have a civil standard of proof for such proceedings.

Clause 3 of the Bill empowers the court to make a confiscation order where proceedings in respect of a drug trafficking offence have been instituted but not concluded because the defendant has died or absconded. In order to obtain a confiscation order against a deceased or absconded defendant, the prosecution must satisfy the court that he could have been convicted.

As it is a new procedure in Hong Kong, Members ask the Administration to clarify the nature of the requirement and the standard involved. The Administration clarifies that the court has to be satisfied that with the evidence before it, if the defendant has gone to trial, he could have been convicted. The court is empowered to call witnesses under the new subsection (7).

As regards whether abscondment is a fact which has to be established for the purpose of confiscation proceedings, the Administration advises that the court has to be satisfied on the balance of probabilities that the defendant has absconded and six months must have elapsed beginning with the date the court believes he absconded. In the case of a person known to be outside Hong Kong and whose exact whereabouts are known, the court has to be satisfied that all reasonable steps have been taken, but have been unsuccessful, to obtain his return and notice of proceedings is given to him in sufficient time to enable him to defend them.

In the case of a defendant who has died, it is up to the Administration to decide whether to proceed with the confiscation order against that person. In response to Members' comments, the Administration has proposed Committee stage amendments to clause 3(b) to make it explicit that the personal representatives of a deceased defendant could oppose the application for a confiscation order, and act on his behalf in confiscation proceedings.

In response to concerns by Members about the possibility of a defendant who has absconded being held in custody on charges not recognized in Hong Kong, the Administration has proposed a Committee stage amendment to clause 3(a) based on section 25(6) of the Organized and Serious Crimes Ordinance, namely, that a confiscation order can only be made against the absconder in circumstances where he is in custody outside Hong Kong by reason of "conduct which would constitute an indictable offence if it had occurred in Hong Kong".

To cater for all eventualities, the Administration has proposed Committee stage amendments to clause 3(b) to provide for the situation of a defendant dying or absconding after he has been convicted but before he has been sentenced and to cover the situation of a defendant dying or absconding after an application for a confiscation order has been made, but before the confiscation application has concluded. Members agree that such provisions are necessary and support the proposed amendments.

The Bills Committee has considered a Member's suggestion that there may be a case for a provision for return of confiscated property if an absconded defendant returns, is tried and acquitted. The Administration points out that such a provision may encourage an absconded defendant to return and demand a trial after a sufficiently long period of time for the key witnesses against him to disappear, die, forget their evidence or be suborned, so that a successful prosecution is most unlikely. It also observes that it is unsatisfactory to draw a distinction between acquittal and non-prosecution with automatic cancellation of the confiscation order following from an acquittal only, because that may act as a disincentive to prosecution. However, the Administration has proposed a Committee stage amendment to clause 23 to add a new provision to section 27, allowing the court to order compensation to be paid in these circumstances if the court thinks it appropriate to do so.

The second major concern to Members is the cash seizure power provided in clause 18.

Clause 18 introduces a new Part IVA to empower an authorized officer to detain specified property seized under section 52 of the Dangerous Drugs Ordinance which is being imported into or exported from Hong Kong and which represents the proceeds of drug trafficking. The seizure and detention of money whilst its origin or derivation is investigated will be made basing on either results of investigation or reliable information.

The exercise of this power is subject to a number of safeguards, one of which is that the seized cash cannot be detained for more than 10 working days.

Since this new Part IVA is closely modelled on Part II of the United Kingdom Drug Trafficking Act of 1994, Members ask the Administration to explain why an initial detention period of 10 working days is required in Hong Kong compared with 48 hours in the United Kingdom. The Administration explains that the prosecution's concern over the 48-hour period is that there will not be enough time to verify the reasons provided by the person and to obtain background information from other jurisdictions on the person.

As requested by Members, the Administration has reviewed the matter and has proposed an amendment to clause 18 which would reduce the initial detention period to seven working days where the money is being exported from Hong Kong. However, it wishes to retain the proposed 10-working-day period where the money is being imported into Hong Kong as on the basis of past experience, it would take at least seven working days to obtain initial information from overseas law enforcement agencies. This is only part of the preliminary investigation process, which is to collect basic information and evidence necessary for the court to decide whether to authorize continued detention of the seized property. In addition to satisfying the court that there are reasonable grounds of suspicion for further retention, the customs authority has also to answer questions if there is any application for the release of seized property.

The Administration has also proposed an amendment to allow the Legislative Council by resolution to substitute another period should it be found that the specified periods are too short or too long.

As regards the minimum amount of suspected proceeds that could be seized as set out in Schedule 4 of clause 28, Members share the view that the triggering amount of \$100,000 appears to be on the low side and are concerned that it may cause undue hindrance to travellers, especially those from China who often carry a large amount of cash.

The Administration explains that the amount is based on the United Kingdom figure of £ 10,000. On review, it has proposed an amendment to clause 28 to raise the amount to \$125,000.

The Administration further explains that the purpose of Part IVA is not only to seize and forfeit drug proceeds which are being laundered internationally, but also to deter drug traffickers from using this method of laundering. The aim is to make this method difficult, risky, inefficient and therefore not feasible. If the monetary amount is set too high, drug traffickers would still be prepared to launder their money in this way because it is cost effective to do so. The Administration also emphasizes that the seizure and detention under new Part IVA will not merely be based on the amount of cash being imported or exported, it must also be based on a reasonable suspicion that the money represents proceeds of drug trafficking, and will be investigation or intelligence-led. The decision to seize and detain will be taken by a customs officer not below the Superintendent grade. Members accept the Administration's clarifications on the matter and agree to the revised figure of \$125,000.

The last major topic considered by the Bills Committee is property subject to the effective control of the defendant. The Administration has proposed a Committee stage amendment to clause 8 to expand the definition of "realisable property" in section 7(1) of the Ordinance to allow assets in the effective control of the defendant to be retained. This is relevant to whether the High Court can restrain that property or not. The prosecution must still prove that the defendant is charged with and has benefited from drug trafficking, and the allegation is that the relevant property is his in reality, but simply held in another name. The proposed amendments are based on the Australian Proceeds of Crime Act 1987 (Commonwealth). Given the common use of shell companies, trust arrangements and the use of relatives and associates to conceal illegally acquired assets, Members agree that there is a need to deal with the problem. However, a Member observes that the provisions may be difficult to enforce, as in trust arrangements the beneficiary may not be apparent and it may not be easy to prove effective control.

The various Committee stage amendments to be moved by the Secretary for Security are supported by the Bills Committee.

Mr President, with these remarks, I commend the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995 to Honourable Members.

SECRETARY FOR SECURITY: Mr President, the Bill before us seeks to amend the Drug Trafficking (Recovery of Proceeds) Ordinance to improve the operation of the Ordinance in the light of experience since its enactment in 1989, and to bring its provisions into line with the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

The Government is committed to combat drug trafficking and drug money laundering, and I am glad that this commitment is also shared by the Bills Committee. I would like to offer my appreciation to the Chairman, the Honourable James TO, and Members of the Bills Committee for their careful consideration of the Bill and constructive suggestions to improve the Bill.

The Bills Committee process has identified ways and means for the Administration to improve the amendments proposed in the Bill. I trust that the amendments to be moved at the Committee stage will produce a Bill that will better serve our purposes.

The principal improvements that we will seek to make at Committee stage are:

- (1) to impose an additional requirement in clause 3 concerning the making of a confiscation order on a defendant who has absconded before proceedings against him in respect of a drug trafficking offence have been concluded. This will stipulate that a confiscation order can only be made against an absconder in custody outside Hong Kong in circumstances where he is in custody by reason of conduct which would constitute an indictable offence if it had occurred in Hong Kong.
- (2) to enable the court to make a confiscation order where a defendant dies or absconds after he has been convicted of a drug trafficking offence and an application for a confiscation order had been made, but before the confiscation application has been concluded;
- (3) to allow the personal representative of a deceased defendant to oppose the application for a confiscation order and for that purpose to be heard and to call, examine and cross-examine any witness;

- (4) to extend the definition of “realizable property” in section 7(1) of the principal Ordinance to allow assets in the effective control of the defendant to be restrained. This will deal with the problem of the common use by drug traffickers of shell companies, trust arrangements, and even relatives and associates to conceal proceeds of drug trafficking;
- (5) to reduce the initial detention period under new Part IVA to seven working days where the money is being exported from Hong Kong, and to enable the Legislative Council by resolution to substitute another period should it be found that the specified periods are too short or too long;
- (6) to allow the court to order compensation to be paid to a returned absconder who is acquitted or against whom proceedings are not instituted within a reasonable period of time; and
- (7) to raise the minimum amount of suspected proceeds that could be seized under new Part IVA from \$100,000 to \$125,000, and to enable the Legislative Council by resolution to substitute another amount should it be found that the specified amount is too large or too small. Given the requirement that there be a suspicion of a link to drug trafficking, ordinary travellers carrying large sums of money for legitimate purposes will not be affected.

The Bills Committee has looked closely at the power to be provided under Part IVA of the Bill. The purpose of Part IVA is not only to seize and forfeit drug proceeds which are being laundered internationally, but also to deter drug traffickers from using this method of laundering, by making it difficult, risky, inefficient and therefore not feasible. I would like to reassure Members that the exercise of the power to detain and seize cash when it is being brought into or out of Hong Kong, must be based on reasonable suspicion that it represents proceeds of drug trafficking, and will be investigation-led or intelligence-led.

I believe the Bill will improve the operation of the Drug Trafficking (Recovery of Proceeds) Ordinance, and enhance our efforts to counter drug trafficking.

Mr President, with these remarks, I recommend the Bill to this Council.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

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.

### **DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (AMENDMENT) BILL 1995**

Clauses 1, 4, 6, 7, 11 to 14, 16, 19 to 22, 24, 27, 30, 34 and 35 were agreed to.

Clauses 2, 3, 5, 8, 9, 10, 15, 17, 18, 23, 25, 26, 28, 29, 31, 32 and 33

SECRETARY FOR SECURITY: Madam Deputy, I move that the clauses specified be amended as set out in the paper circulated to Members.

I have explained the reasons for these and subsequent amendments in my earlier speech on the resumption of the Second Reading debate. They are also supported by the Bills Committee.

Madam Deputy, I beg to move.

THE CHAIRMAN resumed the Chair.

#### *Proposed amendments*

#### **Clause 2**

That clause 2(d) be amended, in the proposed section 2(12A), by adding “or (6A)” after “3(1)(a)(ii)”.

#### **Clause 3**

That clause 3(a) be amended, in the proposed section 3(2)(c)(ii)(A) —

- (a) in sub-sub-subparagraph (I), by deleting “and” at the end;



(b) by adding -

“(IA) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-subparagraph (I), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and”.

That clause 3(b) be amended —

(a) by adding -

“(6A) Where -

- (a) a person has been convicted of one or more drug trafficking offences;
- (b) an application for a confiscation order has been made in respect of the person; and
- (c) the person has died or absconded before that application has been concluded,

then that application may still be concluded notwithstanding that death or abscondment, as the case may be.

(6B) Where subsection (6A) is applicable in relation to a person who has died -

- (a) subsection (2)(a)(i) shall not apply in relation to the person;
- (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died.

(6C) Where subsection (6A) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that -

- (a) the person has absconded; and

(b) in the case of -

(i) a person who is known to be outside Hong Kong and whose exact whereabouts are known -

(A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and

(B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;

(ii) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person.”.

(b) by deleting the proposed section 3(11) and substituting -

“(11) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness.”.

(c) in the proposed section 3(12), by deleting “it” and substituting “they”.

(d) by adding -

“(13) Where -

(a) before the commencement of the Drug Trafficking (Recovery of Proceeds) (Amendment) Ordinance 1995 ( of 1995) -

(i) a person has been convicted of one or more drug trafficking offences;

- (ii) an application for a confiscation order has been made in respect of the person; and
  - (iii) the person has absconded before that application has been concluded; and
- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order,

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person to whom subsection (6A) is applicable because he has absconded.”.

### Clause 5

That clause 5(a) be amended, in the proposed subsection (1B)(b), by deleting “提出的論據” and substituting “依據的事情” .

That clause 5(c) be amended, in the proposed subsection (5), by deleting “出任何論據” and substituting “供任何事情” .

That clause 5(c) be amended, in the proposed section 5(7) -

- (a) by adding “or (6A)” after “section 3(1)(a)(ii)”;
- (b) by adding “or (6C)(b)(i)” after “section 3(2)(c)(ii)(A)”.

### Clause 8

That clause 8 be amended, by deleting the clause and substituting —

#### “8. Definition of principal terms used

Section 7 is amended -

- (a) in subsection (1) -
  - (i) in paragraph (a), by repealing “and”;
  - (ii) in paragraph (b), by repealing the full stop and substituting “; and”;

(iii) by adding -

“(c) any property that is subject to the effective control of the defendant.”;

(b) in subsection (3), by repealing “section 5 and 6” and substituting “this Ordinance”;

(c) by adding -

“(11) For the purposes of subsection (1) -

(a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has

-

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property;

(b) without limiting the generality of any other provision of this Ordinance, in determining -

(i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or

(ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant,

regard may be had to -

- (A) share-holdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (B) a trust that has a relationship to the property; and
- (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons.”.”.

### **Clause 9**

That clause 9(e) be amended, in the proposed section 8(7), by adding “or (6A)” after “3(1)(a)(ii)”.

### **Clause 10**

That clause 10 be amended, in the proposed section 9(1)(a)(i), by adding “or (6A)” after “3(1)(a)(ii)”.

### **Clause 15**

That clause 15 be amended, in the proposed section 16(6)(a)(B)(I), by adding “or (6A)” after “3(1)(a)(ii)”.

**Clause 17**

That clause 17(b) be amended, by deleting the proposed section 20(4)(c)(ii) and substituting —

- “(ii) to the circumstances under which the person -
- (A) in possession or control of the material holds or controls it, as the case may be; or
  - (B) likely to come into possession or control of the material will hold or control it, as the case may be, if he comes into such possession or control,
- as the case may be.”.

**Clause 18**

That clause 18 be amended, in the proposed section 24C —

- (a) in subsection (1), by adding “in the case of such property being imported into Hong Kong, or 7 working days in the case of such property being exported from Hong Kong,” after “days”;
- (b) by adding -
  - “(6) The Legislative Council may, by resolution, amend subsection (1) by substituting another period for any period specified therein.”.

**Clause 23**

That clause 23 be amended —

- (a) by deleting paragraph (a)(i) and substituting -
  - “(i) in paragraph (b), by repealing “; or” and substituting “(including any proceedings referred to in section 3(1)(a)(ii) where no confiscation order is made against that person);”;
  - (ia) by adding -
    - “(ba) that person absconds after proceedings are instituted against him and subsequently -

- (i) he ceases to be an absconder; and
  - (ii) either -
    - (A) those proceedings are continued or reinstated but do not result in his conviction for any drug trafficking offence; or
    - (B) those proceedings are not continued or reinstated within a reasonable period after it is known to the Attorney General that he has ceased to be an absconder; or;”.
- (b) by adding -
- “(aa) in subsection (2)(a), by adding “subject to subsection (3A),” before “that”;
  - (ab) in subsection (3), by repealing “The” and substituting “Subject to subsection 3A, the”;
  - (ac) by adding -
    - “(3A) Subsection (2)(a) and (3) shall not apply to any case to which subsection (1)(ba) is applicable.”;

### Clause 25

That clause 25 be amended, in the proposed paragraph (b), by adding “該” before “指定國家” .

### Clause 26

That clause 26 be amended, by deleting the clause and substituting -

**“26. Section substituted**

Section 31 is repealed and the following substituted -

**“31. Amendment of Schedules**

(1) The Governor in Council may, by order, amend Schedule 1, 2 or 3.

(2) The Legislative Council may, by resolution, amend Schedule 4.”.”.

**Clause 28**

That clause 28 be amended, in the proposed Schedule 4, by deleting “\$100,000” and substituting “\$125,000”.

**Clause 29**

That clause 29 be amended, by adding —

“(aa) by repealing rule 3(2)(a) and (b) and substituting -

”(a) state, as the case may be, the grounds for believing that -

- (i) the defendant has benefited from drug trafficking; or
- (ii) the High Court will be satisfied as specified in section 15(1A);

(b) state, as the case may be -

- (i) that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded;
- (ii) that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence;
- (iii) that an application for a confiscation order has been made in respect of the defendant where section 3(1)(a)(ii) or (6A) is applicable; or



- (iv) that an application has been made under section 15(1A) in respect of a confiscation order made against the defendant;”;

### Clause 31

That clause 31 be amended —

- (a) by adding -

“(ca) in paragraph 5(a), by repealing new section 7(1)(b) and substituting -

“(b) in any other case -

- (i) any property held by the defendant;
- (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and
- (iii) any property that is subject to the effective control of the defendant.”;

- (b) in paragraph (i), by deleting the proposed paragraph 18 and substituting -

”18. For section 31 these shall be substituted -

#### “31. Amendment of Schedules

The Governor in Council may, by order, amend Schedule 1, 1A or 2.”;

### Clause 32

That clause 32 be amended, by adding —

“(da) in section 7 -

(i) in subsection (1)(b) -

(A) in subparagraph (i), by repealing “and”;

(B) in subparagraph (ii), by repealing the full stop and substituting “; and”;

(C) by adding -

“(iii) any property that is subject to the effective control of the defendant.”;

(ii) by adding -

“(11) For the purposes of subsection (1) -

(a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has -

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property;

(b) without limiting the generality of any other provision of this Ordinance, in determining -

(i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or

(ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant,

regard may be had to -

- (A) share-holdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (B) a trust that has a relationship to the property; and
- (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons.”;”.

### Clause 33

That clause 33(a) be amended, in the proposed definition of “公約”, in paragraph (b), by deleting “類似的” and substituting “的同名”.

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2, 3, 5, 8, 9, 10, 15, 17, 18, 23, 25, 26, 28, 29, 31, 32 and 33, as amended, proposed, put and agreed to.*

New clause 12A Realisation of property

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR SECURITY: Mr Chairman, I move that new clause 12A as set out in the paper circulated to Members be read the Second time.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

SECRETARY FOR SECURITY: Mr Chairman, I move that new clause 12A be added to the Bill.

*Proposed addition*

**New clause 12A**

That the Bill be amended, by adding —

**”12A. Realisation of property**

Section 12(1)(a) is amended by adding “(including any case where section 3(1)(a)(ii) or (6A) is applicable)” after “made”.

*Question on the addition of the new clause proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

**DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (AMENDMENT) BILL 1995**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**Second Reading of Bill****ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 1995****Resumption of debate on Second Reading which was moved on 26 April 1995**

*Question on Second Reading proposed.*

MR JAMES TO: Mr President, the Organized and Serious Crimes (Amendment) Bill 1995, introduced into the Legislative Council on 26 April 1995, seeks to make the same changes to the Organized and Serious Crimes Ordinance as the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995 makes to the Drug Trafficking (Recovery of Proceeds) Ordinance for production order, confiscation and money laundering provisions. The Bill does not contain amendments in respect of external confiscation orders because such orders are not provided in the Ordinance. It also does not provide powers of seizure and detention for the proceeds of crime which are being imported into or exported from Hong Kong because it is not necessary that such powers go beyond the proceeds of drug trafficking.

Initially the Bills Committee had some reservation on the Bill mainly because the Organized and Serious Crimes Ordinance had only been implemented for a few months. However, the Administration pointed out that since the amendments proposed to the Ordinance were modelled on the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill to maintain the correspondence between the two Ordinances and to enhance the law enforcement authority's ability to tackle triads and organized crime, it firmly believed the two Bills should be examined together.

Members' main concern is the proposed amendment to the production order. Clause 4 amends section 4 of the Ordinance to empower the court to make an order to require a person likely to come into possession of certain material to produce it, if he does come into possession of it. The material that may be covered in an order includes any book, document or other record in respect of which there are reasonable grounds for believing that it is likely to be of substantial value to an investigation into organized crime. A parallel can be found in clause 17 of the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995.

Although Members agree that the production order is a very useful device for the law enforcement authority to keep track of what is happening and to obtain good intelligence on suspects, they wish to know what checks and safeguards are provided in the legislation. In response, the Administration points out that there are five pre-conditions on which the High Court Judge has to be satisfied before making the order. In addition, such an order will expire

three months after it is made. When a fresh application is made, the prosecution has to provide all the grounds for the order and to disclose information on previous orders.

After carefully considering the matters, Members share the view that although this provision is justified for drug trafficking cases, further consideration should be given to it in the context of the Organized and Serious Crimes Ordinance. The Bills Committee has therefore asked the Administration to review the need for such a provision which will have a much wider implication when applied in relation to organized and serious crimes. After reviewing the matter, the Administration has agreed to withdraw the proposed amendment.

All the Committee stage amendments to be moved by the Secretary for Security are supported by the Bills Committee.

Mr President, with these remarks, I commend the Organized and Serious Crimes (Amendment) Bill 1995 to Honourable Members.

SECRETARY FOR SECURITY: Mr President, I should also like to thank the Chairman, the Honourable James TO and other Members of the Bills Committee for their thorough consideration of the Organized and Serious Crimes Bill 1995. All the Committee stage amendments which I am going to move were, again, discussed and agreed by the Bills Committee.

The confiscation and money laundering provisions of the Organized and Serious Crimes Ordinance were modelled on the provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance. To maintain compatibility and to achieve effective enforcement, the present Bill proposes amendments to the Organized and Serious Crimes Ordinance similar to those proposed for the Drug Trafficking (Recovery of Proceeds) Ordinance.

I have just explained the Committee stage amendments to the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill; similar amendments will also be proposed to the Organized and Serious Crimes (Amendment) Bill. I am pleased that these amendments have the support of the Bills Committee.

There are, however, two main differences between the Committee stage amendments to the two Bills. First, there is no Committee stage amendment to this Bill in respect of the seizure and detention of specified property imported into or exported from Hong Kong because this Bill does not provide for such powers. Secondly, there is a Committee stage amendment to delete clause 4 of this Bill. The original clause 4 proposes to extend the production order to cover materials that are likely to come into possession of the person subject to the order. However, some Members were concerned that, because the scope of the Organized and Serious Crimes Ordinance was much wider than that of the Drug Trafficking (Recovery of Proceeds) Ordinance and there had not been

much operational experience on the application of production orders under the former Ordinance, it was inappropriate at this stage to propose amendments to enhance the special investigative powers under the former Ordinance. We agreed with the Bills Committee to delete this clause from the present Bill and will examine the issue further in the light of operational experience.

Mr President, with these remarks, I commend the Bill to Members.

*Question on the Second Reading of the Bill 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.

### **ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 1995**

Clauses 1, 6, 8, 9, 13 to 16, 18, 19, 20 and 22 were agreed to.

Clauses 2 to 5, 7, 10, 11, 12, 17, 21 and 23

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

I have explained the reasons for these and subsequent amendments in my earlier speech on resumption of the Second Reading debate. They are also supported by the Bills Committee.

Mr Chairman, I beg to move.

*Proposed amendments*

#### **Clause 2**

That clause 2(e) be amended, in the proposed section 2(16A), by adding “or (7A)” after “section 8(1)(a)(ii)”.

**Clause 3**

That clause 3 be amended, by deleting the clause and substituting —

**“3. Requirement to furnish information or produce material**

Section 3 is amended -

- (a) in subsection (4) -
  - (i) in paragraph (c)(ii), by repealing “meterial” and substituting “material”;
  - (ii) in paragraph (d)(iv), by repealing “家庭” and substituting “家族” ;
- (b) in subsection (7)(a)(iii), by adding “針” before “對” ;
- (c) in subsection (18)(b)(ii), by adding “(including the Attorney General) referred to in subsection (15)” after “person”.

**Clause 4**

That clause 4 be amended, by deleting the clause and substituting —

**“4. Order to make material available**

Section 4 is amended -

- (a) in subsection (4)(d)(ii), by repealing “of the material holds it” and substituting “or control of the material holds or controls it, as the case may be”;
- (b) in subsection (11)(b), by adding “or control” after “possession”.

**Clause 5**

That clause 5(b) be amended, in the proposed section 8(3)(c)(i)(B)(I) —

- (a) in sub-sub-sub-subparagraph (aa), by deleting “and” at the end;



(b) by adding -

“(ab) if that person is in custody outside Hong Kong for purposes other than the purposes referred to in sub-sub-sub-paragraph (aa), he is in such custody by virtue of conduct which would constitute an indictable offence if it had occurred in Hong Kong; and”.

That clause 5(c) be amended —

(a) by adding -

“(7A) Where -

- (a) a person has been convicted of one or more specified offences;
- (b) an application for a confiscation order has been made in respect of the person; and
- (c) the person has died or absconded before that application has been concluded.

then that application may still be concluded notwithstanding that death or abscondment, as the case may be.

(7B) Where subsection (7A) is applicable in relation to a person who has died -

- (a) subsection (3)(a)(ii)(A) shall not apply in relation to the person;
- (b) the court shall not make a confiscation order against the person unless it is satisfied that the person has died.

(7C) Where subsection (7A) is applicable in relation to a person who has absconded, the court shall not make a confiscation order against the person unless it is satisfied that -

- (a) the person has absconded; and

- (b) in the case of -
- (i) a person who is known to be outside Hong Kong and whose exact whereabouts are known -
- (A) reasonable steps have been taken, but have been unsuccessful, to obtain the return of that person to Hong Kong for the purposes of the proceedings concerned; and
- (B) notice of those proceedings was given to that person in sufficient time to enable him to defend them;
- (ii) a person whose exact whereabouts are not known, reasonable steps have been taken to give notice of those proceedings to that person.”.

- (b) by deleting the proposed section 8(8D) and substituting -

“(8D) For the avoidance of doubt, it is hereby declared that where an application is made for a confiscation order in any case where subsection (1)(a)(ii)(A) is applicable, the personal representatives of the deceased person concerned shall, for the purposes of opposing the application, be entitled to be heard on the application and to call, examine and cross-examine any witness.”.

- (c) in the proposed section 8(8E), by deleting “it” and substituting “they”.

- (d) by adding -

“(8F) Where -

- (a) before the commencement of the Organized and Serious Crimes (Amendment) Ordinance 1995 (of 1995)

-

- (i) a person has been convicted of one or more specified offences;
  - (ii) an application for a confiscation order has been made in respect of the person; and
  - (iii) the person has absconded before that application has been concluded; and
- (b) immediately before that commencement, any realisable property of that person is the subject of a charging order or restraint order.

then the provisions of this Ordinance as amended by that Ordinance shall apply in relation to that person as they would apply in relation to a person to whom subsection (7A) is applicable because he has absconded.”.

That clause 5 be amended, by deleting paragraph (d) and substituting —

“(d) in subsection (9) -

- (i) by repealing “subsection (2)”;
- (ii) in paragraph (a), by adding “subsection (3)(a)(i), (b)(ii) or (c)(ii),” before “the court”;
- (iii) in paragraph (b), by adding “subsection (3)(a)(i),” before “the court”.”.

### Clause 7

That clause 7(a) be amended, in the proposed section 10(1B)(b), by deleting “提出的論據” and substituting “依據的事情” .

That clause 7(c) be amended, in the proposed section 10(7) —

- (a) by adding “or (7A)” after “section 8(1)(a)(ii)”;
- (b) by adding “or (7C)(b)(i)” after “section 8(3)(c)(i)(B)(I)”.

**Clause 10**

That clause 10 be amended, by deleting the clause and substituting —

**“10. Definition of principal terms used**

Section 12 is amended -

(a) in subsection (1) -

(i) in paragraph (a), by repealing “and”;

(ii) in paragraph (b), by repealing the full stop and substituting “; and”;

(iii) by adding -

“(c) any property that is subject to the effective control of the defendant.”;

(b) in subsection (3), by repealing “sections 10 and 11” and substituting “this Ordinance”;

(c) by adding -

“(11) For the purposes of subsection (1) -

(a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has -

(i) a legal or equitable estate or interest in the property; or

(ii) a right, power or privilege in connection with the property;

(b) without limiting the generality of any other provision of this Ordinance, in determining -

- (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
- (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant,

regard may be had to -

- (A) share-holdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (B) a trust that has a relationship to the property; and
- (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons.”.”.

**Clause 11**

That clause 11(e) be amended, in the proposed section 13(7), by adding “or (7A)” after “section 8(1)(a)(ii)”.

**Clause 12**

That clause 12 be amended, in the proposed section 14(1)(a)(i), by adding “or (7A)” after “section 8(1)(a)(ii)”.

**Clause 17**

That clause 17 be amended, in the proposed section 21(6)(a)(B)(I), by adding “or (7A)” after “section 8(1)(a)(ii)”.

**Clause 21**

That clause 21 be amended —

(a) by deleting paragraph (a)(i) and substituting -

“(i) in paragraph (b), by repealing “; or” and substituting “(including any proceedings referred to in section 8(1)(a)(ii) where no confiscation order is made against that person);”;

(ia) by adding -

“(ba) that person absconds after proceedings are instituted against him and subsequently -

(i) he ceases to be an absconder; and

(ii) either -

(A) those proceedings are continued or reinstated but do not result in his conviction for any specified offence; or

(B) those proceedings are not continued or reinstated within a reasonable period after it is known to the Attorney General that he has ceased to be an absconder; or”;

(b) by adding -

“(aa) in subsection (2)(a), by adding “subject to subsection (3A),” before “that”;

(ab) in subsection (3), by repealing “The” and substituting “Subject to subsection (3A), the”;

(ac) by adding -

“(3A) Subsections (2)(a) and (3) shall not apply to any case to which subsection (1)(ba) is applicable.”;

### Clause 23

That clause 23 be amended, by adding —

“(aa) by repealing rule 4(2)(a) and (b) and substituting -

“(a) state, as the case may be, the grounds for believing that -

(i) the defendant has benefited from a specified offence;  
or

(ii) the High Court will be satisfied as specified in section 20(1A);

(b) state, as the case may be -

(i) that proceedings have been instituted against the defendant for a specified offence (giving particulars of the offence) and that they have not been concluded;

- (ii) that, whether by the laying of an information or otherwise, a person is to be charged with a specified offence;
- (iii) that an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
- (iv) that an application has been made under section 20(1A) in respect of a confiscation order made against the defendant;”.”.

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2 to 5, 7, 10, 11, 12, 17, 21 and 23, as amended, proposed, put and agreed to.*

New clause 4A	Disclosure of information obtained under section 3, 4 or 5
New clause 14A	Realisation of property
New clause 15A	Exercise of powers by High Court or receiver
New clause 20A	Sentencing in respect of specified offences

*Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR SECURITY: Mr Chairman, I move that new clauses 4A, 14A, 15A and 20A as set out in the paper circulated to Members be read the Second time.

*Question on the Second Reading of the clauses proposed, put and agreed to.*

Clauses read the Second time.



SECRETARY FOR SECURITY: Mr Chairman, I move that new clauses 4A, 14A, 15A and 20A be added to the Bill.

*Proposed additions*

**New clause 4A**

That the Bill be amended, by adding —

**“4A. Disclosure of information obtained under section 3, 4 or 5**

Section 6(2)(a) is amended, by adding “專員” after “廉政” .”.

**New clause 14A**

That the Bill be amended, by adding —

**“14A. Realisation of property**

Section 17(1)(a) is amended by adding “(including anycase where section 8(1)(a)(ii) or (7A) is applicable)” after “made” .”.

**New clause 15A**

That the Bill be amended, by adding —

**“15A. Exercise of powers by High Court or receiver**

Section 19(6) is amended by repealing “抵” and substituting “抵” .”.

**New clause 20A**

That the Bill be amended, by adding —

**“20A. Sentencing in respect of specified offences**

Section 27(2) is amended by repealing “何任” and substituting “任何” .”.

*Question on the addition of the new clauses proposed, put and agreed to.*

Council then resumed.

### **Third Reading of Bill**

THE ATTORNEY GENERAL reported that the

### **ORGANIZED AND SERIOUS CRIMES (AMENDMENT) BILL 1995**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **Second Reading of Bill**

### **WONG WAI TSAK TONG (RENEWAL AND EXTENSION OF SUB-LEASES) BILL**

#### **Resumption of debate on Second Reading which was moved on 7 June 1995**

*Question on Second Reading proposed.*

MR LEE WING-TAT (in Cantonese): Mr President, although the Bill before this Council at the present moment is the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (WWTT Bill), yet the Block Crown Lease (Cheung Chau) Bill (BCL Bill) is also relevant to the subject that the present Bill is addressing. My speech, therefore, will also cover the BCL Bill so that this Council will be able to deal with the WWTT Bill with full knowledge of all the facts involved.

The two Bills before us are intended to resolve a long-standing problem in Cheung Chau by legislative means but with different approaches. The WWTT Bill seeks to regulate the relationship between Wong Wai Tsak Tong (the Tong) and its sub-lessees in three areas, namely, renewal of sub-leases, payment of government rent and consents to modifications and exchanges of sub-leased land. The BCL Bill, which is a Private Member's Bill introduced by the Honourable Andrew WONG, proposes to terminate the Block Crown Lease granted to the Tong and to deem all sub-lessees and sub-leases under the Block Crown Lease Crown lessees and Crown leases respectively.

The source of conflict between the Tong and its sub-lessees dated back to 1904 when the Tong was granted Crown lessee status by the then Land Court. The disputes emerged in the late 1980s when the Tong started to charge the sub-lessees not a small amount for renewal of sub-leases and consents to modifications and exchanges of sub-leased land. The Tong also required the sub-lessees to pay rent under the sub-lease which doubled the Crown rent. The disputes between the two parties in recent years have built up to such an extent that they become public issues. The Administration and Legislative Council Members both hold the view that these issues must be resolved by legislative means.

Against this background, the Bills Committee scrutinizes the provisions of the two Bills. The Bills Committee has received representatives from the Tong, the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Owners. I shall highlight their views and how the Bills Committee arrives at its stance on the two Bills.

The Tong strongly objects to the two Bills. It is adamant that its status as lessee under the Block Crown Lease, and hence the land owner, is unquestionable. The Tong criticizes that without any compensation provision, the proposed legislation is, in effect, an expropriation of its property. In the Tong's view, its disputes with the sub-lessees should be settled by themselves, if necessary through legal action.

Both the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Owners object to the Government Bill. The representatives are dissatisfied that the WWTT Bill not only fails to resolve the long-standing disputes, but also reaffirms the Tong's status as the land owner. The representatives have expressed worries, in particular, about the proposal under which sub-leases deemed to be renewed under the Government Bill shall expire on 27 June 2047, three days prior to the termination of the Block Crown Lease. Such an arrangement, in their view, may allow the Tong to resume all the land sub-leased. The representatives are convinced that the only solution to the problem is to abolish the Tong's status as land agent and to terminate the Block Crown Lease.

Members of the Bills Committee have reservations on the Tong's claim that it has all along been the owner of most of the land in Cheung Chau. Given the perpetual nature of the sub-leases and the fact that superstructures belong to the sub-lessees, Members consider it illogical that a land owner, under normal circumstances, would have agreed to enter into such sub-leases which, in effect, restrict to a considerable extent his interests and rights in the land. Though the Administration explains that there is no evidence to suggest that the decision had been wrongly made by the Land Court in 1904, in Members' view, there are reasons to believe that the Tong, although a registered Crown lessee, is little more than the Government rent collection agent for privately owned land in Cheung Chau. The Bills Committee unanimously agrees that the Government Bill, if enacted in its present form, cannot resolve the current disputes between the Tong and its sub-lessees — known in common parlance as "small owners" — at root. The BCL Bill, on the other hand, will be a better solution to the problem. The Bills Committee, however, recognizes that any proposal to expropriate private property without compensation is objectionable to some Members. Members generally consider it not unreasonable to compensate the Tong for any possible loss it may suffer from the enactment of the Bill. The Bills Committee therefore proposes that the WWTT Bill be rejected and the BCL Bill be supported with the addition of a compensation provision to the BCL Bill. The Bills Committee's recommendations receive the support of the House Committee. The Administration has undertaken that in the event that the WWTT Bill does not pass the Second Reading, it will move an amendment to add a compensation provision to the BCL Bill. Under the Administration's proposal, the Tong is entitled to claim compensation from the Government for the termination of the Block Crown Lease under the BCL Bill. The amount of compensation is to be determined in accordance with the Crown Lands Resumption Ordinance as if the land were resumed under that Ordinance. The proposed provision requires the Tong to submit a claim to the Lands Tribunal for determination of the amount of compensation payable within 12 months from the commencement of the Block Crown Lease Ordinance.

The Bills Committee has different views on the application of the BCL Bill. Clause 9 of the Bill provides that any transactions between the Tong and any person on any lot under the Block Crown Lease effected before the commencement of the Bill will not be affected. Some Members are of the view that the Bill should cover and extend equal protection to those sub-lessees who have their sub-leases renewed in November 1994 as a matter of course if the terms of which do not vary substantially from the standard old sub-leases. One Member, however, stresses the importance to honour contracts which have been legally entered into. The Member is concerned about the possible financial implications on the public purse should all the sub-leases which have been renewed by the Tong be deemed null and void under the Bill and the Lands Tribunal, in deciding the compensation payable to the Tong, will have to take into account the loss incurred by the Tong consequent to such an arrangement. The Member suggests, as an alternative, that sub-leases renewed for a term extending beyond November 1994 under which the Tong and the sub-lessees have agreed on the Government rent payable to the Tong after 30 June 1997

should subsist until their expiry and upon which they will come under the purview of the Bill. As the Bills Committee cannot reach a consensus on the subject, both the Administration and myself will move amendments to clause 9. I shall leave the debate on it to a later stage.

Mr President, these are the views of the Bills Committee. I am speaking on the Bill for myself and the Democratic Party. Mr President, Members know full well that this matter has been troubling Cheung Chau for more than 20 years and has had a considerable impact on Cheung Chau residents' livelihood, economic situation and their harmonious relations with the Tong. During our drawn-out discussions, the Administration has been insisting that the Government Bill is the correct way to deal with the disputes. But I am of the view that the disputes cannot be resolved in this way. It will give no more than a respite instead of disabling this time bomb altogether. Therefore, I am disappointed with the Administration going ahead with the Second Reading of the WWTT Bill. However, I am glad that the Administration has promised that if the WWTT Bill cannot pass its the Second Reading the Administration will propose to amend the BCL Bill by adding a compensation provision. I hope Members will reject the present Bill at the Second Reading stage. By rejecting the WWTT Bill we shall be able to resolve once and for all the disputes which have been troubling Cheung Chau for more than 20 years. Of course, we have not yet reached a consensus in respect of clause 9 of the Honourable Andrew WONG's Private Member's Bill. But the passing of this Private Member's Bill will at least resolve the question of over 90% of Cheung Chau's leasehold rights. Therefore, I hope Members will vote against the Government Bill at the resumed Second Reading of the Bill.

All through these few days, representatives of Cheung Chau residents have been petitioning and complaining to this Council every day. I believe most or all of them support the Private Member's Bill and the deletion of clause 9 from the Bill. This means that they do not support clause 9 of the Government Bill. Of course, there is yet time for us to discuss clause 9. But I hope Members will have the disputes resolved now so that after this sitting the file on this matter will be closed and Members will not have to discuss outstanding issues of this matter again when this Council resumes next October. And representatives of the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Owners will thus cease to petition this Council to ask us to set up an ad hoc committee to propose amendments to some existing Ordinances. The disputes will continue if we do not have them resolved now. So I hope Members will reject the Government Bill at its Second Reading, pass Mr Andrew WONG's Private Member's Bill and support our proposal to have clause 9 of the Private Member's Bill deleted.

Thank you, Mr President.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, there is one point I would like you to rule on.

As I understand it — and I also learn this from the newspaper — Wong Wai Tsak Tong has taken legal proceedings in exercise of their right under the law to protect their interests. Therefore, the matter before us is sub judice. I hope, you, Mr President, will give a ruling as to whether we should continue to discuss this Bill. It is because the Bill, if passed, may be subject to constraints stemming from a court judgment. I hope you, Mr President, will give Members a clear ruling as to what the correct approach should be.

PRESIDENT: There is nothing in that action to prevent Members from continuing with the proceedings on this Bill, Mr CHIM.

MRS MIRIAM LAU (in Cantonese): Mr President, when it first presented the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (the WWTT Bill) to this Council, the Administration should have known that the Bill would come to a sad end. The Administration had consulted the Planning, Lands and Works Panel of this Council with regard to the proposals in the Bill to regulate the relationship between Wong Wai Tsak Tong (the Tong) as head lessee and the Cheung Chau residents as sub-lessees. The proposals came under heavy fire from Members. In a motion debate held by this Council on 18 January 1995, an absolute majority of Members requested the Administration to pluck up enough resolve to revoke the Tong's status as head lessee so as to revive the affected residents' proprietary interest in land. Under such circumstances, the Administration's proposals had already been doomed. Yet, the Administration is going ahead with the Bill. It may be that it wants to give Members the opportunity to put this Bill on the chopping block so that Members will wield the executioner's axe to send the Administration's proposals to Kingdom come.

The bickering and mud-slinging between the Tong and Cheung Chau residents have been going on for many years. If the disputes are drawn out any further, the problem will become yet more complicated and Cheung Chau residents' sufferings will be prolonged. This will be senseless. The proposals contained in the Administration's Bill will only clip the Tong's wings and limit the rate of charges it can levy. The proposals will not fully resolve the problem. Therefore, the Liberal Party is opposed to the WWTT Bill. The Liberal Party is of the view that the wisest or perhaps the most ideal way to resolve the problem would be for the Administration and the Tong to come to a negotiated settlement pursuant to which the Tong would voluntarily give up its head lessee status in return for reasonable compensation. However, it must be noted that the Administration has been discussing the matter with the Tong for many years and no agreement has ever been reached. That being the case, the Liberal Party is of the view that the revocation of the Tong's head lessee status through legislative means would be acceptable. But, as this would involve the expropriation of private property, the Liberal Party considers that

compensation should be paid to the Tong. In this regard, the Liberal Party has all along been opposed to expropriation of private property without compensation.

The Honourable Andrew WONG will later introduce his Private Member's Bill known as the Block Crown Lease (Cheung Chau) Bill (the BCL Bill). Although the BCL Bill can solve the question of the Tong's head lessee status, yet the Bill provides that no compensation or damages of whatever sort shall be payable. The Liberal Party cannot accept this. If no compensation provision is added, the Liberal Party will not support Mr Andrew WONG's Private Member's Bill. However, the Administration has eventually deferred to Members' views and has indicated to the Bills Committee that, if the WWTT Bill fails to pass its Second Reading, the Administration will add a compensation provision to the BCL Bill so that the Tong will be given the right to claim compensation within 12 months after the revocation of its head lessee status. If the Administration does this and if an amendment to such effect is passed, the Liberal Party will support Mr Andrew WONG's BCL Bill.

Mr President, with these remarks, I wish to state that the Liberal Party opposes the WWTT Bill.

MR ANDREW WONG (in Cantonese): Mr President, I rise to speak against the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (the WWTT Bill). Allow me first to give a description of the historical background of the Wong Wai Tsak Tong (excerpted from the relevant report) as well as the disputes between the Tong and the sub-lessees.

The Wong Wai Tsak Tong (the Tong) is at present the registered owner of over 90% of the private land (in about 1 700 lots) on Cheung Chau. It is a clan organization which originated in the Fujian Province of China during the Song Dynasty. The Tong's claim to Cheung Chau Island dated back to the Qing Dynasty when it enjoyed the right to collect rent and tax on land, and was in effect a taxlord.

The New Territories (Land Court) Ordinance 1900 declared all land in the New Territories to be the property of the Crown, and provided that all claims, disputed or otherwise, in relation to land in the New Territories be heard and determined by the Land Court. The Land Court determined all claims and made up the Crown Lease Schedules and Rent Rolls in 1904. During its deliberations, the Land Court ruled that the taxlord rights were not compatible with the principles of British administration. Claims to land previously held by taxlords were mostly made in favour of the original sub-lessees and the taxlords were "compensated" by being given some other piece of land.

However, for reasons unknown (the file dealing with the Tong (CSO 260/1901) cannot be traced) and a rumour had it that the file was found missing in the 1980s, the Land Court decided to recognize the Tong as the owner of the land on Cheung Chau. Its land holdings were registered under the Block Crown Lease dated 18 March 1905 with the lease expiring three days before 1 July 1997 (that is to say, on 27 June 1997). Records dated 30 June 1904 attached to the Block Crown Lease show that most of the lots were sub-leased, and that the superstructures belonged to the sub-lessees. Over the years, the number of sub-lessees of the Tong had increased from 500 in the 1900s to over 7 000 in 1994.

Shortly after the signing of the Block Crown Lease, some inhabitants of Cheung Chau filed a petition, asking that they be allowed to pay Crown rent to the Government direct and that the Crown leases be granted to them. In the minute from the then Colonial Secretary to the then Governor dated 31 July 1905 concerning this petition, it was stated that “Taxlord rights awarded by Mr GOMPERTZ (a judge of the Land Court) were dealt with by recognizing the taxlord as landlord.” As the Tong continues to be the registered owner today, it may be assumed that the Government did not accede to the petitioners’ request in 1905.

Section 15 of the New Territories Ordinance (Cap. 97) provides, *inter alia*, that a land-holding Tong should appoint a manager to represent it. The manager has full power to dispose of or in any way deal with the land as if he were the sole owner. He is personally liable for the payment of all rents and charges of the land and is responsible for dealing with all land transactions involving the Tong, including the signing of leases, giving written consent to redevelopment of lots and executing documents involving modifications, land exchanges and so on.

Mr President, I have given the historical background of the Tong as aforesaid. But the Tong’s past and present practices in land transactions have given rise to widespread resentment among its sub-lessees since 1985. The main disputes include, *inter alia*, the following, which the Honourable LEE Wing-tat already briefly canvassed a moment ago:

- (1) Renewal of sub-leases, once every five year;
- (2) Redevelopment by sub-lessees, which may require consent in writing; and
- (3) Payment of Government rent.

These can be said to be the cause of the disputes and here I would not elaborate on them any further.



I would only like to point out that protest action by the sub-lessees has been going on for 10 years since 1985. I first came across these sub-lessees when some representatives of the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Owners filed a complaint with the Complaints Division of the then Office of the Members of the Executive and Legislative Councils (OMELCO). Aggrieved by the acts of the Tong, the Cheung Chau Rural Committee and a group of sub-lessees formed an association to fight for their rights in 1985. They held direct negotiations with the Tong and sought the Government's assistance in resolving the disputes. When these had failed to bring about any positive results, they approached the OMELCO in addition to taking other parallel actions, including :

- (1) In March 1990, some sub-lessees filed a claim with the High Court against the Tong on the ground that the Tong was not entitled to impose charges or fines in land tenure matters on Cheung Chau. The case was later settled out of court.
- (2) The Cheung Chau Rural Committee petitioned the Governor in November 1990 to challenge the Tong's legal status and to request removal of such status from the Tong in the interests of all the sub-lessees.

The sub-lessees first approached OMELCO in 1989 (I was present then) to seek assistance in connection with their disputes with the Tong. Since then, the subject has been brought to the attention of the Legislative Council Members on many occasions, including the case conference on 31 May 1991, the meetings of the Lands and Works Panel on 31 July 1991 and 23 December 1993, and the Legislative Council Meeting with the Islands District Board Members on 31 March 1994.

Mr President, at the Lands and Works Panel meeting on 15 November 1994, the Administration presented the Government's intention to introduce legislative measures to regulate the relationship between the Tong and its sub-lessees in three areas. Mr LEE Wing-tat already gave a brief introduction of these measures, which are precisely the subject contents of the present Bill we are debating, that is to say, renewal and extension of sub-leases, consents to modifications and exchanges of sub-leased land, and payment of Government rent. Again, I will not go into these in detail.

Mr President, the Bill before us for resumption of Second Reading debate today represents the formal text of the Bill intended then to be introduced. The Bill was carefully studied by an ad hoc group under the Planning, Lands and Works Panel of this Council and a report was published in March. The report was debated by this Council in January this year at the instance of Mr LEE Wing-tat who moved a motion to that effect which was subsequently amended by the Honourable Edward Ho and the Honourable TAM Yiu-chung. During these meetings and the debate, and, for that matter, in the report itself, Members were pretty well agreed in their view that the Bill proposed by the

Administration would not resolve the disputes at all. They considered that the problem should be solved in another way. The way contemplated by Members was precisely the one I had advocated right from the start. It would not be a means to divest the Tong of its property rights but would be a means whereby all these unique sub-leases would be deemed Crown leases. In other words, sub-lessees under such unique sub-leases which are renewable on a perpetual basis every five years shall be deemed Crown lessees. This is precisely what the sub-committee has recommended and the Administration will add a compensation provision to our proposals. However, the Administration still holds fast to its stance and contends that the Government Bill can better address the problem concerned. That is why we are not prepared to adopt the Government Bill as a legislative measure to resolve the disputes.

The Administration may have discussed with the Tong a more ideal way to deal with the matter, which was mentioned by the Honourable Miriam LAU moments ago. This requires that the parties concerned first arrive at a consensus to surrender the lands which will then be given back to the sub-lessees. As things now stand, I believe if Members later reject the WWTT Bill proposed by the Administration and support the Block Crown Lease (Cheung Chau) Bill proposed by me in the capacity as a Private Member, the Administration will introduce a compensation provision.

As to the two so-called “measures bearing on the question of coverage”, I shall give my personal views with regard thereto when the Bill next following on the Order Paper comes before us.

Mr President, with these remarks, I urge Members to reject the present Government Bill.

MR MAN SAI-CHEONG (in Cantonese): Mr President, first of all, I have to declare interest because I dealt with quite a lot of legal matters relating to real property in Cheung Chau. But as a Legislative Council Member, I shall take the interests of Cheung Chau, particularly the interests of the residents, as the foremost factor for consideration when casting my vote. I shall also follow the Democratic Party’s stand when voting on this Bill because the interests and stands of the residents are consistent with those of the Party.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, in point of fact, the question the Wong Wai Tsak Tong Bill (the WWTT Bill) is addressing is one which is closely intertwined with Cheung Chau’s history. The Government appears to want to hide its own mistake through an attempt to perpetuate a historical mistake. I would hate to see such a move on the part of the Government which would give people the impression that it is seeking to expropriate the private property of Wong Wai Tsak Tong (the Tong). Therefore, my personal view is that the best way to resolve the question would be, as the Honourable Mrs Miriam LAU suggested a moment ago, for the

Government to keep calm and discuss the matter with the Tong to prevail on it to give back, by way of a token move, the property rights to the residents of Cheung Chau. Of course, for one reason or another or because of a failure to strike a deal with the Tong, the Government has been dragging its feet in regard to this matter. But, in fact, the present Bill in respect of renewal and extension of sub-leases presented by the Government today is only a half-way approach to address the issues. It is because, as far as the Cheung Chau residents are concerned, if they were to pay a small and reasonable amount of charges or a recognized sum to enable them to formally become head lessees, in other words, landlords, then they would, I firmly believe, accept or agree to the arrangement in the long-term interests of Cheung Chau. But now a Bill is being introduced to affirm that the Tong, not the residents, is the head lessee or landlord. After the enactment of the Bill, the residents would be in direr straits. Therefore, this would not be an arrangement that would please the residents. On the other hand, the Government, while affirming outright in the Bill the Tong's status as the head lessee, that is, the landlord, is nevertheless seeking to restrict the Tong's rights and interests by legislative means. This, basically, will detract from the rights and interests a landlord in Hong Kong is reasonably expected to enjoy. In other words, the Bill will bar the property owner from doing a number of things. Despite the Government's past legislation to restrain landlords from increasing rents, it is, in the final analysis, unreasonable to forbid a landlord to do this, that and the other. Hence, the present Bill will please neither party and will be voted down eventually.

Mr President, what I am more concerned about is that, in the context of Hong Kong which is a capitalistic society, neither the present Bill nor the Private Member's Bill to be later presented by the Honourable Andrew WONG are perfect. If the Government Bill before us is passed, it will mean that returns on private assets will be subject to restraints. Although the Tong's representativeness is far from being broad — it is made up of only about 1000 people — and the Tong is moreover subject to criticisms from the community which is inclined to consider it dishonest, yet this incident will affect all property owners in Hong Kong. We may all become property owners, whether big or small, some day. If the Government took such an attitude as it is now purportedly taking, I think the principle of "one country, two systems" would be negated. We would have to be wary of it more than we have to be wary of the Communist Party. Though the Communist Party expropriated private property in the 1950s, the Party has now returned most of the property concerned and Chinese citizens are allowed to own private property. Hong Kong will be a Special Administrative Region implementing the "one country, two systems" principle. If the means resorted to by the Government was adopted as law, I would have to remind some of the local developers that they would have to assess the implications very carefully. It is because what befalls the Tong today may one day befall the major developers. Though some Members assert that this will not happen, yet some other Members are at least contemplating such a possibility. Though nothing of that sort has been perpetrated yet, many unreasonable incidents or events anathema to a free society might happen if a political party or Members espousing similar political

views succeeded in controlling half of the votes of the future Legislative Council.

Mr President, I personally take a balanced attitude towards the matter. I shall help Cheung Chau residents fight for their rights. But let me remind Members that the parties concerned should make reasonable contacts with each other. It would be best if the residents would pay an acceptable amount of charges by way of a token to resolve this problem. The Government should have, through direct or private negotiations, sought to resolve this problem. It is because even if the Private Member's Bill, rather than the present Government Bill, is passed, the parties will ultimately have to go to court to fight their case. There is no knowing who will win and who will lose. Such court proceedings may take three, five or even 10 years to conclude and Cheung Chau's real estate development will suffer enormously. Though most of the property is owner-occupied and will not have much bearing on real estate development, yet, from the Cheung Chau residents' perspective, if the problem is fully resolved, they can apply for bank loans by putting their property up as collateral and use the loan funds to further their business or economic interests. But, if this problem continues as a festering wound with no prospect of settlement, I am afraid the Governor might not have enough courage to give his assent even if the present Bill was enacted as law by this Council. Of course, the court will be the last resort to adjudicate on the dispute. But, judicial proceedings being what they are, I believe no one can be sure of their outcome.

Therefore, Mr President, I hope that, after the passage of the Private Member's Bill, the Government will show sincerity by negotiating with the Tong to decide on a reasonable amount of compensation so that Cheung Chau residents will be able to enjoy the following as soon as possible: first, they will put everything behind them and will be free from the psychological pressure that has been weighing heavily on them; secondly, they will be able to develop and invest in whatever businesses they care to run; and, thirdly, Cheung Chau will be in a state of harmony and developers will be free to launch development projects there. This will be the most practical way to solve the problem. If the parties continue to fight it out — though one side outnumbers the other side — that will not be the proper way to get what one wants here in Hong Kong which is a free and capitalistic society. I hope that, with the relevant law being enacted, Cheung Chau will have a peaceful future.

Mr President, with these remarks, I absolutely oppose in principle the WWTT Bill.

MR TAM YIU-CHUNG (in Cantonese): Mr President, Hong Kong is a society governed by the rule of law. An absolute majority of its citizens are law-abiding people. However, what is lawful may not necessarily be reasonable. That is why this Council regularly amends existing laws to rectify those which are unreasonable. Today, the Administration is introducing the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (the WWTT Bill) with the

purpose of resolving the disputes relating to interests in land which have been existing between Cheung Chau residents and the Wong Wai Tsak Tong (the Tong) for the past 20 years. However, the Administration has failed to take the present opportunity to rectify the mistake committed 90 years ago. On the contrary, it is attempting to “legalize” through legislative means an unreasonable state of affairs.

The Administration is of the view that the Tong is the owner of 90% of the land in Cheung Chau and that its legal status in this respect is unquestionable. But, if we care to ask further: “Under what circumstances did the Tong acquire its property rights?”, we will find that the Tong acquired such rights through very unreasonable means. True, we have no evidence to prove that the Tong’s then managers acquired such rights through coercion or deceit on their part or through corruption or malfeasance on the part of government officials. Yet, neither can the Tong prove that it had acquired 90% of the land in Cheung Chau through reasonable and lawful means.

According to available data, before 1905, the Tong had not been the owner, as it presently is, of most of the land in Cheung Chau. Britain, having then taken possession of the New Territories and the outlying islands under a lease granted by the Qing Dynasty, had to levy government rent on the indigenous residents of the New Territories, including Cheung Chau, grant them leases in exchange for the “red title deeds” issued to them by the Qing government, and register their land holdings. However, at that time the Administration did not grant separate leases to individual residents but granted a Block Crown Lease under which the Tong was named the head lessee. Perhaps, the officials responsible for such an arrangement did it out of good intention. They did not want Cheung Chau residents to travel a long distance to town to pay the government rent and so they arranged for an agent to collect the rent and allowed this agent to receive certain administrative charges. If this assumption is correct, the Tong is not an owner of land and should not enjoy the legal status of a landlord.

Conversely speaking, if the Tong had indeed acquired 90% of the land in Cheung Chau through payment of “valuable consideration” and the residents had become sub-lessees through sale of their land, I cannot imagine why the Tong would have been so magnanimous as to enter into a sub-lease with the sub-lessees which contained the following terms: The superstructures to remain the property of the original residents; the consent of the Tong not required in respect of redevelopment; the sub-lease be renewable on the same terms and conditions every five years. The only benefit accruing to the Tong was the minimal difference between the amount of rent it collected and the actual rent tendered to the Government. Moreover, when the Tong was awarded the status of head lessee under the Block Crown Lease, some residents immediately filed an appeal with the Land Court. It is clear from this that the Tong’s head lessee status is not equivalent to the status of one who owns a proprietary interest in land. But as the file containing the judgment of the Land Court was lost, we have no way of knowing why the trial judge had come to such a decision.

Anyway, so long as the Tong did not make any excessive demands, the residents by and large were not opposed to such an arrangement. The two sides therefore got along peacefully for decades.

However, times changed and land became a valuable commodity. The managers of the Tong were no longer contented with the residents' gifts upon renewal of sub-leases. They demanded money and even went so far as to institutionalize the charges for renewal of sub-leases. Worse still, they kept increasing these charges. This precipitated the disputes between the Tong and the residents. During the past dozen years, the Administration, cherishing the hope that the disputes could be settled through mediation, did not have the courage to address the crux of the issue, let alone the courage to admit its past mistake. Today, the Bill presented by the Administration manifests the same old attitude of the Administration. It is seeking, through enactment of the Bill by this Council, to "legalize" a mistake made 90 years ago.

However, I must point out that even if the WWTT Bill is passed today, it will not resolve the disputes between the Cheung Chau residents and the Tong. It is because the residents are adamantly of the view that the land belongs to them and the Tong has no right, upon land being assigned, to levy charges on a scale pegged to the land premium charged by the Administration. At present the Administration has set the charging rate at 10% to stabilize the situation so that the managers of the Tong will not demand an exorbitant rate, say, 20% or even 100%. The more important point to note about the WWTT Bill is that it reaffirms the Tong's legal status as the head lessor of land in Cheung Chau. In other words, the residents of Cheung Chau will be divested of their ownership rights in their own domestic property. The residents cannot put up with this which the public will also find unimaginable.

Mr President, if the WWTT Bill is passed, it will mean expropriation of the landed property of the residents of Cheung Chau. By way of a reminder to the Administration, I would like to cite the plot of a Cantonese operatic work, *the Violet Hairpin*. LU, the all powerful Minister of Defence of the realm, intended to split the couple HUO Xiaoyu and LI Yi by alleging that their marriage had not been registered with the authorities and by refusing to acknowledge their marriage as "legal". But HUO said that her marriage to LI had not been registered with the Chang An authorities but in the hearts of mankind.

Mr President, with these remarks, I oppose the Bill.

MR ALBERT CHAN (in Cantonese): Mr President, I rise to speak against the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (the WWTT Bill) introduced by the Administration. A number of Members have spoken on this Bill already, including the Honourable LEE Wing-tat, the Honourable Mrs Miriam LAU, the Honourable Andrew WONG, the Honourable TAM Yiu-chung and the Honourable CHIM Pui-chung. I agree with their views and I will

not therefore repeat their arguments. It is indeed a rare event during my four-year tenure as Member that I share so many of the views expressed by Mr CHIM.

The dispute between Wong Wai Tsak Tong (the Tong) and small landowners, that is to say, sub-lessees, of Cheung Chau has remained unresolved for over 90 years. The issues involved in and the background to the dispute have been exhaustively discussed by the Members who spoke before me. In a nutshell, 90 years ago, under a Block Crown Lease granted by the Government, the Tong became the head lessee of over 90% of the land in Cheung Chau. During these 90 years, many of the sub-lessees have been unfairly treated in relation to land disputes and assignment of sub-leases. The WWTT Bill now being introduced by the Administration will not, in fact, resolve this 90-year-old problem. On the contrary, it will worsen the hard lot of the aggrieved parties. Therefore, opposition to the Bill proposed by the Administration is only a natural outcome.

Later, Mr Andrew WONG will introduce a Private Member's Bill with the aim of resolving the dispute between the Tong and the sub-lessees in Cheung Chau. I will support this Private Member's Bill. As Mr CHIM Pui-chung pointed out a moment ago, the Legislative Council should not, nor do Members so desire, seek to resolve private disputes through legislative means. During the past few years, Members already gave the Tong and the Administration ample opportunity to deal with this problem. But, unfortunately, discussions failed to bear fruit. To a certain extent, I believe this Council is now left with no alternative but to resort to legislative means. I am most grateful to Mr Andrew WONG for eventually solving this 90-year-old unsolved case through legislative means. I hope Members will later support Mr Andrew WONG's Private Member's Bill.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Deputy, although our views may differ, I would still like to thank the Honourable LEE Wing-tat, and Members of the Bills Committee on the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill for their detailed deliberations on the Bill over the past few weeks.

I would like to take this opportunity to clarify once again the stand of the Administration in the matter. In the course of dealing with the land problems on Cheung Chau over the past years, the Administration has identified three main issues which are the basis of disputes between the Wong Wai Tsak Tong and its sub-lessees. These are the renewal and extension of sub-leases, payment of government rent, and charging of fees for modification and exchanges. The Wong Wai Tsak tong (Renewal and Extension of Sub-leases) Bill is therefore tailored to resolve these disputes and regulate the relationship between the Tong

and the sub-lessees, in the most impartial manner without taking side with any party. We are dealing with a problem left over from history and our records are incomplete, we would want to do it in as fair a manner as possible. However, in our quest to be fair, we may not please any body in particular, and hence, this may be the reason why some Members say that the Administration's Bill is not supported by the parties concerned.

But through the enactment of the Bill, sub-lessees will have certainty to their sub-leases to 27 June 2047. They will pay government rent direct to the Government. The Tong will also not be able to delay redevelopment proposals requiring modifications and exchanges of the sub-leased land. As a result, the sources of much of the friction between the sub-lessees and the Tong should be removed. The Bill will achieve a fair, objective and practical solution to the dispute between the two parties and recognize as far as possible their legitimate interests, without taking away any property rights. The title of the sub-lessees to their property would also be clarified, facilitating property transactions in Cheung Chau.

In the course of the Bills Committee's deliberations, Members raised concern that the Bill might confirm the legal status of Wong Wai Tsak Tong as the owner of about 90% of the private land on Cheung Chau and this might weaken the position of the sub-lessees to claim ownership of the sub-leased land. Madam Deputy, I would like to clarify that Wong Wai Tsak Tong is already the registered owner of about 90% of the private land on Cheung Chau. The Tong holds the land under the Block Crown Lease dated 18 March 1905 and under several new grants made after that date. The Administration's Bill is therefore not aimed to affect the existing status of the Tong and the sub-lessees.

On the other hand, Wong Wai Tsak Tong has expressed concern that the Bill would take away its private property right without compensation. I take this opportunity to clarify also that the rights and liabilities of the Tong and a sub-lessee under the sub-leases extended and renewed by the Bill will not be affected by the Bill, except as specifically provided for under the Bill. If a sub-lessee breaches the terms of a sub-lease, the Tong will be entitled to exercise its legal rights against the sub-lessee. By regulating the relationship between the Tong and the sub-lessees, we aim to address the practical problems arising from the dispute between the two parties without taking away legitimate property rights. Since the legal status of the Tong would not be affected by the Bill, we therefore also consider that no compensation to the Tong is necessary.

Thank you, Madam Deputy.

*Question on Second Reading of the Bill put.*

*Voice vote taken.*



THE PRESIDENT'S DEPUTY said she thought the "Noes" had it.

MR LEE WING-TAT: Division.

PRESIDENT'S DEPUTY: The division bell will be rung.

THE PRESIDENT resumed the Chair.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary and Mr Marvin CHEUNG voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Moses CHENG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr LAM Kui-chun, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted against the motion.

THE PRESIDENT announced that there were four votes in favour of the motion and 39 votes against it. He therefore declared that the motion was negated.

PRESIDENT: As the motion for the Second Reading of the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill has been negated, no further proceedings shall be taken on the Bill.

**PRIVATE MEMBER'S MOTIONS****INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

MR JAMES TO moved the following motion:

“That in relation to the -

- (a) Merchant Shipping (Miscellaneous Craft) (Amendment) Regulation 1995 published as Legal Notice No. 289 of 1995;
- (b) Shipping and Port Control (Hong Kong-China and Macau Ferry Terminals) (Amendment) Regulation 1995 published as Legal Notice No. 290 of 1995;
- (c) Telecommunication (Amendment) (No. 3) Regulation 1995 published as Legal Notice No. 291 of 1995;
- (d) Telecommunication (Hong Kong Telephone Company) (Exemption from Licensing) (Repeal) Order 1995 published as Legal Notice No. 292 of 1995;
- (e) Telecommunication (Fixed Telecommunication Network Services) (Exemption from Licensing) Order published as Legal Notice No. 293 of 1995;
- (f) Port Control (Public Cargo Working Area) (No. 3) Order 1995 published as Legal Notice No. 301 of 1995;
- (g) Port Control (Public Water-Front) (No. 2) Order 1995 published as Legal Notice No. 302 of 1995;
- (h) Telecommunication (Hong Kong Telephone Company) (Exemption from Licensing) (Fees) (Repeal) Order 1995 published as Legal Notice No. 303 of 1995;
- (i) Housing (Tenancy Appeals) Rules published as Legal Notice No. 304 of 1995;
- (j) Housing (Amendment) Ordinance 1995 (24 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 305 of 1995;

- (k) Pensions (Special Provisions) (The Hong Kong Institute of Education) Ordinance (38 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 306 of 1995;
- (l) Banking Ordinance (Amendment of Third Schedule) Notice 1995 published as Legal Notice No. 307 of 1995;
- (m) Telephone (Amendment) Regulation 1995 published as Legal Notice No. 308 of 1995; and
- (n) Factories and Industrial Undertakings (Suspended Working Platforms) Regulation (L.N. 393 of 1994) (Commencement) Notice 1995 published as Legal Notice No. 309 of 1995

and laid on the table of the Legislative Council on 5 July 1995, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as extended under section 34(3) thereof, be extended under section 34(4) thereof to the third sitting (within the meaning of section 34(6) thereof) of the next session of the Legislative Council.”

MR JAMES TO (in Cantonese): Mr President, I move the first motion standing under my name in the Order Paper.

Honourable Members, the present motion and a few others I shall be moving later are of the same nature. The subsidiary legislation concerned is meant to be passed otherwise than by an affirmative resolution, in other words, if this Council does not overrule or make any amendment to it, the subsidiary legislation will come into force. Why do I want to have the scrutiny and passage of the subsidiary legislation deferred until the third sitting of the next term Legislative Council? It is because, frankly speaking, we shall not be having sufficient time to scrutinize the subsidiary legislation concerned, particularly in the case of the last sitting of the current Session, the 26 July sitting, when a further series of subsidiary legislation has been tabled to this Council. I am hoping that, if the current term Legislative Council has insufficient time to scrutinize the subsidiary legislation, we shall defer exercising the right of scrutiny until the next term Legislative Council sits when the said legislation will have taken effect. That will enable Members to have an interval spanning three sittings to consider the legislation. This will be a preferable arrangement particularly after the elections to the next term Legislative Council. If Members are given three chances to scrutinize the legislation, it will mean a better balance can be struck in terms of the relationship between the legislature and the executive. In that case, Members will have more time to scrutinize the subsidiary legislation. This is purely a technical motion. I hope Members will support it.

*Question on the motion proposed.*

MR TAM YIU-CHUNG (in Cantonese): Mr President, I rise to speak in support of the Honourable James TO's motion. At noon today I received a deputation from the associations of six trades, including the Hong Kong Freighter Operators Association, the Hong Kong Transport, Warehouse and Wharf Operators Association, the Motor Transport Association, the Harbour Transport Association, the Federation of Cargo Handling Area Traders, and the New Territories Goods Vehicle Operators Association. They have formed a body to jointly oppose the massive increases in cargo handling area charges sought by the Government. It is because the Executive Council approved on 12 July a 20% increase in cargo handling area charges. If we do not pass Mr James TO's motion today, the traders' opposition will be futile and to no avail. It is because this Council will enter into a long recess with effect from next Monday and the proposal for increase of charges will have been automatically passed before this Council resumes. Therefore, we hope Members will endorse Mr James TO's motion to enable us to have more time to discuss the matter with the traders concerned in order to find a solution. That will also give the new term Legislative Council an opportunity to study whether to entertain complaints in this regard. Thank you, Mr President.

*Question on the motion put and agreed to.*

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

MR JAMES TO moved the following motion:

“That in relation to the -

- (a) Schedule of Routes (China Motor Bus Company) Order 1995 published as Legal Notice No. 310 of 1995;
- (b) Swimming Pools (Regional Council) (Amendment) (No. 2) Bylaw 1995 published as Legal Notice No. 311 of 1995;
- (c) Employees Retraining Ordinance (Amendment of Schedule 4) Notice 1995 published as Legal Notice No. 312 of 1995;
- (d) Builders' Lifts and Tower Working Platforms (Safety) Ordinance (23 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 313 of 1995;
- (e) Motor Vehicles Insurance (Third Party Risks) (Amendment) Ordinance 1995 (46 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 314 of 1995;

- (f) Employees' Compensation (Amendment) (No. 2) Ordinance 1995 (47 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 315 of 1995; and
- (g) Official Languages (Authentic Chinese Text) (Crimes Ordinance) Order published as Legal Notice No. (C) 49 of 1995;

and laid on the table of the Legislative Council on 12 July 1995, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap 1), as extended under section 34(3) thereof, be extended under section 34(4) thereof to the third sitting (within the meaning of section 34(6) thereof) of the next session of the Legislative Council.”

MR JAMES TO (in Cantonese): Mr President, I move the second motion standing under my name in the Order Paper.

The subsidiary legislation concerned was presented to this Council on 12 July. As I am moving this motion on the same grounds as the preceding motion, I shall not repeat the arguments here.

*Question on the motion proposed, put and agreed to.*

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

MR JAMES TO moved the following motion:

“That in relation to the -

- (a) Merchant Shipping (Safety) (Musters and Training) (Amendment) Regulation 1995 published as Legal Notice No. 316 of 1995;
- (b) Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation published as Legal Notice No. 317 of 1995;
- (c) Merchant Shipping (Safety) (Carriage of Cargoes) Regulation published as Legal Notice No. 318 of 1995;
- (d) Merchant Shipping (Safety) (Grain) (Amendment) Regulation 1995 published as Legal Notice No. 319 of 1995;

- (e) Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation published as Legal Notice No. 320 of 1995;
- (f) Port Control (Cargo Working Areas) (Amendment) Regulation 1995 published as Legal Notice No. 321 of 1995;
- (g) Official Languages (Alteration of Text) (Companies Ordinance) Order 1995 published as Legal Notice No. 322 of 1995;
- (h) Statutes of the Chinese University of Hong Kong (Amendment) (No. 2) Statute 1995 published as Legal Notice No. 323 of 1995;
- (i) Occupational Retirement Schemes (Amendment) Ordinance 1995 (53 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 324 of 1995;
- (j) Official Languages (Authentic Chinese Text) (Consumer Council Ordinance) Order published as Legal Notice No. (C) 50 of 1995;
- (k) Official Languages (Authentic Chinese Text) (Hong Kong Examinations Authority Ordinance) Order published as Legal Notice No. (C) 51 of 1995; and
- (l) Official Languages (Authentic Chinese Text) (Companies Ordinance) Order published as Legal Notice No. (C) 52 of 1995;

and laid on the table of the Legislative Council on 19 July 1995, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as extended under section 34(3) thereof, be extended under section 34(4) thereof to the third sitting (within the meaning of section 34(6) thereof) of the next session of the Legislative Council.”

MR JAMES TO (in Cantonese): Mr President, I move the third motion standing under my name in the Order Paper.

The subsidiary legislation was presented to this Council on 19 July. I shall not repeat the arguments I advanced earlier when moving the first two motions.

*Question on the motion proposed, put and agreed to.*

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

MR JAMES TO moved the following motion:

“That in relation to the -

- (a) Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 1995 published as Legal Notice No. 325 of 1995;
- (b) Waste Disposal Ordinance (Amendment of Schedules) Notice 1995 published as Legal Notice No. 326 of 1995;
- (c) Insurance Companies (Determination of Long Term Liabilities) Regulation published as Legal Notice No. 327 of 1995;
- (d) Insurance Companies (Margin of Solvency) Regulation published as Legal Notice No. 328 of 1995;
- (e) Motor Vehicles Insurance (Third Party Risks) (Amendment) Regulation 1995 published as Legal Notice No. 329 of 1995;
- (f) Pleasure Grounds (Urban Council) (Amendment) (No. 2) Bylaw 1995 published as Legal Notice No. 339 of 1995;
- (g) Animals and Plants (Protection of Endangered Species) (Exemption) (Amendment) Order 1995 published as Legal Notice No. 340 of 1995;
- (h) Animals and Plants (Protection of Endangered Species) Ordinance (Replacement of Schedules) Notice 1995 published as Legal Notice No. 341 of 1995;
- (i) Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 4) Order 1995 published as Legal Notice No. 342 of 1995;
- (j) Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 5) Order 1995 published as Legal Notice No. 343 of 1995;
- (k) Trade Marks Ordinance (Amendment of Schedule) Order 1995 published as Legal Notice No. 344 of 1995;

- (l) Smoking (Public Health) (Notices) (Amendment) Order 1994 (L.N. 558 of 1994) (Commencement) Notice 1995 published as Legal Notice No. 345 of 1995;
- (m) Pneumoconiosis (Compensation) Appeal Rules published as Legal Notice No. 346 of 1995;
- (n) Trainee Solicitors (Amendment) (No. 2) Rules 1995 published as Legal Notice No. 347 of 1995; and
- (o) Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (L.N. 320 of 1995) (Commencement) Notice 1995 published as Legal Notice No. 352 of 1995;

and laid on the table of the Legislative Council on 26 July 1995, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), as extended under section 34(3) thereof, be extended under section 34(4) thereof to the third sitting (within the meaning of section 34(6) thereof) of the next session of the Legislative Council.”

MR JAMES TO (in Cantonese): Mr President, I move the fourth and last motion standing under my name in the Order Paper.

The subsidiary legislation concerned was laid before this Council on 26 July, that is to say, at the current sitting. I shall not repeat my arguments in this regard.

*Question on the motion proposed, put and agreed to.*

### **HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993**

MRS ELSIE TU moved the following motion:

“That the Standing Orders of the Legislative Council of Hong Kong be amended -

- (1) in the enactment paragraph by repealing “1917 TO 1992” and substituting “1917 TO 1993 (NOS. 1 AND 2)”;



(2) in Standing Order No. 3A -

(a) by adding -

“(3) The person holding the office of President immediately before a dissolution of the Council, or in his absence or inability to act, the person who was last the President’s deputy, shall preside at a sitting of the Council held for the consideration of urgent business during that dissolution and shall be Chairman at a sitting of a committee of the whole Council held in consequence of such a sitting of the Council. If both such persons are absent or unable to act, the person who held office as a Member for the longest continuous period of time immediately before that dissolution, and who is present and able to act, shall preside.”;

(b) by repealing paragraph (7) and substituting -

“(7) Subject to clause XXI of the Royal Instructions and these Standing Orders the House Committee shall determine the procedures for all matters relating to the election of the President.”.”

MRS ELSIE TU: Mr President, I move the motion standing in my name on the Order Paper.

Earlier in the Session, the House Committee endorsed the proposal by the Subcommittee on Procedural Matters on a package of amendments to the Standing Orders. The two draft resolutions to give effect to these amendments were endorsed by the House Committee on 7 July 1995. The Administration has been consulted and has indicated support for the amendments before us.

The review of the Standing Orders leading to these amendment has focused on:

- (a) making necessary changes due to the abolition of the three *ex officio* seats after the 1995 Legislative Council elections. The Administration’s role in conducting government business in the Council and its committees will, however, be preserved;
- (b) making necessary changes to reflect the absence of Appointed Members after the 1995 Legislative Council elections;
- (c) making necessary changes to provide for the smooth conduct of the business of the Council and its committees; and

- (d) making technical amendments to achieve consistency in usage, to enhance clarity and to update the Standing Orders to reflect current practices.”

I should like to say a few words on the amendments proposed in this resolution.

*Proposed new paragraph (3) in Standing Order No. 3A*

The Standing Orders are silent on who should preside over the Council if it should turn out to be necessary for the Governor to appoint, under the Royal Instructions, a sitting during dissolution to consider any urgent business. This new paragraph gives certainty in the arrangements by providing that the President immediately before a dissolution of the Council shall preside. If he is absent, the former President's deputy shall preside. Should both of them be absent, then the Member who has had the longest continuous service in the Council shall preside.

I believe it would be right for me to mention here, for the record, that the Governor has acceded to the House Committee's request that, if an urgent sitting of this Council were called after the coming dissolution, he would re-appoint as Members all those persons who were Appointed Members of the Council before the dissolution, and no one else.

*Proposed replacement paragraph (7) in Standing Order No. 3A*

You were elected to your present office, Mr President, by a procedure which has been agreed by the House Committee in January 1993. In reviewing the Standing Orders, the House Committee has reaffirmed this procedure, which is that the election of the President of this Council should be conducted at a sitting of the Council; that nominations for the office, each subscribed by one Member and seconded by at least three others, should reach the Clerk in the prescribed forms at least four clear days before the day of the election to enable the Clerk to notify all Members; and that, if there are two or more valid candidates for the office, a secret ballot will be conducted and the candidate who receives the highest votes shall be declared elected.

Members have also decided that the Standing Order should formally empower the House Committee to determine the procedures for all matters relating to the election; hence the proposed replacement paragraph (7).

If this amendment is passed today, the House Committee will determine the procedure later this week (if we are not required to do so, next week) to enable the election to take place at the first sitting of the new Council in October.

Members will understand, therefore, that there is a time element in this motion. That is why I am proposing that the amendments shall take immediate effect if the Council approves it.

With these remarks, Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

## **HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993**

MRS ELSIE TU moved the following motion:

“That with effect from 17 September 1995 the Standing Orders of the Legislative Council of Hong Kong be amended -

- (1) in Standing Order No. 2 by repealing paragraph (5);
- (2) in Standing Order No. 3 -
  - (a) in paragraph (2)(b) by repealing “(other than an ex officio Member)”;
  - (b) in paragraph (2A) by adding “(Oath or Affirmation)” after “Standing Order No. 1”;
- (3) in Standing Order No. 3A(1) by repealing “excluding the ex officio Members”;
- (4) in Standing Order No. 3B(1) and (2) by adding “(House Committee)” after “Standing Order No. 60C(2)”;
- (5) in Standing Order No. 4 -
  - (a) in paragraph (2) by adding “and public officers acting in the course of their duties relevant to Council business” after “Members”;
  - (b) in paragraph (4) by repealing “of the Council” and substituting “and public officers acting in the course of their duties relevant to Council business”;

- (6) in Standing Order No. 4B -
- (a) in paragraph (1) by adding “, under the power conferred on him by clause XXIB(2) of the Royal Instructions,” after “may”;
  - (b) in paragraphs (2) and (3) by repealing “designated under paragraph (1) of this order” and substituting “so designated by the Governor”;
- (7) in Standing Order No. 4C -
- (a) in paragraph (1) by adding “and a public officer who has notified the Clerk before the sitting that his attendance is required in respect of a particular item of business” after “a sitting”;
  - (b) in paragraph (2) -
    - (i) by adding “4AA (Attendance of the Governor),” before “10”;
    - (ii) by repealing “paragraph (a) of Standing Order No. 29 (Interruptions), and”;
    - (iii) by adding “and Standing Order No. 60(2) and (4) (Finance Committee)” after “(Voting)”;
    - (iv) by repealing “as they apply to a Member who is an *ex officio* Member.” and substituting -

“as they apply to a Member:

Provided that paragraph (a) of Standing Order No. 29 (Interruptions) shall apply to a public officer only in relation to the item of business in respect of which he attends a sitting.”;

(c) by adding -

“(3) Subject to clause XXIB(2) of the Royal Instructions, the Chief Secretary, the Financial Secretary and the Attorney General may attend any sitting of the Council, committees of the whole Council and other committees and subcommittees, and when attending sittings of the Council or committees of the whole Council these Standing Orders, except Standing Orders Nos. 1 (Oath or Affirmation), 3 (Presiding in Council and in Committee of the whole Council), 4AA (Attendance of the Governor), 4B (Attendance of Public Officers), 6(1) (Proceedings at First Sitting of Session), 10 (Quorum), 13 (Presentation of Petitions), and the Standing Orders in Part J (Voting), shall apply to them as they apply to a Member.”;

(8) by repealing Standing Order No. 6(2) and substituting -

“(2) Subject to paragraph (7) of this order, the Governor, if he so wishes, shall address the Council at the first sitting of a session.”;

(9) in Standing Order No. 7 -

(a) in paragraph (1) by adding at the end “; except that the first sitting of a term of the Council shall be held on the date appointed by the Governor for the commencement of the first session of that term”;

(b) in paragraph (2) -

(i) by adding “and sittings held within 14 clear days of the commencement of the first session of a term of the Council” after “session”;

(ii) by adding “and sittings held for the purposes of Standing Order No. 4AA (Attendance of the Governor)” after “emergency”;

- (10) in Standing Order No. 8 -
- (a) in paragraph (1) by adding “; except that the first sitting of a term of the Council shall begin at 10.00 a.m.” after “2.30 p.m.”.
  - (b) by repealing paragraphs (2), (3) and (4);
- (11) in Standing Order No. 9 -
- (a) in paragraph (2) by repealing “It shall be moved by an ex officio Member, save that a Member other than an ex officio Member may move such a motion” and substituting “It may be moved by a Member or any designated public officer attending the sitting”;
  - (b) by repealing paragraphs (4) and (5) and substituting -
    - “(4) At the conclusion of all the business on the Order Paper a Member may move that this Council do now adjourn, for the purpose of raising any public matter for which the Government is responsible, with a view to eliciting a reply from a designated public officer.”;
  - (c) in paragraph (6) -
    - (i) by repealing “raise a matter under the provisions of paragraph (5)” and substituting “move a motion under the provisions of paragraph (4)”;
    - (ii) by repealing “President” where it first appears and substituting “Clerk”;
  - (d) by repealing paragraph (6A);
  - (e) in paragraph (7) by repealing “an ex officio Member” where it twice appears and substituting “a designated public officer”;
  - (f) in paragraph (8) by repealing everything after “question” and substituting a full stop;

- (12) in Standing Order No. 11(1) -
- (a) by repealing “the first sitting of a session,”;
  - (b) by adding “(Attendance of the Governor), Standing Order No. 6 (Proceedings at First Sitting of Session)” after “Standing Order No. 4AA”;
  - (c) in subparagraph (f) by repealing “ex officio Members” and substituting “designated public officers”;
  - (d) by adding -
    - “(ia) Requests for leave under Standing Order No. 67A (Procedure for Obtaining Leave for Member to Attend as Witness in Civil Proceedings) and Standing Order No. 67B (Procedure for Obtaining Leave to Give Evidence of Council Proceedings).”.
  - (e) by repealing subparagraph (j) and substituting -
    - “(j) Proceedings under Standing Order No. 9(4) (Motions for the Adjournment of the Council).”;
  - (f) by repealing subparagraph (k);
- (13) in Standing Order No. 11(2) -
- (a) by adding “(aa),” after “(a),”.
  - (b) by repealing “(e),”.
  - (c) by repealing “, (g) and (h)” and substituting “and (g)”;
- (14) in Standing Order No. 12 -
- (a) in paragraph (2) by repealing “paragraphs (1) and (2) of Standing Order No. 19” and substituting “Standing Order No. 19(1) and (2)”;
  - (b) in paragraph (3) by repealing “ex officio Members or” and “other than ex officio Members”;

- (c) by repealing paragraph (4) and substituting -

“(4) This Standing Order does not apply to a sitting under Standing Order No. 4AA (Attendance of the Governor), Standing Order No. 6 (Proceedings at First Sitting of Session) or a sitting to elect the President.”;

- (15) in Standing Order No. 14 -

- (a) in paragraph (1) -

(i) by repealing “by an ex officio Member” and substituting “by a designated public officer”;

(ii) by repealing “other than an ex officio Member”;

- (b) in paragraph (2) by adding “or a designated public officer” after “Member” where it first appears;

- (c) in paragraph (3) by adding “or the designated public officer” after “Member”;

- (d) by repealing paragraph (4) and substituting -

“(4) A Member or a designated public officer may, with the consent of the President, address the Council on subsidiary legislation laid on the Table of the Council, provided that the period (or any extended period) under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) for amendment of the subsidiary legislation has not expired. A Member or a designated public officer who wishes to address the Council under this paragraph at any sitting shall inform the President of his wish before the beginning of that sitting.”;

- (e) in paragraph (5) -

(i) by adding “or a designated public officer” after “Member” where it first appears;



- (ii) by adding “or the designated public officer” after “Member” where it appears for the second and third times;
- (16) in Standing Order No. 15(1) by repealing “other than an ex officio Member”;
- (17) in Standing Order No. 16 -
- (a) in paragraphs (2) and (3) by repealing “in the order in which notice is delivered under Standing Order No. 17(2)” and substituting “in the manner recommended by the House Committee and agreed by the President”;
  - (b) by adding -
    - “(3A) The House Committee may recommend to the President that in respect of a particular sitting no question requiring an oral reply should be asked; and if the President accepts such recommendation no such question shall be asked at that sitting, save that the President may permit urgent questions under the provisions of Standing Order No. 17(4).”.
- (18) in Standing Order No. 17(2) by adding at the end “; provided that for questions requiring an answer at the second sitting of the first session of a term the period of notice shall be not less than 4 clear days”;
- (19) in Standing Order No. 18(1)(j) by repealing “paragraphs (7) and (8) of Standing Order No. 31” and substituting “Standing Order No. 31(7) and (8)”;
- (20) in Standing Order No. 19 -
- (a) in paragraph (2) by repealing “paragraph 2 of Standing Order No. 16” and substituting “Standing Order No. 16(2)”;
  - (b) in paragraph (3) by repealing “ex officio Member” and substituting “designated public officer”;
  - (c) in paragraph (6) by repealing everything after “consent” and substituting “either be asked by another Member or be treated as a question seeking a written answer; or’ otherwise shall be deemed to be withdrawn.”.

(d) by repealing paragraph (8) and substituting -

“(8) A Member who has given notice of a question may withdraw the question -

- (a) by giving notice in writing to the Clerk at any time before the sitting at which the question is to be asked (whether or not the question is already on the Order Paper); or
- (b) by informing the President orally during question time at the sitting that he withdraws the question.”;

(21) in Standing Order No. 19A -

- (a) by adding “(Contents of Questions)” after “No. 18”;
- (b) by adding “(Attendance of the Governor)” after “No. 4AA”;

(22) in Standing Order No. 20 -

- (a) in the heading by repealing “ex officio Members” and substituting “designated public officers”;
- (b) in paragraph (1) by repealing “An ex officio Member” and substituting “A designated public officer”;
- (c) in paragraph (2) by repealing “Member” and substituting “public officer”;

(23) in Standing Order No. 21 by adding -

“(1A) No motion to amend subsidiary legislation which is subject to the provisions of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall be moved in Council unless notice of it has been given not less than five clear days before the day on which the motion is to be considered by the Council:

Provided that the President may in his discretion dispense with such notice.

(1B) No motion to extend the period referred to in section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to subsidiary legislation shall be moved in Council unless notice of it has been given not less than three clear days before the day on which the motion is to be considered by the Council:

Provided that the President may in his discretion dispense with such notice.

(1C) The notice period required for any amendment to a motion referred to in paragraph (1A) or (1B) shall be decided by the President according to his discretion.”.

- (24) by repealing Standing Order No. 22(1B) and (3);
- (25) in Standing Order No. 23(b) by adding “(Attendance of Public Officers)” after “No. 4B”;
- (26) by adding -

**“23A. Motions on Previous Decisions of Council**

Where the Council has taken a decision on a specific question no further motion shall be moved in relation to that question during the current session except a substantive motion to rescind the decision, moved with the permission of the President.”;

- (27) in Standing Order No. 24 -
  - (a) in paragraph (3) by repealing “paragraph (2)(a) or (2)(b) of Standing Order No. 21” and substituting “Standing Order No. 21(2)(a) or (b)”;
  - (b) in paragraph (4) by repealing “as amended” and substituting “, or on the motion as amended,”;
- (28) in Standing Order No. 27 -
  - (a) in paragraphs (3) and (4) by adding “or raise their hands” after “rise”;

- (b) in paragraph (5) -
  - (i) by adding “(Recommendations of House Committee as to time of Speaking)” after “No. 27A”;
  - (ii) by repealing “other than an ex officio Member,”;
  - (iii) by adding “or the Chairman” after “President”;
- (c) by adding -
  - “(6) The restriction on speaking time referred to in paragraph (5) shall not apply to designated public officers.”;
- (29) in Standing Order No. 27A -
  - (a) in paragraph (1) by repealing “(other than a motion or amendment to a motion on a Bill)” and substituting “(other than a motion intended to have legislative effect)”;
  - (b) in paragraph (1)(a) by adding “(Occasions where a Member may speak more than once)” after “No. 28(3)”;
  - (c) in paragraph (1)(c) by repealing “(except ex officio Members)”;
  - (d) in paragraph (3) by repealing “other than ex officio Members” and substituting “, but not upon designated public officers,”;
- (30) in Standing Order No. 28 -
  - (a) in paragraphs (1)(a) and (5) by adding “of the whole Council” after “committee”;
  - (b) in paragraph (6) by repealing “An ex officio Member” and substituting “A designated public officer”;
- (31) in Standing Order No. 29(b) by repealing “elucidate” and substituting “seek elucidation of”;

(32) in Standing Order No. 30 -

- (a) in paragraph (3) by repealing “an ex officio Member” and substituting “a designated public officer”;
- (b) by adding -

“(6) A debate adjourned under the provisions of paragraph (2) of this order may be resumed at a subsequent sitting of the Council provided that the Member or public officer who moved the motion for that debate, or in the case of a debate on a bill, the Member or public officer in charge of the bill, shall give notice in writing to the Clerk of his intention to resume the debate not less than five clear days before the day on which the debate is to be resumed:

Provided that the President may in his discretion dispense with such notice.

(7) Proceedings of a committee of the whole Council adjourned under the provisions of paragraph (4) of this order may be resumed at a subsequent sitting of the committee provided that the Member or public officer in charge of the bill to which the adjourned proceedings relate shall give notice in writing to the Clerk of his intention to resume the proceedings not less than five clear days before the day on which the proceedings are to be resumed:

Provided that the Chairman may in his discretion dispense with such notice.

(8) The provisions of paragraphs (1), (2), (3), (4) and (5) of this order shall apply to any debate or proceedings resumed under the provisions of paragraphs (6) and (7).”;

(33) in Standing Order No. 31(3) -

- (a) by adding “in debate” after “except”;
- (b) by repealing “made” and substituting “moved”;

- (34) in Standing Order No. 32 by adding “of the Council” after “sitting”;
- (35) in Standing Order No. 35(2) by repealing “other Member presiding” and substituting “Chairman”;
- (36) in Standing Order No. 36A by adding “of the whole Council” after “committee”;
- (37) in Standing Order No. 37(1) by adding “(Use of Electronic Voting System)” after “Standing Order No. 36A”;
- (38) in Standing Order No. 39 -
  - (a) in paragraph (1) -
    - (i) by adding “or a designated public officer” after “Member” where it first and secondly appears;
    - (ii) by repealing “other than an ex officio Member”;
  - (b) in paragraph (1A) by repealing “other than an ex officio Member”;
  - (c) in paragraph 2 -
    - (i) by adding “object or” after “any”;
    - (ii) by repealing “(Motion and Amendments requiring Recommendation)” and substituting “(Restriction on Motions and Amendments)”;
    - (iii) by repealing “recommendation” and substituting “authorization or permission”;
  - (d) in paragraph (3) -
    - (i) by repealing “other than an ex officio Member”;
    - (ii) by repealing “effect” and substituting “intention”;
    - (iii) by repealing “paragraph (7) of Standing Order No. 38” and substituting “Standing Order No. 38(7)”;

- (e) by adding -
- “(3A) (a) A bill which, in the opinion of the President, contains substantially the same provisions as another bill on which the Council has already taken a decision at second reading shall not be further proceeded with in the same session and shall be withdrawn.
  - (b) If a bill which has been read for the second time is subsequently withdrawn another bill with substantially the same provisions may be presented in the same session, subject to the provisions of Standing Order No. 38 (Form of Bills), this Order and Standing Order No. 40 (Presentation and Publication of Bills).”;
- (39) in Standing Order No. 40(1)(b) by repealing “paragraph (3) of Standing Order No. 39” and substituting “Standing Order No. 39(3) (Notice of Presentation of Bills)”;
- (40) in Standing Order No. 41(1) by repealing “paragraph 2 of Standing Order No. 40” and substituting “Standing Order No. 40(2)”;
- (41) in Standing Order No. 42 -
- (a) in paragraph (1) -
    - (i) by adding “presented by a Member” after “bill” where it first appears;
    - (ii) by adding “object or” after “any”;
    - (iii) by repealing “(Motion and Amendments requiring Recommendation)” and substituting “(Restriction on Motions and Amendments)”;
    - (iv) by repealing “recommendation” where it twice appears and substituting “authorization or permission”;

- (v) by repealing “an ex officio Member” and substituting “a designated public officer”;
- (b) in paragraph (2) by repealing “recommendation” and substituting “authorization or permission”;
- (c) by repealing paragraph (3B) and substituting -

“(3B) When a debate has been adjourned under paragraph (3A), it may be resumed on notice by the Member or public officer in charge of the bill, given by him in writing delivered to the office of the Clerk, after consultation with the chairman of the House Committee, subject to the following -

- (a) subject to subparagraphs (b) and (c), resumption of debate shall not take place earlier than 9 clear days after the sitting of House Committee at which the bill was considered in preparation for resumption of debate;
- (b) if at the sitting of House Committee to consider the bill in preparation for resumption of debate the committee recommends a period longer than 9 clear days before resumption then resumption shall not take place earlier than 12 clear days after that sitting;
- (c) if at the sitting of House Committee to consider the bill in preparation for resumption of debate the committee recommends that the second reading debate be resumed at the next



sitting of the Council then resumption may take place at that sitting with the permission of the President;

- (d) notice of resumption of debate shall be given by the Member or public officer in charge of the bill as soon as possible after the relevant sitting of House Committee, and, where subparagraph (a) applies, shall be given no later than 2 clear days after the relevant House Committee sitting.”;
- (42) in Standing Order No. 43(3) by repealing “paragraph (2) of Standing Order No. 62” and substituting “Standing Order No. 62(2)”;
- (43) in Standing Order No. 45(6)(b) by adding “(Attendance of Public Officers)” after “No. 4B”;
- (44) in Standing Order No. 46 -
  - (a) in paragraph (1) by repealing “Committee” and substituting “a committee”;
  - (b) in paragraph (9A) -
    - (i) by adding “or to any number” after “year” where it first appears;
    - (ii) by repealing “that” and substituting “any such”;
    - (iii) by adding “, or to reflect the order,” after “year” where it secondly appears;
- (45) in Standing Order No. 48(3) by repealing “Chairman” and substituting “chairman”;

(46) by repealing Standing Order No. 52 and substituting -

**“52. Withdrawal or postponement of Bills**

The Member or public officer in charge of a bill may, by announcement in Council at the beginning of proceedings for its second or third reading, withdraw or postpone the bill.”;

(47) in Standing Order No. 54(3) by adding “(Finance Committee)” after “No. 60(9)”;

(48) in Standing Order No. 55(6) by repealing “an ex officio Member” and substituting “a designated public officer”;

(49) in Standing Order No. 56 -

(a) in paragraph (1) -

(i) by repealing “an ex officio Member” and substituting “a designated public officer”;

(ii) by repealing “recommendation” and substituting “authorization or permission”;

(b) in paragraph (10) by repealing “paragraph (3) of Standing Order No. 55” and substituting “Standing Order No. 55(3)”;

(50) by repealing Standing Order No. 58;

(51) by repealing Standing Order No. 59;

(52) in Standing Order No. 60 -

(a) in paragraph (1) by repealing “and the Attorney General”;

(b) in paragraph (2) by repealing “other than the ex officio Members” and “other than an ex officio Member”;

(c) in paragraph (2A) by repealing “the Committee” and substituting “the committee”;

(d) in paragraph (3) by repealing everything after “directs.”;

(e) by adding -

“(3A) Sitings shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee.”;

(f) in paragraph (4) by repealing “other than ex officio Members” and “but no ex officio Members shall have a vote”;

(g) in paragraph (4A) -

(i) by repealing “, other than ex officio Members,”;

(ii) by repealing everything after “to the chairman.” and substituting “If a majority of the members so signify before the expiry of the period specified by the chairman for the purpose, and if upon expiry of that period no member has (in writing submitted to the chairman) signified disapproval of the matter or requested that the matter be referred for decision at a sitting of the committee, it shall be deemed to be approved by the committee.”;

(h) by repealing paragraph (5) and substituting -

“(5) The clerk to the committee appointed under Standing Order No. 4(6) (Duties of the Clerk) shall attend the sittings of the committee. He shall keep the minutes of the proceedings of the committee in a manner determined by the committee.”;

(i) by repealing paragraphs (6), (7) and (8);

(j) in paragraph (10) -

(i) by repealing “Committee” wherever it appears and substituting “committee”;

(ii) by repealing “call” where it twice appears and substituting “invite”;

- (iii) by repealing “servant” and substituting “employee”;
    - (iv) by repealing “their” and substituting “its”;
  - (k) in paragraph (10) by adding “and its subcommittees” after “of the committee”;
- (53) in Standing Order No. 60A -
  - (a) in paragraphs (1)(b) and (c) and (1A) by repealing “Committee” and substituting “committee”;
  - (b) by repealing paragraphs (2) and (3) and substituting -

“(2) The committee shall consist of a chairman and six members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. The chairman and two other members shall constitute a quorum. In the event of the temporary absence of the chairman, the committee may elect a chairman to act during that absence.

(3) A report mentioned in paragraphs (1) and (1A) of this order shall be deemed to have been referred by the Council to the committee when it is laid on the Table of the Council.”
  - (c) in paragraph (3A) -
    - (i) by repealing “directs” and substituting “orders”;
    - (ii) by repealing “meetings” and substituting “sittings”;
    - (iii) by repealing “Committee” where it twice appears and substituting “committee”;
    - (iv) by repealing “called” and substituting “invited”;

(d) by adding -

“(3B) The committee shall sit at the times and the place determined by the chairman. Written notice of every sitting shall be given to the members and to any person invited to attend a sitting at least five clear days before the day of the sitting but shorter notice may be given in any case where the chairman so directs.

(3C) All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.”.

(e) in paragraph (4) -

(i) by repealing “Committee” wherever it appears and substituting “committee”;

(ii) by repealing “call” where it twice appears and substituting “invite”;

(iii) by repealing “servant” and substituting “employee”;

(iv) by repealing “their” and substituting “its”;

(f) in paragraphs (5), (5A) and (6) by repealing “Committee” wherever it appears and substituting “committee”;

(54) in Standing Order No. 60B -

(a) by repealing paragraph (2) and substituting -

“(2) The committee shall consist of a chairman and six members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. The chairman and two other members shall constitute a quorum. In the event of the temporary absence of the chairman, the committee may elect a chairman to act during that absence.”;

- (b) in paragraph (3) by adding at the end “but the shorter notice may be given in any case where chairman so directs”;
  - (c) in paragraph (5) -
    - (i) by repealing the first sentence;
    - (ii) by adding “or other member presiding” after “chairman”;
  - (d) in paragraph (6) by repealing “call” and substituting “invite”;
- (55) in Standing Order No. 60C -
- (a) in paragraph (1) by repealing “and ex officio Members”;
  - (b) in paragraph (2) by adding “by the committee” after “be elected”;
  - (c) in paragraphs (3) and (4) by adding “(Second Reading)” after “No. 42(3A)”;
  - (d) in paragraph (6) by repealing “and the ex officio members”;
  - (e) in paragraph (7) by adding “(Panels)” after “No. 60E”;
  - (f) by repealing paragraph (11A);
  - (g) in paragraph (11B) by adding “(Panels)” after “No. 60E”;
  - (h) in paragraph (12) by repealing the last sentence;
  - (i) by adding -
    - “(12A) Sitings of the committe shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee.”;

- (j) in paragraph (13) by repealing “, the deputy chairman”;
  - (k) in paragraph (14) by repealing everything after “to the chairman.” and substituting “If a majority of the members so signify before the expiry of the period specified by the chairman for the purpose, and if upon expiry of that period no member has (in writing submitted to the chairman) signified disapproval of the matter or requested that the matter be referred for decision at a sitting of the committee, it shall be deemed to be approved by the committee.”;
  - (l) in paragraph (16) by repealing “call” and substituting “order”;
  - (m) in paragraph (17) by adding “and its subcommittees” after “committee” where it first appears;
- (56) in Standing Order No. 60D -
- (a) in paragraph (3A) by repealing “Committee” where it secondly appears and substituting “committee”;
  - (b) in paragraph (7) by adding “or any other member presiding” after “chairman”;
  - (c) in paragraph (10) by repealing “call” and substituting “order”;
  - (d) in paragraph (11) -
    - (i) by adding “and its subcommittees” after “Committee” where it first appears;
    - (ii) by adding “(House Committee)” after “No. 60C(7)”;
- (57) in Standing Order No. 60E -
- (a) in paragraph (4) by repealing “and the ex officio Members”;
  - (b) in paragraph (5) by adding “In the event of the temporary absence of the chairman or any deputy chairman the Panel may elect a chairman to act during such absence.” after the first sentence;

- (c) in paragraph (9) by repealing “form” and substituting “appoint”;
  - (d) in paragraph (10) by adding at the end “The quorum of a joint sitting shall be one third of the members of all the relevant panels or subcommittees including the chairman (a fraction of the whole number being disregarded). All matters for decision at a joint sitting shall be decided by a majority of the members voting. The chairman shall, if the votes be equally divided, have a casting vote in addition to his original vote.”;
  - (e) in paragraph (11) by repealing “and its subcommittee” and “or its subcommittee, as the case may be”;
  - (f) in paragraph (12) by repealing “or its subcommittee, as the case may be”;
  - (g) in paragraph (13) by adding “or any other member presiding” after “chairman”;
  - (h) in paragraph (15) -
    - (i) by repealing “or its subcommittee”;
    - (ii) by repealing “call” and substituting “order”;
  - (i) in paragraph (16) by adding “(House Committee)” after “No. 60C(7)”;
- (58) in Standing Order No. 61 -
- (a) in paragraph (2) -
    - (i) by repealing “nominate” and substituting “appoint”;
    - (ii) by adding at the end “, taking into account the recommendations of the House Committee”;
  - (b) in paragraph (4) -
    - (i) by repealing “they” wherever it appears and substituting “it”;



- (ii) by repealing “have” and substituting “has”;
  - (iii) by repealing “them” and substituting “it”;
  - (iv) by repealing “are” and substituting “is”;
- (59) in Standing Order No. 62 -
- (a) in paragraph (1) by repealing “them” where it twice appears and substituting “it”;
  - (b) in paragraph (2) by repealing the second sentence and substituting “The sittings of a select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the committee.”;
  - (c) by repealing paragraph (3) and substituting -
    - “(3) In the event of the temporary absence of the chairman the committee may elect a chairman to act during such absence.”;
  - (d) in paragraph (4) by repealing “paragraph (6) of Standing Order No. 4” and substituting “Standing Order No. 4(6);
  - (e) in paragraph (6) by repealing “give” and substituting “have”;
  - (f) in paragraph (8) by repealing “they think” and substituting “it thinks”;
  - (g) in paragraph (11) by repealing “call” and substituting “order”;
- (60) in Standing Order No. 63 -
- (a) by repealing “have” and substituting “has”;
  - (b) by repealing “their” and substituting “its”;
- (61) in Standing Order No. 64 by repealing “or a committee thereof” and substituting “or any committee or subcommittee”;
- (62) in Standing Order No. 64A(1A) by repealing “or appointment”;

- (63) in Standing Order No. 65 -
- (a) in paragraphs (2) and (3) by repealing “or Chairman” and substituting “, Chairman of a committee of the whole Council or chairman”;
  - (b) in paragraph (5) -
    - (i) by repealing “or Chairman” and substituting “, Chairman of a committee of the whole Council or chairman”;
    - (ii) by adding “to the Legislative Council or the clerk” after “the Clerk”;
- (64) in Standing Order No. 65A -
- (a) by adding “(Registration of Interests)” after “No. 64A”;
  - (b) by adding “(Personal Pecuniary Interest to be Disclosed)” after “65(1), (1A) or (1B)”;
- (65) by adding -
- “66A. Disorderly conduct**
- The President, Chairman of a committee of the whole Council or chairman of a committee or subcommittee may order the removal from a sitting of any member of the public or of the press who behaves, or who appears likely to behave, in a disorderly manner.”.
- (66) in Standing Order No. 67 -
- (a) in paragraph (1) -
    - (i) by repealing “A Member” and substituting “At a sitting of the Council, a committee of the whole Council, a committee or a subcommittee a Member”;
    - (ii) by repealing “or Chairman” and substituting “, Chairman or chairman”;
    - (iii) by repealing “or committee” and substituting “, committee or subcommittee”;

- (b) in paragraph (3) -
  - (i) by repealing “or committee” and substituting “or a committee or subcommittee”;
  - (ii) by repealing “and the Clerk” and substituting “or the committee room in which the committee or subcommittee is sitting, and the Clerk or clerk”;
- (67) in Standing Order No. 67A(2) by repealing “moved” and substituting “which may be moved without notice”;
- (68) in Standing Order No. 67B -
  - (a) in paragraph (1) by repealing “a committee,” where it twice appears and substituting “a committee or subcommittee,”;
  - (b) in paragraph (2) by repealing “moved” and substituting “which may be moved without notice”;
- (69) in Standing Order No. 70 -
  - (a) in paragraph (a) by adding “, electronic” after “electrical”;
  - (b) in paragraph (b) by repealing “a sitting” and substituting “the relevant sitting”;
  - (c) by adding -
    - “(c) “designated public officer” means a public officer designated by the Governor under clause XXIB(2) of the Royal Instructions.”.”

MRS ELSIE TU: Mr President, a moment ago I gave an account of the background to the two resolutions I propose for approval by this Council today.

I should now go straight to highlighting the more significant amendments proposed in this resolution.

*Proposed new paragraph (3) in Standing Order No. 4C*

The new paragraph preserves the present position in respect of the attendance of the Chief Secretary, the Financial Secretary and the Attorney General at any sitting of the Council, committees of the whole Council, and other committees. When attending these sittings, the Standing Orders, with some exceptions, shall apply to them as they apply to Members.

*Proposed new Standing Order No. 23A*

This clarifies the position that, where the Council has taken a decision on a specific question, no further motion shall be moved in relation to that question during the same Session. However, with the permission of the President, a substantive motion to rescind that decision may be moved.

*Proposed amendment to Standing Order No. 27(5)*

The amendment clarifies that while a Member may speak more than once in Committee of the whole Council, each speech must not last for more than 15 minutes unless the Chairman gives permission in exceptional circumstances.

*Proposed new paragraphs (6) to (8) in Standing Order No. 30*

These provide a mechanism for the Member or public officer in charge to resume a debate or committee proceedings adjourned under this Standing Order.

*Proposed new paragraph (3A) in Standing Order No. 39*

The new paragraph stipulates that it is for the President to decide whether a Bill intended for introduction contains substantially the same provisions as another bill on which the Council has already taken a decision at Second Reading. If so, the intended bill shall not be further proceeded with in the same Session and shall be withdrawn. However, if a bill which has been read for the Second time is subsequently withdrawn, another bill with substantially the same provisions may be presented in the same Session.

*Proposed replacement paragraph (3B) in Standing Order No. 42*

This provides for flexibility in the resumption of Second Reading debates or straightforward bills, while ensuring that as much notice as possible is given to Members in controversial or complex cases.

In the case of straightforward bills, the resumption may take place at the second regular Council sitting after the meeting of House Committee at which the bill has been considered. If the House Committee recommends a longer period, then the resumption shall not take place earlier than the third regular sitting of the Council following the relevant meeting of the House Committee.

Mr President, I could go on and on but it would not make me too popular as Members will all have studied the proposals for which they have indicated support. Suffice it to say that the amendments in front of us have not been proposed and agreed lightly. A great deal of effort has been put in by the Legislative Council Secretariat in bringing us to where we are. I would like to pay special tribute to the staff servicing the Subcommittee on Procedural Matters who had the foresight 18 months ago to embark on the review project to set the ball rolling to its goal today. We are also indebted to the Legal Adviser who, amid the hustle and bustle of this Council towards the end of this term but with his usual distinguished professionalism and dedication, has drafted the amendments to enable this Council to give effect to the agreed proposals.

Mr President, I move that the resolution be approved.

*Question on the motion proposed, put and agreed to.*

## **PRIVATE MEMBER'S BILLS**

### **First Reading of Bill**

#### **HONG KONG SHENG KUNG HUI BILL**

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

### **Second Reading of Bill**

#### **HONG KONG SHENG KUNG HUI BILL**

MR TIMOTHY HA moved the Second Reading of: "A Bill to incorporate the Province of the Hong Kong Sheng Kung Hui as a body corporate under the name of the Hong Kong Sheng Kung Hui and to provide for the constituents and certain powers and duties of the Hong Kong Sheng Kung Hui and for incidental matters."

MR TIMOTHY HA: Mr President, I move the Hong Kong Sheng Kung Hui Bill be read the Second time.

As a member of the Standing Committee of the Synod of the Diocese of Hong Kong and Macau of the Sheng Kung Hui, it is my privilege and pleasure to be given the honour of promoting three private bills at today's sitting for the incorporation of the three new bodies of the Anglican Church in Hong Kong and Macau. These three bodies will be known as the Hong Kong Sheng Kung Hui, the Church Body of the Hong Kong Sheng Kung Hui and the Hong Kong Sheng Kung Hui Foundation. I shall speak on the background of the three Bills and on this reading relating to the Hong Kong Sheng Kung Hui Bill. I shall then move the other two Bills in turn.

The Anglican Church has been operating under a peculiar structure which is the legacy of history. The developments of the Church in recent years necessitate a review of such structure; resulting in the Synod of the Church resolving to establish the Province of Hong Kong Sheng Kung Hui. With the establishment of such province, the Church in Hong Kong will be able to affiliate directly to the worldwide Anglican body known as the Anglican Consultative Council. These three bodies to be incorporated under the three Bills will form the major structure of the Province.

Existing parishes of the Anglican Church in Hong Kong will be grouped into three new dioceses, namely, the Diocese of Hong Kong, the Diocese of Eastern Kowloon and the Diocese of Western Kowloon. The parishes in Macau will be grouped into a Missionary Area and will be affiliated as such to the Province.

Upon the establishment of the Province, the Church will have a structure which is in line with its counterparts in other parts of the world. Besides, this new structure will inevitably be facilitating growth and new developments of the Church.

The Hong Kong Sheng Kung Hui Bill will be conferring corporate status on the Province of the Hong Kong Sheng Kung Hui and it will provide for the constituents and powers as well as duties of the Province. The Ordinance enacted will come into effect on a date to be appointed by the Secretary for Home Affairs upon the completion of the process of establishing the Province.

I am also pleased to confirm that the three Bills, if passed, will be the subject of report and discussion at the next Ordinary Meeting of the Diocesan Synod, and all views will be considered and dealt with according to established procedure.

I am most grateful to you and my colleagues for supporting this Bill, as well as the later two Bills, to go through three readings at this sitting, which will be the last sitting of this current Session.

Mr President, I move under Standing Order 42(3A) that the Second Reading debate on this Bill shall not be adjourned and the debate be proceeded with now.

*Question on the motion proposed.*

REV FUNG CHI-WOOD (in Cantonese): Mr President, I have been a minister of the Hong Kong Sheng Kung Hui since 1982. In 1986 I took part in the Hong Kong campaign against the building of the Daya Bay Nuclear Power Plant. Since then, in terms of social participation, I have been taking a different line from that espoused by the central policy makers of Sheng Kung Hui. As a matter of fact, Anglican bodies all over the world participate in social and world affairs in different ways. The Anglican Church of England has a department charged with the exclusive responsibility of monitoring social and national affairs. On the global front, the Anglican Consultative Council convenes a general meeting once every four years. The meeting adopts clear and definite resolutions with regard to the issues of war, human rights and environmental protection and makes unequivocal pleas to society and Anglican bodies all over the world. Therefore, my social participation is part of the important tradition and mission of the Anglican Communion. Members of the Hong Kong Sheng Kung Hui take issue with me for openly criticizing my own church, but I feel the church should instead conduct a self-examination in respect of the views that it expresses.

MR ROGER LUK: A point of order, Mr President, I want to clarify are we debating on the motion that the Second Reading should proceed? We are not in the Second Reading debate.

PRESIDENT: The matter before Council is the proposal that the Second Reading debate shall not be adjourned and Rev FUNG, as I understand, is opposing the motion and I am sure he will explain why.

REV FUNG CHI-WOOD (in Cantonese): Mr President, I thank you for your ruling.

Mr President, with regard to criticism, I think one will have to find out if one's critics are levelling criticism out of malice or good intention. If it is out of good intention, then the party being criticized will have to do a self-examination. The Bible teaches us to tell the truth out of love and charity. I believe I made my comments in good faith and out of love. As a clergyman, I should tell what I truly believe on appropriate occasions and at the appropriate time. As a legislator, I should do the same.

Mr President, four years ago the Hong Kong Sheng Kung Hui convened a meeting of the Diocesan Synod where it was resolved that a Province be established. The resolution was passed by the House of Clergy (made up of clergymen and church functionaries) by 26 to 24 votes. It can thus be perceived that close to half of the clergymen had reservations as to the setting up of a Province. And I was one of those clergymen who had reservations. To establish a Province is a very difficult and onerous task. If the church members are not of one mind, the task will be yet more difficult. Today, this Council will vote on the three Bills laid before it. The first Bill is the Hong Kong Sheng Kung Hui Bill which seeks to incorporate the Province of the Hong Kong Sheng Kung Hui. However, after the passage of this Bill, or the two other Bills, there will still be other procedure to go through. Next September two Bishops will be appointed and the consent of the Anglican Consultative Council will be required before the Province can be established. In relation to the three Bills before us, I twice wrote to the Honourable Timothy HA, the Member sponsoring the Bills, and I received replies from him. In fact, I was not too satisfied with some aspects of his response. But I do not intend to discuss the details here. I believe the two letters already set out in clear detail my views in this regard.

I would like to point out one purported irregularity which is that the three Bills have not been discussed and endorsed by the Diocesan Synod of the Hong Kong Sheng Kung Hui. Hence, the procedural propriety is open to question. As a matter of fact, these three Bills are very important. They should be endorsed by the highest representative body, which is the Synod, before being tabled to the Legislative Council. Now we have three members of the Diocesan Synod writing to Members of this Council to request that the three Bills be shelved. I had intended to move a motion to have two of these Bills shelved, that is to say, the Church Body of the Hong Kong Sheng Kung Hui Bill and the Hong Kong Sheng Kung Hui Foundation Bill. It is because in respect of these two Bills there was scant discussion and scant views being expressed at the meetings of the previous Synod. But Mr Timothy HA, the Honourable Moses CHENG and other members of the Diocesan Standing Committee have promised that after their passage by this Council the three Bills will be sent back to the Diocesan Synod for discussion. And the Synod will be in session next November. Therefore, I accept this remedial approach and will not move a motion to have the Bills shelved. However, I feel that I still cannot give these two Bills my full support. That being the case, I will abstain from voting on the motions for the Second and Third Readings of the Church Body of the Hong Kong Sheng Kung Hui Bill and the Hong Kong Sheng Kung Hui Foundation Bill.

MR PETER WONG: Mr President, I would like to declare that my firm is the auditor of Sheng Kung Hui.



MR MOSES CHENG: Mr President, I rise to declare that I am a member of the Standing Committee of the Dioceses of Hong Kong and Macau Sheng Kung Hui as mentioned by the Rev FUNG Chi-wood and also my firm is acting as their legal adviser.

DR YEUNG SUM (in Cantonese): Mr President, the Hong Kong Sheng Kung Hui Bill addresses the internal affairs of a religious organization. However, as the Bill has been presented to this Council for scrutiny, we will of course do our best to scrutinize it. Rev the Honourable FUNG Chi-wood from the Democratic Party has been following up this matter. In the course of discussion, the Honourable Timothy HA gave his views a number of times on the issues involved. If this Bill is passed, I believe Mr HA will send the three Bills back to the church to consult the views of church members.

For this reason, the Democratic Party supports the Hong Kong Sheng Kung Hui Bill. Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, what I am going to say will have nothing to do with the Hong Kong Sheng Kung Hui Bill and the two Bills related to it. I beg your pardon. I should not have said so. I should have said I am not going to comment on the contents of the three Bills now laid before us. Recently Members of this Council received letters from members of the Synod who communicated to us their views on the Bills. I shall not comment on the contents of the letters either. I would just like to comment on the procedure for scrutiny of Private Bills which deal exclusively with matters of a private nature.

In my view, the Legislative Council should be very cautious when enacting Private Bills which deal with matters of a private nature. Therefore, it is not a matter of course that we must pass any Private Bill laid before us. I think that unless the Bill is non-controversial or unless it is unanimously proposed by the organization concerned or by its internal governing body which wants this Council to pass the Bill to formalize the subject matter through legislation, we should not lightly endorse it. Otherwise, if there is controversy surrounding the Bill, a prudent assembly should set up a Bills Committee to scrutinize it.

Now, to my knowledge — or I should say I am told by a number of Synod members who communicated information to me through certain channels — the Synod agreed that we could proceed with the Second and Third Readings of the three Bills. My conclusion, therefore, is that as far as I know no one is raising objection to the three Bills, I will treat this as a request made unanimously and will agree that the three Bills be read the Second and Third time.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I would like to give some views of my own on the present motion. Members will of course agree that in Hong Kong all Bills, including Private Member's Bills, are scrutinized by the Legislative Council according to the established procedures of the Council. This is the public as well as social responsibility of Legislative Council Members. The views expressed by the Honourable James TO a moment ago are correct.

The second point I would like to make is that in Hong Kong we enjoy many freedoms which we would do well to treasure. Among these, religious freedom is one which we should particularly cherish and treasure. It is because all religions have enjoyed respect in Hong Kong. Respect for religion and social harmony arising therefrom are very important to Hong Kong society. Of course, we understand that different religions, on account of their different backgrounds and histories, have different organizational structures, internal operation modes and procedures. When we say we respect religious freedom, that connotes respect for the established procedures and practising modes of different religions.

The third point I would like to make is that, as we well understand, times change and so a creditable church will subject its procedures and practising modes to constant improvement having heard various views within itself. I believe any church, in the course of its development in Hong Kong, will have such awareness and readiness to improve.

I was happy to hear the Honourable Timothy HA saying a while ago that the diverse views expressed in the course of the Bill's passage through this Council would be reflected to the Sheng Kung Hui Council for discussion. I firmly believe that a church member of whatever religion loves his church, respects the church's internal procedure and reflects views according to such procedure. This will enable religions in Hong Kong to develop and flourish in an atmosphere of mutual respect and thus contribute to Hong Kong society. Therefore, Members from the Democratic Party support the Second and Third Readings of the Bill.

Thank you, Mr President.

MR ROGER LUK (in Cantonese): Thank you, Mr President. A corporate association can exist under three styles. First, it can be registered with the Registrar of Societies though this will not formally make it a corporate body; second, it can be set up as a company limited by guarantee; and, third, it can be incorporated by legislation. Therefore, when a Bill to incorporate a private organization is presented to the Legislative Council for scrutiny, the frame of mind of Members who scrutinize it will be that they are helping the organization concerned attain a corporate body status through legislation. A moment ago, Dr the Honourable YEUNG Sum said the Legislative Council has the duty to scrutinize Bills. Be that as it may, insofar as private organizations

are concerned, I think we should look at this Council's responsibility in two aspects. First, whether the way the organization is structured is prejudicial to the public interest; second, whether the organization's objectives and structure are clearly defined; third, whether the way the organization operates is fair.

I received many letters relating to the three Sheng Kung Hui Bills before us. Though I am not a member of the church, I studied for more than 10 years in an Anglican school. After reading the letters, I failed to see what connection there could possibly be between the letter contents and the three points I enumerated above. I very much hope that in the event of similar cases happening in the future those who take issue with a Bill will tell us clearly what is wrong with the Bill in terms of principle. I would hate to see the Legislative Council holding up the incorporation of an organization just because of some questionable internal arrangements or disparate views within the organization. These are matters that the organization concerned should settle by itself. The Bill to have the organization incorporated should not be presented to the Legislative Council if these matters are not yet settled. If such a Bill is presented to this Council, the points I mentioned with regard to principle, structure and operation should have been taken care of in the first place. In relation to these three points, even if a Bills Committee is set up, it should not involve itself in the internal disputes of the organization concerned. The Bills Committee should scrutinize the Bill in terms of the three points that I mentioned. If the Bill is found to be justified and reasonable, we should support it. It is because the organization concerned can become a corporate body otherwise than through incorporation by legislation. It can set itself up as a company limited by guarantee to attain the same status. But the organization will not have the social standing it would otherwise have had if it had been incorporated by legislation.

MR JAMES TO (in Cantonese): Mr President, I feel that what I said earlier has been misunderstood.

PRESIDENT: Try to clarify this, but please be brief.

MR JAMES TO (in Cantonese): I would just like to say that never have I wanted to get involved in any dispute. To my understanding, not getting involved in any dispute means that the Legislative Council will pass such a bill to give legal status to a corporate body only when there is no controversy surrounding it. Therefore, the principle, as I understand it, is that we may not pass a bill which bears on the disputes of a certain organization if such disputes have not been resolved by the said organization. But, as of the present moment, information from various sources has indicated that there are no outstanding disputes nor are there supplicants opposing the Second and Third Readings. Therefore, I agree that the Bill should go through its Second and Third Readings.

MR TIMOTHY HA: Thank you, Mr President. I have nothing to add to what I have already said except to thank the Members who have spoken for their concern and for their suggestions.

*Question on the motion put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

### **HONG KONG SHENG KUNG HUI BILL**

Clauses 1 to 17 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR TIMOTHY HA reported that the

### **HONG KONG SHENG KUNG HUI BILL**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **First Reading of Bill**

### **CHURCH BODY OF THE HONG KONG SHENG KUNG HUI BILL**

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

**Second Reading of Bill****CHURCH BODY OF THE HONG KONG SHENG KUNG HUI BILL**

MR TIMOTHY HA moved the Second Reading of: “A Bill to continue the body corporate known as The Church Body of the Chinese Anglican Church in Hong Kong under the name of the Church Body of the Hong Kong Sheng Kung Hui, to provide for the constitution, powers and duties of the Church Body of the Hong Kong Sheng Kung Hui, and to repeal the Chinese Anglican Church Body Incorporation Ordinance.”

MR TIMOTHY HA: Mr President, I move that the Church Body of the Hong Kong Sheng Kung Hui Bill be read the Second time.

The Church Body of the Hong Kong Sheng Kung Hui Bill will continue the body corporate known as the Church Body of the Chinese Anglican Church in Hong Kong which was incorporated under the Chinese Anglican Church Body Incorporation Ordinance. It will provide for the constitution, powers and duties of the new Church Body which will be known as the Church Body of the Hong Kong Sheng Kung Hui.

The Chinese Anglican Church Body is the Corporate structure existing currently in the Anglican Church and holding ownership of properties for parishes, schools and welfare agencies in the Church. The same arrangement for property ownership will be maintained in the new Province. As the changes to the constituents and the structure of the new Church Body are quite substantial, it is thought to be more appropriate for a new body corporate to be established under a new statute. Upon the Church Body of the Hong Kong Sheng Kung Hui Ordinance coming into effect, the Chinese Anglican Church Body Incorporation Ordinance will be repealed.

Mr President, I move under Standing Order 42(3A) that the Second Reading debate on this Bill shall not be adjourned and the debate be proceeded with now.

Thank you, Mr President.

*Question on the motion proposed, put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

**CHURCH BODY OF THE HONG KONG SHENG KUNG HUI BILL**

Clauses 1, 2, 5 to 14 and 16 were agreed to.

Clauses 3, 4, and 15

MR TIMOTHY HA: Mr Chairman, I move that clauses 3, 4 and 15 be amended as set out in the paper circulated to Members.

The amendment is merely a technical one. The Church Body of the Chinese Anglican Church does not have a name in the Chinese language. So, what the amendment seeks to do is to use the English name which is the only proper name in the Chinese text of the Bill instead of the Chinese name published in the Bill.

Thank you, Mr Chairman.

*Proposed amendments***Clauses 3, 4 and 15**

That clauses 3, 4 and 15 of the Chinese Text of the Bill be amended, by deleting the Chinese text “香港聖公會牧區聯議會” appearing in clauses 3(a), 4 and 15 of the Chinese Text of the Bill and substitute the same with “The Church Body of the Chinese Anglican Church in Hong Kong”.

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 3, 4 and 15, as amended, proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

MR TIMOTHY HA reported that the

**CHURCH BODY OF THE HONG KONG SHENG KUNG HUI BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **First Reading of Bill**

#### **HONG KONG SHENG KUNG HUI FOUNDATION BILL**

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

### **Second Reading of Bill**

#### **HONG KONG SHENG KUNG HUI FOUNDATION BILL**

MR TIMOTHY HA moved the Second Reading of: “A Bill to continue the corporation sole called The Bishop of Victoria, Hong Kong as a body corporate under the name of the Hong Kong Sheng Kung Hui Foundation, to provide for the constitution, powers and duties of the Hong Kong Sheng Kung Hui Foundation, and to repeal the Bishop of Victoria Incorporation Ordinance.

MR TIMOTHY HA: Mr President, I move that the Hong Kong Sheng Kung Hui Foundation Bill be read the Second time.

The Hong Kong Sheng Kung Hui Foundation Bill will continue the corporation sole called The Bishop of Victoria as a body corporate under the name of the Hong Kong Sheng Kung Hui Foundation. It will provide for the constitution, powers and duties of the Hong Kong Sheng Kung Hui Foundation.

The Foundation will be holding the properties currently held by the Bishop of Victoria.

Income from the properties will, similar to the current arrangements, be continued to be applied towards training of clergy and developmental work of the Church.

As the constituents and structure of the Foundation will be substantially different to those provided under the Bishop of Victoria Incorporation Ordinance, it is thought to be more appropriate for a new body corporate to be established under a new statute.

Upon the coming into effect of the Hong Kong Sheng Kun Hui Foundation Ordinance, the Bishop of Victoria Incorporation Ordinance will be repealed.

Mr President, I move under Standing Order 42(3A) that the Second Reading debate on this Bill shall not be adjourned and the debate be proceeded with now.

Thank you, Mr President.

*Question on the motion proposed, put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

### **HONG KONG SHENG KUNG HUI FOUNDATION BILL**

Clauses 1 to 16 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR TIMOTHY HA reported that the

### **HONG KONG SHENG KUNG HUI FOUNDATION BILL**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.



**First Reading of Bill****MASONIC BENEVOLENCE FUND INCORPORATION (AMENDMENT) BILL 1995**

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

**Second Reading of Bill****MASONIC BENEVOLENCE FUND INCORPORATION (AMENDMENT) BILL 1995**

MR PETER WONG moved the Second Reading of: “A Bill to amend the Masonic Benevolence Fund Incorporation Ordinance.”

MR PETER WONG: Mr President, I move the first of three Bills in connection with activities of freemasons in Hong Kong. The Masonic Benevolence Fund Incorporation (Amendment) Bill 1995 seeks to:

- (a) widen the investment powers of the corporation;
- (b) give power to the corporation to replace custodian trustees;
- (c) amend the name of the Fund to “the Hong Kong and Far East Masonic Benevolence Fund”; and
- (d) update the fees provided in section 8 of the main Ordinance which regulates the charitable aspects of Freemasonry in Hong Kong.

This Bill is private in nature and has no revenue implications. I can assure Members that these amendments are in total compliance with the wishes of the trustees and members of the corporation.

Due to a misunderstanding about the responsibility of who instructs the Government Printer to print the Official Gazette, the Bill was not gazetted on the original date planned and necessitate the three readings all on one day — today, in order to have such changes enacted. And that I thank Members for their indulgence.

I must declare my interest in these three Bills as I am the District Grand Master of Hong Kong and the Far East, of the United Grand Lodge of England and hence can be said to be one of the rulers of Freemasonry in these parts.

Mr President, I move under Standing Order 42(3A) that the Second Reading of the Masonic Benevolence Fund Incorporation (Amendment) Bill 1995 be not adjourned and that the debate be proceeded forthwith.

*Question on the motion proposed, put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

### **MASONIC BENEVOLENCE FUND INCORPORATION (AMENDMENT) BILL 1995**

Clauses 1 to 6 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR PETER WONG reported that the

### **MASONIC BENEVOLENCE FUND INCORPORATION (AMENDMENT) BILL 1995**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**First Reading of Bill****CHATER MASONIC SCHOLARSHIP FUND (AMENDMENT) BILL 1995**

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

**Second Reading of Bill****CHATER MASONIC SCHOLARSHIP FUND (AMENDMENT) BILL 1995**

MR PETER WONG moved the Second Reading of: “A Bill to amend the Chater Masonic Scholarship Fund Ordinance.”

MR PETER WONG: Mr President, I move the second of the three Bills in connection with masonic matters. The Chater Masonic Scholarship Fund (Amendment) Bill 1995 seeks to extend the objects of the Chater Masonic Scholarship Fund and provide scholarships to various universities and other institutions and to widen the investment powers of the Fund trustees. It is private in nature and has no revenue implications.

Mr President, I move under Standing Order 42(3A) that the Second Reading debate on the Chater Masonic Scholarship Fund (Amendment) Bill 1995 be not adjourned and that the debate be proceeded forthwith.

*Question on the motion proposed, put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

**CHATER MASONIC SCHOLARSHIP FUND (AMENDMENT) BILL 1995**

Clauses 1 to 6 were agreed to.

Council then resumed.

**Third Reading of Bill**

MR PETER WONG reported that the

**CHATER MASONIC SCHOLARSHIP FUND (AMENDMENT) BILL 1995**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**First Reading of Bill****ZETLAND HALL TRUSTEES INCORPORATION (AMENDMENT) BILL 1995**

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

**Second Reading of Bill****ZETLAND HALL TRUSTEES INCORPORATION (AMENDMENT) BILL 1995**

MR PETER WONG moved the Second Reading of: “A Bill to amend the Zetland Hall Trustees Incorporation Ordinance.”

MR PETER WONG: Mr President, I move that the Zetland Hall Trustees Incorporation (Amendment) Bill 1995 be read a Second time.

This is the first of a series of three Bills to update the three Ordinances dealing with the activities of freemasons in Hong Kong.

Zetland Hall Trustees is the body that owns the property at Number 1 Kennedy Road, the site of the Masonic Hall at which freemasonry activities take place in Hong Kong. The object of the Bill is to widen the investment powers of the trustees and to update the fees as provided in section 9 of the Ordinance. It is all of a private nature and has no revenue implications.

Mr President, with these remarks, I move under Standing Order 42(3A) that the Second Reading debate on the Zetland Hall Trustees Incorporation (Amendment) Bill 1995 be not adjourned and that the debate be proceeded with.

*Question on the motion proposed, put and agreed to.*

*Question on the Second Reading of the Bill proposed, 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.

### **ZETLAND HALL TRUSTEES INCORPORATION (AMENDMENT) BILL 1995**

Clauses 1 to 4 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR PETER WONG reported that the

### **ZETLAND HALL TRUSTEES INCORPORATION (AMENDMENT) BILL 1995**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**Second Reading of Bill****ELECTORAL PROVISIONS (AMENDMENT) BILL 1995****Resumption of debate on Second Reading which was moved on 5 July 1995**

*Question on Second Reading proposed.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, I should like to make clear at the outset the Administration is firmly against the Bill moved by the Honourable Andrew WONG. Let me explain why.

The coming Legislative Council elections are scheduled to be held on 17 September. This is not even two months away. All the legislation necessary for the elections are already in place. This legislative framework was not drawn up lightly. Rather, it is the product of a most thorough discussion in the community, and within this Council, which lasted almost two years. And we are now well into the phase of implementing the framework. With the elections just round the corner, our focus and priority must be to make sure that all the necessary arrangements, on the basis of the agreed framework, are in place in time. In our view, it would be grossly inappropriate to rush through, at this very late stage, ideas which seek to radically alter the settled playing field.

When introducing his Bill into this Council on 5 July, Mr WONG argued that our electoral laws should not unduly limit the franchise or the pool of candidates. This I entirely agree. Indeed, our electoral system is built precisely on the principle of broad based participation. This is what open and fair elections are all about. But I hardly need to remind this Council that all responsible administrations, and this includes those in the more liberal jurisdictions, have legislated to exclude various categories of persons from the electoral process. And Hong Kong is of no exception. The disqualification provisions are necessary to protect the integrity not only of the elections, but also of the representative institutions to which the candidates are to be returned.

Most of the disqualification provisions which Mr WONG tries to remove have been in the statute book for many years. All were drawn up after extensive public discussion, including a Green Paper consultation exercise in 1981. They are well accepted by the public, and there are no known implementation difficulties. It is, therefore, most astonishing that Mr WONG should seek to introduce fundamental changes over-night. Indeed, to do so would be wrong in public policy terms:

Firstly, it goes against our proven approach to constitutional development: gradual, measured evolution rather than radical, headlong, rush.

Secondly, it goes against the established practice in Hong Kong that any proposal for major changes are preceded by, and subject to, comprehensive public consultation. Are the public ready for the radicalism embodied in the Bill? Has Mr WONG carried out any systematic public sounding? I certainly am not aware of any. If he has, he should share his methodology and results with the Council.

Thirdly, it completely ignores the impact on the September elections. Mr WONG's proposals will create unacceptable disruption to our preparation for the elections. For example, special arrangements will need to be devised, at the last minute, to facilitate prisoners to vote. It will also create serious confusion for electors and candidates alike. More importantly still, the arbitrariness and the almost whimsical manner with which the changes are being made are bound to invite grave doubts on the credibility of our electoral system.

If Mr WONG were serious about his proposals, and if he had genuinely thought that changes should be made for the September elections, one would expect that he would have put forward the Bill quite some time ago. There would have been plenty of opportunities for him to do so in the past couple of years. It is therefore somewhat puzzling that he has not done so. Does this reflect a lack of public support for his ideas? Or is it because the case for change is not nearly as justifiable as Mr WONG has made out to be? I note Mr WONG's explanation (during his speech on 5 July) that he had to await the judgement of the LAU San-ching case. I would merely point out that the court case in question concerns only the qualifying residential period for candidates, and has absolutely no connection whatsoever with the various disqualification provisions which are the subject of Mr WONG's Bill.

All the above does not mean that the existing legislative provisions are sacrosanct. But the Administration does firmly believe that any fundamental change to the electoral system should be made with extreme care, after detailed study, and thorough consultation. The appropriate time for a comprehensive review, if the public consider one necessary, should be after the September Legislative Council elections.

Finally, I should draw this Council's attention to one particular aspect of Mr WONG's Bill. As Members will recall, during the debate on 12 July on the Electoral Provisions (Miscellaneous Amendments) Bill. Mr WONG tried to reduce the qualifying residential period for candidates to 180 days. In the event, this Council accepted the Bill's original proposal to set the qualifying period at three years. Mr WONG now proposes that the qualifying period be set at one year. For the reasons I set out during the debate on 12 July, the Administration cannot agree to reduce the qualifying period to less than three years. But quite apart from the merits or otherwise of Mr WONG's latest proposal, it must be highly questionable whether it is fair for Mr WONG to

attempt, in effect, a second bite at the cherry right after his first attempt was rejected by this Council.

For the reasons I have set out above, Mr President, I would urge this Council to reject Mr WONG's Bill. The three ex-officio Members will vote against the Bill's Second Reading. I would also like to urge Members to vote against it.

MR ANDREW WONG (in Cantonese): Mr President, I am honoured to be called radical, headstrong and rash because all these epithets did not appear to have stuck to me as my "trademark". People are apt to say that my style is not crisp or sharp enough and that I do things in a gradual, progressive and measured manner. But now I am being called such beautiful names and I deem it quite an honour. Moreover, the Administration is employing such wording as "strongly oppose" which constitutes rather strong terms indeed. Perhaps, this might be because of what I had said in a recent "get-together" with the Constitutional Affairs Branch where I particularly emphasized the question of prison escapees. At that time I said such "stunts" were quite "cheap" — again I do not know whether or not this term is unparliamentary. And perhaps the Administration was offended at such a remark.

What I am intending to say is simple enough. I have been the convenor of the Constitutional Development Panel for a number of years. Every year, I brought up the present issues for discussion with the Administration. Mr Nicholas NG was not the Secretary for Constitutional Affairs then. But, surely, his predecessor will remember this. Each time the then Secretary would say by way of explanation that with an election fast approaching it would be better to wait until the election was over before conducting a review. Elections came and went but we just waited time and time again. It is because elections scheduled serially might not be held simultaneously. For instance, district board elections were followed by municipal council elections and then followed by Legislative Council elections. So when an overall review was being requested, the Administration would say that the next election was coming up. These items were never placed on the agenda unless I specifically broached them for discussion with the Administration. Hence, no discussion would be possible when there was an upcoming election and again no discussion would be held until after the election when an overall review would be undertaken. Never for once were these issues made the subject of review. In contrast, a proposal to increase seats on boards or councils would more easily arouse the interest of the community.

But, there are a lot of basic ingredients to constitute a fair election. The Bill I am introducing now contains proposals to which Members do not appear to have paid much heed. The Constitutional Affairs Branch is probably saying that these things are not too important and there is no need to be bothered with them. Another excuse has been that there was too much work to do, such as dealing with Governor PATTEN's constitutional package, or that it was



impossible to draft the relevant legal provisions because of a shortage of staff at the Law Draftsman's Office. Therefore, I have personally drafted the present Bill without the help of lawyers. I think I just about pass muster as a draftsman!

Furthermore, I have proposed three different packages of proposals for Members to choose from. Of course, the Bill before us only contains the first package. But I have the second and third packages to fall back on. The amendments I am proposing today represent a concession on my part. It has been argued that electoral provisions cannot be too lax, but I think at least some measure of reform can be introduced. That being the case, I will later propose three pairs of amendments, that is to say, in respect of Cap. 367 and Cap. 381 of the Laws of Hong Kong. Cap. 367 covers all elections held in Hong Kong while Cap. 381 principally deals with three aspects of the Legislative Council elections, particularly functional constituency and Election Committee elections.

I accept the argument advanced by the Secretary for Constitutional Affairs that certain things cannot be done because an election is almost upon us. If the second package is passed, those who are not registered voters will not be qualified to vote just the same. This should be no cause for worry. Other affected areas will have no bearing on the qualification of voters. They will have a bearing on two aspects of a candidate's qualification, namely, the number of years of residence in Hong Kong and the provision as to disqualification. In view of the imminent approach of an election, if the present Bill is passed today and assented to by the Governor tomorrow, those who are not qualified to stand as a candidate under the existing laws will be qualified to stand when nomination starts on 1 August. Doubts will thus be eliminated. This move will relax the requirements as to a candidate's qualification under the electoral system. The electorate will have more candidates to choose from.

The Secretary for Constitutional Affairs is correct in stating that voters and candidates are likewise subject to qualification restrictions in all other countries. But the question is whether these restrictions are reasonable and whether they unreasonably limit the basic rights of the citizen. A convicted criminal is a citizen no less. If it is argued that a convicted criminal is no longer a citizen and should be divested of his political rights, I would say such concept has found no currency in Hong Kong. I already advanced numerous arguments when I first presented the Bill for Second Reading. I shall not rehash them.

I have done a rough vote count. It would seem that the Bill will not be able to pass its Second Reading. Therefore, I think I may as well talk about my proposed amendments. The Chinese version as appearing on the paper before Members has not been amended. My original intention was to introduce amendments separately to clauses 2, 3, 4, 5, 6 and 7, that is to say, six clauses altogether. I have discussed with the Secretary for Constitutional Affairs and decided that it would be better to pair up the clauses and introduce amendments to each pair, that is to say, three sets of amendments, one each for clauses 2 and 5, clauses 3 and 6, clauses 4 and 7.

Clauses 2 and 5 deal wholly with voters' qualifications. In this connection, I would like to mention that in my original package I propose to repeal the provision that prisoners serving their terms are disqualified from voting. In the new package, I still propose that this provision be wholly repealed. There are no such restrictions in Canada or Australia. As a matter of fact, according to Canada's Charter of Rights, even a prisoner has his basic rights which include the right to vote. As regards convicted prisoners serving a term of more than six months, my original package proposes that the provision disqualifying them from voting be wholly repealed.

At present, all prisoners are disqualified from voting no matter whether they are about to serve or are already serving their terms and no matter whether the offences of which they are convicted are serious or otherwise. I propose that this provision be amended in two aspects. One aspect is that, in respect of the sentence, a line of distinction be drawn at five years instead of the present six months. This is the case with the State of Southern Australia (one of the states in the Federal Union of Australia) where a prisoner convicted of serious offences who has not served out his term is disqualified from voting. Where a prisoner convicted of a less serious offence is serving a term of six months, one year, two years, three years or even four years, he should not be unreasonably deprived of his right to vote.

Another matter which has been discussed for a number of years in the Constitutional Panel relates to the question of how to deal with the varied prison terms arising from the lack of comparable offences or different sentencing criteria in different jurisdictions. I propose that the offence of which a prisoner is convicted and sentenced to five years' imprisonment shall refer to an offence committed in Hong Kong. Only when one is convicted of such an offence in Hong Kong shall he lose his right to vote. This is similar to the provisions in force in the United Kingdom, Canada and Australia where conviction and sentence in respect of an offence committed outside the country is not taken into account. Therefore, this is not a new thing invented by me. As regards other offences attracting heavier sentences, according to the existing law, if a person is convicted of a corruption or election-related offence, not only will he lose his right to vote irrespective of the length of his sentence, he will lose the right to vote for the next seven years. I think this is not right. I proposed in the original Bill to repeal this provision altogether. But, in the second package, I have tightened things up a bit. Yet I am still proposing that this provision be repealed. Australia does not have this sort of restriction.

As regards voters, my proposal is very simple. Anyone who has been convicted of an offence in Hong Kong and sentenced to more than five years' imprisonment shall be disqualified from voting while still serving his prison term. All others shall have the right to vote. If this proposal is passed and if there is an election next year, the electoral register will be reopened next year and these offenders will be qualified as voters. It will not affect this year's elections. The above are proposals contained in clauses 2 and 5.

Clauses 3 and 6 relate to the length of residence in Hong Kong. The Secretary for Constitutional Affairs said a while ago that the Electoral Provisions (Miscellaneous Amendments) Bill we passed last time already affirmed that three years was the correct requirement. I have three proposals in this regard. The first one is 180 days of residence; another is one year; and the third is three years. I can accept a Hong Kong residence requirement of three years. It is not unacceptable. But why is the Administration insisting on three years? Let us compare it with the residence requirements of other countries. Australia requires six months of residence; seven of the Canadian provinces have a six-month residence requirement and the other three provinces have a 12-month requirement; the United Kingdom has no residence requirement and anyone who happens to reside in a constituency at the time of an election will qualify as a voter.

Hong Kong used to have no extra residence requirement before 1982. I told this Council in the last debate that anyone who had ordinarily resided in Hong Kong for three years would qualify to be registered as a voter and that, in the case of a candidate, there had been no extra requirement. I have made a number of concessions. I am now even accepting a 12-month residence requirement. The amendment I proposed then was 180 days. But since Members had decided not to accept a 180-day residence requirement, I gave it up and pushed my second proposal, namely, that the required length of residence in Hong Kong be reduced to one year.

With regard to the question of disqualification of a candidate, the first and second packages contain more or less the same proposals. They differ only in one respect. I mentioned a moment ago that not all convicted offenders can become voters. If a person is convicted of a serious offence and sentenced to more than five years' imprisonment, he will be disqualified from voting. Therefore, not only will a convicted person serving a sentence of more than five years be disqualified from voting, he will also be disqualified from standing as a candidate. In other words, except those who have been sentenced to imprisonment for more than five years and have not yet served out their terms, any other persons can stand as a candidate. So, a person who has committed a minor offence and is about to be discharged from prison can stand as a candidate and carry out electioneering activities through an agent even though he cannot be physically present to conduct such activities because of his incarceration. I believe there will be such sort of people. They are probably the so-called prisoners of conscience or political prisoners who may be much liked by the electorate. This will give the voters more choices.

I mentioned a while ago the question of disqualification arising from the commission of election-related offences. At present, commission of corruption offences will likewise disqualify the offender. My original proposal is that any person who commits an election-related offence in Hong Kong (I limit the offences to election-related offences) shall immediately be disqualified irrespective of the length of the prison term he serves. The Ordinance concerned currently provides that he shall be disqualified for 10 years. But I

am proposing that the disqualification period be shortened to four years. In other words, a person who is serving sentence, which may be for no more than two years, shall likewise be disqualified. Even after he is discharged from prison, he shall still be so disqualified for the next two years, that is to say, he shall be denied the opportunity to stand as a candidate in the next election.

Let me perhaps deal with the question of treason first. When we last passed a Bill to abolish capital punishment, the Bill provided that only the mandatory sentence of life imprisonment be imposed for murder in view of the fact that the seriousness of treason tends to vary from case to case. In such circumstances, I think that the disqualification provision in respect of the offence of treason should be repealed. It is because a person will be disqualified anyway if he is sentenced to imprisonment for more than five years.

Finally, I would like to deal with the question of bankruptcy which was the subject of study by a subgroup under the Law Reform Commission. The subgroup has recommended that the present law on bankruptcy appears to be too harsh. I now propose that, during the five-year period prior to the election, if a bankrupt person fails to get himself discharged from bankruptcy he shall be disqualified from standing as a candidate; if he has been discharged from bankruptcy but has not yet repaid all of his debts, he will still be eligible to stand for election.

Mr President, I would like to make it clear that, if Members support the Bill's Second Reading now, it might be possible for Members to make a few mistakes when it comes to the Committee Stage. In the case of clauses 2 and 5, if Members blocked my amendments they might wrongly cast their votes when it comes to voting on the original clauses 2 and 5. In that event, they would be supporting the original clauses which would mean reverting to the first package of proposals, not the second package. I hope Members will, with the true intention of making Hong Kong's electoral system a fairer system, support me in principle during the Second Reading in order to show that my views or proposals are tenable.

Members will be unable to propose further amendments during the Committee Stage. If Members think that my package of proposals are acceptable, would they please vote in favour of clauses 2 and 5 relating to voters' qualification? Would they also vote in favour of clauses 3 and 6 relating to the shortening of the required length of residence to one year? At the same time, would Members please vote in favour of clauses 4 and 7 relating to the disqualification of candidates so that the requirement will be the same as that applicable to voters? In other words, five years' imprisonment will be taken as the baseline in both cases but the disqualification provision in respect of breaches of electoral laws will be retained.

With these remarks, I urge Members to support the motion for the Second Reading of the Bill.

*Question on Second Reading of the Bill put.*

*Voice vote taken.*

THE PRESIDENT said he thought the “Noes” had it.

Mr Andrew WONG claimed a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yen voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the motion.

Mr PANG Chun-hoi abstained.

THE PRESIDENT announced that there were 22 votes in favour of the motion and 32 votes against it. He therefore declared that the motion was negated.

**Second Reading of Bill****BLOCK CROWN LEASE (CHEUNG CHAU) BILL****Resumption of debate on Second Reading which was moved on 5 July 1995**

*Question on Second Reading proposed.*

MR LEE WING-TAT (in Cantonese): Mr President, I shall not repeat the arguments I made during the debate on the Wong Wai Tsak Tong (WWTT) Bill. Basically, Members are well aware that the present Bill introduced by the Honourable Andrew WONG on behalf of the Subcommittee which studied the WWTT question is not the outcome of his brainstorming efforts alone. Though the greater part of the Bill is Mr WONG's brainchild, other Members have taken part in compiling the report based on which the present Private Member's Bill is drafted.

The principle on which this Bill is based is clear enough. It is to terminate WWTT's status as the head lessee under the Cheung Chau Block Crown Lease in order to make the sub-lessees (commonly known as "small landowners") Crown lessees so that they will become "small landowners" in the fullest sense of the word. I believe Members will not take issue with this. But this Private Member's Bill contains one controversial provision, namely, clause 9. I hope Members will later make a wise choice after hearing the Administration's as well as my responses. Thank you.

MR TAM YIU-CHUNG (in Cantonese): Mr President, I voted against the other Private Member's Bill introduced by the Honourable Andrew WONG during its Second Reading debate held earlier on. But I will vote in favour of the present Bill. I shall not say more than is necessary. It is because I find that the conduct of business this afternoon is proceeding at a much quickened pace. At the speed it is going, I hope the sitting will not over-spill to tomorrow. At the same time, I support the deletion of clause 9. Thank you, Mr President.

MRS MIRIAM LAU (in Cantonese): Mr President, during the earlier debate on the Wong Wai Tsak Tong Bill (the WWTT Bill), I already stated clearly the Liberal Party's stance on this Private Member's Bill proposed by the Honourable Andrew WONG. The Liberal Party is of the view that the Administration can expropriate or confiscate the private property of a citizen only if it has sufficient grounds to do so. In exercising this right, the Administration must ensure that the affected citizen will receive fair and reasonable compensation. If Mr Andrew WONG's Bill is passed, Wong Wai Tsak Tong (the Tong) will lose its status as a Crown lessee. This will be a fact and it will cause intense pain to members of the Tong. Yet, as a matter of fact,

we have no other way to resolve this long-standing, historical problem. Therefore, we have to do it notwithstanding the pain it will cause. However, the Liberal Party insists that, in revoking the Tong's rights, the Administration must pay fair and reasonable compensation to the Tong.

During the debate on the WWTT Bill, the Honourable LEE Wing-tat mentioned that the Bills Committee, in the course of scrutinizing these two Bills, had discussed whether to delete clause 9 from the Block Crown Lease (Cheung Chau) Bill. He said that a Member had stressed the important point that contracts signed under lawful circumstances must be performed and abided by. The Member had further pointed out that, if all renewed sub-leases were to become null and void after the commencement of the present Bill, the said Member would be worried lest a charging effect on public funds be created because the Lands Tribunal would have to assess, for the purpose of awarding compensation, the loss which this arrangement would cause to the Tong. The Member put forward a fresh proposal which has been embodied in the amendment to be moved by the Administration during the Committee stage to clause 9 of the Bill. The Member had been of the opinion that if the said clause was so amended, the contracts between Cheung Chau residents and the Tong would continue to subsist, upon the expiry of which the present Bill would apply to the land concerned. Let me admit that I am that Member.

When I entered this Chamber this afternoon, I saw placed on the bench a letter written by the Cheung Chau Rural Committee to Members. The letter alleged that some Cheung Chau residents had been misled and hoodwinked and, out of fear and under coercion from the Tong, they had signed the new leases with the Tong in a state of helplessness and with undue haste. I and the Liberal Party deeply sympathize with those who signed new leases under such circumstances. But, outsiders can never know why leases were entered into and how they were drawn up and signed. Outsiders can never tell who was right and who was wrong nor can they tell the reason for all this. When a person signs a contract, the law presumes that he understands what he is doing. Of course, if the person signing the contract then was not of sound and sober mind or was under duress or was the victim of misrepresentation or deceit, there are avenues available under the law for the affected person to apply to the court to set aside the contract if he can prove that any of the above elements existed.

Hong Kong is a society under the rule of law. The law is supreme and can override everything. The law can forbid a citizen to enter into a particular kind of contract. The law normally provides that thereafter the citizen shall not enter into a certain kind of contract. But the Administration should not say, whenever it pleases, that the law can overrule a certain kind of contract notwithstanding it has been formally entered into by the citizen. It is because the basic spirit of the law is to respect private contracts. The parties to the contract should enjoy the contractual rights and perform the contractual obligations after the contract has been entered into.

Furthermore, the Liberal Party has repeatedly stressed that, if the Tong's Crown lessee status is revoked, the Administration must pay compensation. Assuming that only the Tong's Crown lessee status was abolished and the sub-leases had expired and not been renewed, the Administration would know how much its financial commitment would be under such circumstances. But if the leases between the Tong and Cheung Chau residents were revoked, let us image what the scenario would be like. We know that many of the contracts were entered into between Cheung Chau residents and the Tong after November 1994. But we have no means of knowing the precise number of such contracts. Nor do we have the means of knowing what terms these contracts contained, how much money the Cheung Chau residents had to pay the Tong and what benefits the Tong had given to the Cheung Chau residents. It is because a multiplicity of details are involved. Therefore, if the Administration says that all contracts, irrespective of their form and contents, are to be revoked, the Cheung Chau residents concerned will become direct Crown lessees immediately after the present Bill is passed today. In that case, the Administration will have no idea of the amount of compensation payable to the Tong.

So we deeply sympathize with the Cheung Chau residents who entered into contracts from fear or misrepresentation. But Hong Kong is, after all, a society under the rule of law. We have to respect private leases or sub-leases. While extending to them our sympathy, we have to remember that we have the responsibility to ensure that public money is well and properly spent. We cannot request the Administration to issue a blank cheque because the Administration will not know how much it will have to pay and how deep this "pit" will be.

We are of the view that a better way to deal with the problem would be to respect the sanctity of the contracts already signed. It is estimated that many of these sub-leases are for a term of not more than five years. When their sub-leases expire, the protection under the present Bill will be extended to the Cheung Chau residents concerned. Although, from the point of view of the Cheung Chau residents, this may not be the most ideal solution, yet we think this is the wisest way which will enable Cheung Chau residents to get out of their dire straits upon expiry of their sub-leases.

Mr President, I so submit.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.



MR CHIM PUI-CHUNG (in Cantonese): Madam Deputy, in principle, I am personally opposed to the Honourable Andrew WONG's Private Member's Bill. It is because he did not, of his own accord, propose to pay compensation. Hence, in terms of spirit and morality, the Bill infringes the property rights of other people. Despite the questionable nature of these property rights, the Government recognizes them as good and valid though, of course, the Government qualifies it by saying that history has landed this problem on our lap.

I have doubts as to why Mr Andrew WONG, a member of Heung Yee Kuk, is doing this. Next September, the elected membership of the Legislative Council will be enlarged. I should be worried on behalf of the owners of New Territories small houses for indigenous villagers. It is because dwellers of New Territories small houses for indigenous villagers may be next on the "hit list". Why do I say this? Let us see who will get the more votes.

In saying this, my ultimate hope is to maintain a fairer and balanced frame of mind. True, when I spoke earlier, I expressed support and sympathy for the Cheung Chau residents who had been troubled by the problem. Yet, trouble is one thing and reality is quite another. As a matter of fact, this Private Member's Bill indeed seeks to divest other people of their property rights. It did not, in the first instance, contain a compensation provision. It is the Government which is now seeking to add such a provision to the Bill. Will it be right or wrong not to pay compensation? Members used to criticize the Communist Party. Now the Communist Party has not yet arrived but Hong Kong is already jumping the gun in trying to implement the communist model. Therefore, when Mr Andrew WONG was speaking, I remarked *sotto voce* that it was like schizophrenia. It is because even him himself did not know which Bill was right and which Bill was wrong. He was proceeding at an erratic pace. This, however, is my feeling. This does not mean it is a fact.

Mr WONG is proposing this Private Member's Bill and I am worried on behalf of the territory's major real estate developers. If one day their operations develop vastly, they may arouse jealousy. Some people might want to take away their things. In taking away their things, compensation would be offered to make the expropriation look reasonable. But Members well understand that, with regard to compensation, the Government's attitude is that the affected parties can file a claim. In other words, after things are taken away from one, one can commence legal proceedings to claim compensation. The mentality that I always have had is that the Government will invariably respect the affected parties to the extent required under the law. This is true of the Land Development Corporation. The Corporation has power but power does not mean it can take things by force. But the Government only says a claim can be filed with the court for it to adjudicate on. This, basically, amounts to pushing one to the wall. Therefore, I hope the Government, and that includes the Chief Secretary, will listen to the clear voice of the people concerned and deal with the present matter in a reasonable manner.

A while ago the Honourable Mrs Miriam LAU commented on clause 9 of the Bill. This indeed is a cause for concern. When the proposed amendment is discussed later, I shall talk about it in detail. Many people in this world are law-abiding. They would renew their leases every five years. But now it is those who resist the law in refusing to renew their leases who are going to benefit most. This will encourage law-abiding citizens to cherish doubts as to the desirability of doing lawful things. I shall therefore speak on clause 9 in greater detail when the item comes up for discussion later.

Madam Deputy, this Bill is proposed by Mr Andrew WONG who is a Heung Yee Kuk member. Again, on behalf of those who own an interest in New Territories small houses, I censure Mr WONG.

MR ALBERT CHAN (in Cantonese): Madam Deputy, I hope the present Bill introduced by the Honourable Andrew WONG will not meet the same fate that befell the preceding Bill, namely, the Electoral Provisions (Amendment) Bill. I hope the present Bill will be supported by Members.

A while ago the Honourable CHIM Pui-chung alleged that Mr Andrew WONG might be suffering from schizophrenia. But, the more I listened, the more keenly I felt that Mr CHIM could be suffering from “crap talk syndrome” and “talk-through-one’s-hat syndrome”. Hearing him speak, I found that many of his arguments were logically unsound, contradictory and full of holes. When he rejected the Government Bill earlier, he advanced a multiplicity of arguments and highlighted the problems currently confronting the Cheung Chau landowners. But when Mr Andrew WONG proposed a specific method to resolve the problem, Mr CHIM commented that Mr WONG’s Bill infringes private property rights. As a matter of fact, Mr CHIM is well aware that, in respect of the Wong Wai Tsak Tong (WWTT) question, both the Government Bill and Mr Andrew WONG’s Bill seek to address one and the same historical problem. Since the problem has been existing for 90 years, this Council has the responsibility to find a solution to it and the government department concerned has this responsibility too. After so many years of discussion and in the absence of other alternatives, it would be perfect indeed if Mr CHIM could put forward a better proposal or if Mr CHIM could act as an intermediary so that the Government and the WWTT would reach agreement to have this problem resolved. If the matter could be resolved, though it might entail the payment of \$5 million to \$10 million in compensation, Members would not need to spend so much time seeking to resolve this 90-year-old historical problem by way of a Private Member’s Bill.

I would like to make one point. Though the spirit of Mr Andrew WONG's Bill will give rise to the question of infringement of private property rights, yet if this problem is not resolved thousands of small landowners in Cheung Chau will continue to be subjected to unfair treatment stemming from an unfair arrangement and a historical burden. The present choice is one of deciding how we should deal with this historical problem in order to protect, in an appropriate way, the rights of thousands of small landowners. At present, a most ridiculous and most unreasonable state of affairs exists, which is that many of the Cheung Chau small landowners are not enjoying the rights to which owners in Hong Kong in general are entitled despite having paid valuable consideration and taken up financial commitment in just the same way as other owners do. In other words, rights and obligations are not evenly balanced. Therefore, although Mr Andrew WONG's Bill cannot be described as a most ideal measure yet it can, in the final analysis, resolve this historical issue in a balanced manner.

I will support the Honourable LEE Wing-tat's proposed amendment to clause 9. It is because the most ridiculous aspect of this problem is manifested in the refusal by many landowners to renew their sub-leases with the WWTT last summer. This aspect is dealt with in the present Bill. As a number of cases cited by the Union of Cheung Chau Residents and Owners as well as by the Rural Committee have indicated, many landowners renewed their sub-leases out of ignorance or because they had been deceived or misled. Based on a mistaken concept, they signed the renewed sub-leases and yet they are not to be protected under the present Bill. Of course, the Honourable Mrs Miriam LAU has pointed out that if clause 9 of the Bill is deleted the Government, which probably will have no means of knowing how much compensation it will have to pay, will get ensnared in a bottomless pit. We have repeatedly asked the Government if there are data available which will prove that the amount of compensation may be very huge. But the Government has been unable to produce any data. I feel that since we have to deal with and resolve this 90-year-old historical problem once and for all, we should pluck up courage to assume responsibility and come to grasp with the problem by deleting clause 9. All small landowners in Cheung Chau support the deletion of clause 9, so do many Cheung Chau residents organizations, including the Cheung Chau Rural Committee.

Mr CHIM Pui-chung is worried about the "small house for indigenous villager" problem. If Mr CHIM can represent the interests of indigenous residents in respect of their entitlement to small houses, I am sure he does not or cannot represent the villagers under the Cheung Chau Rural Committee. It is because the Cheung Chau Rural Committee is a formal rural organization and I wonder how many of Mr CHIM's constituents are members of rural bodies. My constituents in New Territories South who are members of rural bodies outnumber Mr CHIM's. If a censure is called for, I shall represent the 0.8 million residents of New Territories South to censure Mr CHIM.

Madam Deputy, I hope Members will take a good look at this problem. The proposals concerned may not be perfect. But if we want to resolve this long-standing historical problem, I hope Members will pluck up courage to deal with and resolve it once and for all. Please do not leave this historical burden to the next term Legislative Council by dumping the problem in its lap. If it is so dumped, there will be no knowing as to how many more meetings will have to be held.

Thank you, Madam Deputy.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Deputy, the Administration cannot support the Block Crown Lease (Cheung Chau) Bill as it stands. The Bill if enacted, would in effect abolish Wong Wai Tsak Tong's interest in its sub-leased land on Cheung Chau without compensation.

The Administration considers that private property rights should not be abolished. This is against Hong Kong's long-standing policy of respecting and protecting property rights. Regrettably, as seen from the earlier speeches today, it appears that quite a number of Members may not appreciate this to the extent as the Administration does.

Property transactions on Cheung Chau have effectively been frozen since November 1994 because of uncertainty over the title to the sub-leased land arising from the non-renewable sub-leases. The desirability of resolving this issue as soon as possible is more than obvious.

Should the Bill be passed by this Council at the Second Reading, notwithstanding the reservations of the Administration, I intend to introduce a Committee stage amendment to provide for compensation to be claimed by the Tong in accordance with provisions of the Crown Land Resumption Ordinance. The purpose of the Committee stage amendment is to reduce the undersirability of allowing legislation to be enacted which expropriates without compensation a property right legally combined.

However, I must say that even with the provision of compensation procedures, the Administration does not see the Bill as the right way forward. Abolition of property right is wrong in principle and sets a very dangerous precedent in the history of Hong Kong. The provision of compensation to the Tong only serves to reduce but not remove this undersirability.

Thank you, Madam Deputy.

MR ANDREW WONG (in Cantonese): Madam Deputy, first, I am grateful to the Administration for supporting my Bill even after their own Bill, the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill (the WWTT Bill),

has been rejected by Members. I do not mean that the Administration is deferring to me alone. It could be said that the Administration is ready to act according to the result of the debate we had last January and the recommendations contained in the study report of the Sub-committee. As none wanted to sponsor a Bill to give effect to the recommendations of the report, the Administration least of all, I have taken on the task myself. The Administration has agreed to have clause 10 of the Bill amended to enable the affected party to claim compensation where none was claimable under the original provision. I have to thank the Administration for this.

The Honourable CHIM Pui-chung commented a while ago that, in moral terms, what I am doing is a mistake. If it was a moral mistake, then I suppose many Members would have to share the blame. I believe that under the present circumstances I am not entitled to propose any compensation provision. However, my intention and that of Members is crystal clear. We want the Administration to agree to have a compensation provision inserted. We do not intend to expropriate the property of other people. What we are proposing to do is the only solution to the deadlocked dispute between the Wong Wai Tsak Tong (the Tong) and the sub-lessees in Cheung Chau. It is because if discussion is to be held as to what should amount to reasonable compensation there may never be any outcome after years of discussion.

Having thanked the Administration, I have to address the Administration's way of thinking which is that it would be objectionable and wrong to expropriate other people's property and exterminate their rights and interests therein, not to mention that it would set a bad precedent. But the Administration should not overlook the fact that their own WWTT Bill proposed a drastic attenuation of property rights though stopping short of actual expropriation. The Administration might have been seeking, through legislative means, to do more or less the same thing as I am doing. I have openly remarked that this is pretty much like one who has walked 100 paces ridiculing another who has walked 50. Perhaps I am the one who has walked 100 paces whereas the Administration has just walked 50. But, anyway, both parties are seeking, to varying extents, to expropriate the Tong's property. Now the Administration and I both admit that under the law the Tong is the legal owner. In such circumstances, how much are the property rights worth? The size or extent of property rights should be a matter for the courts to judge, not for us to decide by means of legislation. But, there is no other alternative open to us to solve the problem. The way, as presently proposed, to deal with the matter is the best way to solve the problem in a clear-cut and outright fashion. Therefore, I cannot support the Administration's proposal which is limited to addressing the question of property rights. As a matter of fact, such proposal is also meant to expropriate property without compensation. If, in making the present proposal, my true intention is to deny compensation to the affected party and is therefore immoral, the Administration is perfectly entitled to propose a compensation provision. But, in the WWTT Bill, there was no compensation provision. Why was that?

Madam Deputy, I do not want to start a debate with Mr CHIM Pui-chung here. If, because of this matter, I have incurred the dislike or wrath of Heung Yee Kuk and real estate developers, this is something I shall deal with on my own. Mr CHIM need not have worries for me. I believe what I am doing is totally above board as befitting an upright man and is fair to all parties involved, myself and others and even the Tong. According to Mr CHIM's thinking, the indigenous villagers' property rights in "small houses" would be put on the "chopping block". As a matter of fact, everything can be put on the "chopping block". Why are "small houses" being particularly singled out? Could it be that Mr CHIM had been put on the "chopping block" by the Land Development Corporation?

As regards syndromes, I think they are not worth mentioning. Be it schizophrenia or "crap talk", such terms sound like an affront. May be Members should not use such words. But our Governor once used the term "hyperchitis" and I used "omelcoliosis" Members will recall that I once asked Mrs Elizabeth WONG if there was a new occupational disease called "omelcoliosis". She replied that she knew I was being infected by such virus.

Madam Deputy, with these remarks, I urge Members to support the Second Reading of this Bill.

*Question on Second Reading of the Bill put.*

*Voice vote taken.*

THE PRESIDENT'S DEPUTY said she thought the "Ayes" had it.

MR LEE WING-TAT: Division.

PRESIDENT'S DEPUTY: We have a division. The division bell will be rung.

THE PRESIDENT resumed the Chair.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU, Mr James TIEN, Mr Alfred TSO and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr PANG Chun-hoi and Mr CHIM Pui-chung voted against the motion.

THE PRESIDENT announced that there were 50 votes in favour of the motion and five votes against it. He therefore declared that the motion was carried.

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.

### **BLOCK CROWN LEASE (CHEUNG CHAU) BILL**

Clauses 1 and 3 were agreed to.

Clause 2

CHAIRMAN: Mr LEE Wing-tat has given notice to move an amendment to the definition of "Block Crown Lease" in clause 2. Mr Andrew WONG has also given notice to move an amendment to the Chinese text of the definition of "Block Crown Lease" only. I will call upon Mr LEE Wing-tat to move his amendment first."

MR LEE WING-TAT (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out under my name in the paper presented to Members.

Mr Chairman, I am proposing this amendment on behalf of the Bills Committee. By way of a perfecting touch to the Block Crown Lease (Cheung Chau) Bill as drafted, the amendment seeks to redefine “Block Crown Lease” in the Interpretation section of the Bill. In the present version of the Bill, “Block Crown Lease” means the Block Crown Lease dated 18 March 1905 whereby certain lots were demised in favour of Wong Wai Tsak Tong and includes new grants of lots granted after the aforesaid date upon the surrender of old lots. Members of the Bills Committee were of the view that all lots demised to the Tong after 18 March 1905, irrespective of whether they had been surrendered and regranted, should be covered by the Block Crown Lease. I move the amendment. Thank you, Mr Chairman.

*Proposed amendment*

**Clause 2**

That clause 2 be amended, in the definition of “Block Crown Lease”, by deleting everything after “includes” and substituting -

“grants of lots in favour of Wong Wai Tsak Tong made after 18 March 1905 and other grants of lots made after that date which have been assigned to Wong Wai Tsak Tong”.

*Question on the amendment proposed.*

MR ANDREW WONG (in Cantonese): Mr Chairman, I observed one principle when I drafted this Bill, which is that the clearer the definition, the better. But, obviously, because of the failure to resolve the problem relating to those sub-lessees affected by the five-year sub-leases, I entirely accept the present amendment. If agreed to by Members, the amendment will help improve the Bill.

*Question on the amendment put and agreed to.*

MR ANDREW WONG (in Cantonese): I move that clause 2 be further amended as set out under my name in the paper circulated to Members.

The amendment seeks to change “租出” to “批租”. This is purely a question of Chinese translation. It is because “demise” is rendered as “批租” in the Chinese version of other Ordinances. To achieve uniformity, the term is to be changed to “批租”. Moreover, “長洲部分地段” is to be changed to “長洲若干地段” so as to point out specifically that the land lots are independent units rather than part of a land unit. Therefore, the present amendment seeks to revise some of



the terms in the Chinese version, that is to say, to replace “租出” with “批租” and “部分地段” with “若干地段” .

*Proposed amendment*

## **Clause 2**

That clause 2 be further amended, in the definition of “集體官契” by deleting “並據此租出長洲部分地段” and substituting “並據此批租出長洲若干地段” .

*Question on the amendment proposed, put and agreed to.*

MR LEE WING-TAT (in Cantonese): Mr Chairman, I move that clause 2 be further amended for the same reason that I gave when I spoke a moment ago. It is to define in clearer terms “Block Crown Lease”. Therefore, I will not repeat what I said earlier. Thank you, Mr Chairman.

*Proposed amendment*

## **Clause 2**

That clause 2 be further amended —

- (a) by deleting the definitions of “Land Registry register”, “lot” and “sub-lease” and substituting -

“land” (土地) means a lot or lots, or part or parts thereof;

“lot” (地段) means a piece or parcel of ground demised under the Block Crown Lease or granted after 18 March 1905, whether upon the surrender of old lots under the Block Crown Lease or not, and identified by a lot number in the Land Registry ;

“sub-lease” (分租契) means a sub-lease granted by Wong Wai Tsak Tong which has been registered in the Land Registry before the commencement of this Ordinance of land or undivided shares in land held under the Block Crown Lease for a term of years specified in the sub-lease and renewable on the same terms until the termination of the Block Crown Lease, whether renewed or not, and includes such a sub-lease which has been assigned in whole or in part or has been retained in part following an assignment and which assignment has been registered in the Land Registry before the commencement of this Ordinance;” .

(b) by adding -

““undivided shares in land” (土地的不分割份數) includes the entitlement to exclusive possession of premises attached to the entitlement to the undivided shares.”.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 2, as amended, proposed, put and agreed to.*

CHAIRMAN: The Secretary for Planning, Environment and Lands has given notice to move amendments to clauses 4 to 10. Mr LEE Wing-tat has given notice to move amendments to clauses 4 to 9. As the amendment to clause 9 has significant implications on other clauses, I have decided under Standing Order 46(4) to deal with amendments to clause 9 ahead of the amendments to clauses 4 to 8.

Clause 9

CHAIRMAN: Both the Secretary for Planning, Environment and Lands and Mr LEE Wing-tat have given notice to move amendments to clause 9. I will call upon Mr LEE Wing-tat to move his amendment to clause 9 first in accordance with Standing Order 25(4).”

MR LEE WING-TAT (in Cantonese): Mr Chairman, I move that clause 9 be amended as set out under my name in the paper circulated to Members.

Mr Chairman, the clause in question, that is to say, clause 9, is the only provision in the entire Private Member's Bill in respect of which Members' views differ. As I said during the resumption of Second Reading debate on the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill, I hope Members will support my present amendment. Of course, even if this amendment is not passed, at least 90% or over 90% of Cheung Chau residents will still get protection under this Bill. However, Mr Chairman, my purpose of proposing this amendment is to extend the coverage or scope of protection of this Bill to all small landowners of Cheung Chau or, in the terms of the Bill, to land in Cheung Chau held from Wong Wai Tsak Tong (the Tong) under sub-leases.

I would like here to give Members a brief introduction of sub-leasing by the Tong. Under a Block Crown Lease, the Tong is the head lessee of most of the land in Cheung Chau. It sublets the land to sub-lessees (commonly known as small landowners) under sub-leases. It is stipulated that these sub-leases are renewable every five years on the same terms. In the past, some small landowners forgot to renew their sub-leases when the five-year term was up.

But the Tong never imposed any penalty on them for delaying the renewal of their sub-leases. In the late 1970s and early 1980s, the Tong changed its long-held policy and started to impose a penalty ranging from several hundred to a \$1,000 or even \$10,000 on those who failed to renew their sub-leases on time. Sometimes, the Tong would impose on sub-lessees at varying percentage rates a land premium surcharge for redevelopment or land exchange. The surcharge ranged from 10% to 20% or even 30% of the premium. Some small landowners even alleged that there had been instances where the surcharge had been as high as 50% to 100% of the premium. If the small landowner did not pay the premium surcharge, the Tong would not give its consent to the proposed development which could never go ahead without such consent.

Clause 9 of the Honourable Andrew WONG's Private Member's Bill provides that "..... nothing in this Ordinance shall affect any transactions between Wong Wai Tsak Tong and any person on any lot under the Block Crown Lease carried out before the date of coming into operation of this Ordinance." Simply put, any small landowner who had renewed his sub-lease with the Tong before 9 November 1994 will not be protected by the new Ordinance irrespective of the terms of the sub-lease. The Administration is proposing an amendment to clause 9 but the amendment is intended to continue to give effect to the new sub-leases extending beyond November 1994 signed between the Tong and small landowners. The amendment differs from the original Bill in only one aspect, which is that it will only be after the expiry of the new sub-leases — normally after the effluxion of five years — that the sub-lessees will be deemed Crown lessees, that is to say, small landowners in the full sense of the word. I am of the view that clause 9 of the original Bill and the Administration's proposed amendment to clause 9 are neither fair nor capable of resolving the problem completely. My grounds for such view are as follows:

First, neither the Bill nor the Administration's proposed amendment can protect, or shall I say, penalize those small landowners who are in the habit of renewing their sub-leases once every five years. This, I think, is unacceptable. How can the Legislative Council pass a law which will accord protection only to those who persevere in opposing the Tong by refusing to renew their own sub-leases but will deny protection to those small landowners who, succumbing to the Tong's pressures, have been obliged to, or have no other option but to, renew their sub-leases? Most of those sub-lessees who have renewed their sub-leases are old people. Their life-long savings are all invested in the property on their respective lots. They have been left with no alternative but to have their sub-leases renewed because some of them want to develop or exchange their land; some others may want to sell their property for economic or other personal reasons or in order to emigrate. Even though they have not been literally coerced into signing new sub-leases, yet, apart from those who habitually renew their sub-leases every five years, most have their own varied difficulties or reasons for doing so. As a number of Members have remarked, circumstances have compelled the sub-lessees to voluntarily renew their sub-leases. This so-called voluntary renewal is not really voluntary in the true sense of the word. If during May, June, July or August last year, the Administration

or the then Secretary for Planning, Environment and Works had clearly stated that a Bill would be drafted according to the spirit of the present Bill tabled by Mr Andrew WONG, I believe these sub-lessees would have had to put up with the status quo for just one year longer at the most. But the Administration made no such statement. The Administration as yet had no clear policy then to terminate the Tong's status as head lessee under the Block Crown Lease. How could the small landowners have imagined that this problem would be resolved shortly? If history could repeat itself and if the clock could be turned back, I believe these 200 to 300 small landowners would not have "voluntarily" renewed their sub-leases and thus forgoing the protection afforded by the present Bill.

Mr Chairman, the second ground is that the amendment proposed by the Administration will only put off, but not resolve, the problem. This group of small landowners not protected by the new law will approach and petition the new-term Legislative Council next October. They will say to Mr Andrew WONG that the matter is far from being settled and will request that another ad hoc committee be set up to deal with this problem. According to Mr Andrew WONG, this is the first time since 1988 that he had the opportunity to have this problem resolved. If we pass the Administration's amendment and thus put off the problem for three to four years, how much longer would the matter have to drag on before it would be eventually resolved?

Let me turn to the third ground on which my view is based. Since sub-leases are normally renewed for a term of five years, these small landowners will not be full landowners in the true sense of the word for the next five years at least. They are not Crown lessees; they are still the Tong's sub-lessees. From a certain perspective, the real property they own is not any different from frozen property. If they want to exchange their land for the purpose of development, is it true that they will have to pay premium to the Tong? Will the Tong give its consent? I have heard pretty bad news about this and I hope it is not true. One of my colleagues in this Council has told me that, if the Administration's amendment is passed, the Tong may, by certain means, seek to re-enter the land let to those small landowners because they are just sub-lessees. This is no alarmist talk. I shall later elaborate on it.

Mr Chairman, let me now turn to the fourth ground. According to information provided by the Cheung Chau Rural Committee and the Union of Cheung Chau Residents and Owners, from the summer to November of last year, more than 200 sub-lessees signed new sub-leases with the Tong. These sub-leases were not renewed on the same terms as before. Viewed from a certain angle, the Tong has departed from its past practice. These Cheung Chau residents have signed new sub-leases because they had no choice. Cheung Chau residents call the contracts "unequal treaties" which carry the following draconian and oppressive terms.

Clause 3(A) of the contract provides that after 1 July 1997 the Tong shall collect from the small landowners government rent equivalent to 6% of the rateable value of the land. This is in fact in breach of the Sino-British Joint Declaration which states that government rent collectable after that date shall be equivalent to 3% of the rateable value. Clause 7 of the contract provides that the Tong or its representative may, without giving any reason, enter the premises at any time to carry out inspection. I believe even the Chinese Ministry of Public Security or the KGB of the former Soviet Union would not have such vast powers. But the contract does indeed so provide. Clause 8 of the contract provides that, if the small landowner is in arrear with the government rent or in breach of any of the terms of the contract (there are a vast number of conditions in the contract and it would be easy to breach one of them), the Tong shall cause the property of the small landowner to be forfeited to the Tong. Are such oppressive terms acceptable? As I said a moment ago, a Member of this Council hinted to me that the Tong could well act on these clauses in the new contract. This is not alarmist talk. Clause 8 of the new contract confers on the Tong new powers which formerly were not conferred on it when the sub-leases were renewed every five years.

Some Members have commented that the small landowners were aware of the terms when they signed the contract. But this depends on whether Members will believe what circumstances the small landowners were in when they signed the contract. As I said a while ago, they may have had difficulties, such as redevelopment or emigration, which obliged them to sign the contract. Moreover, many of these contracts were written in English and many sub-lessees thought that the sub-leases were being renewed on the same terms every five years as had been the usual practice. A small landowner complained to us that he had been asked by the solicitor to sign on the last page of the contractual document when the sub-lease was being renewed and after he had signed it some other contractual papers were added and bound together as one bundle. Was this fair to them? Has the Honourable Member ever looked at the contractual documents from 1905 right up to the present time? Contracts from 1905 up to very recent times contained the same terms. It was not until 1994 that the contents changed where a clause 8 was added. If we do not protect these 200 to 300 small landowners, we cannot rule out the possibility that the Tong may resort to force or other means to coerce the small landowners into submission, take over their property, impose new contractual terms on them, force them to pay rent, exploit them or demand more from them.

Mr Chairman, the reason given by the Administration for rejecting my amendment cannot stand. The Administration gave two reasons for the rejection. First, the Administration argues that my proposed amendment will detract from the contractual obligations entered into voluntarily by the Tong and the small landowners. As I said moments ago, many of the small landowners had no choice but to sign the contracts. This is not much different from the payment by small landowners of large sums of premium to the Tong during the period from the early 1980s to the early 1990s in order to secure the Tong's consent to development of their sub-leased lots. If Members care to ask

the Cheung Chau small landowners, those petitioners outside this Council Building, how much premium they have paid the Tong during the past 10 to 20 years by way of consideration for land exchange or redevelopment, they will say that they have variously paid sums ranging from 10% to 50% or even 100% of the land premium charged by the Government. If Members care to ask those who have paid 50% whether they willingly did it, they will say they did not. But if they did not pay the extra premium, the Tong would not give its consent and the small landowners would be unable to develop their property. So I think they were “coerced into voluntarily” paying the extra premium.

Mr Chairman, the Cheung Chau residents had no alternative but to sign these unequal treaties. Members must understand that Mr Andrew WONG’s Private Member’s Bill now laid before us for endorsement seeks to terminate, by legislative means, the contract subsisting between the Government and the Tong in the form of a Block Crown Lease. We are legislating to terminate a contract, that is to say, the contract whereby the Government conferred on the Tong the status of Block Crown Lease holder. Why did we accept that the Administration could do it this way, or why did we accept that we could do it this way during the resumed Second Reading debate? Then why do we not accept that a minority of the small landowners can do it this way too? I feel that it is not logically justifiable.

Mr Chairman, the second explanation given by the Administration for not accepting my proposed amendment is that the Administration is worried lest they should be faced with certain unforeseeable contractual arrangement which would lay the Administration open to huge compensation claims after deletion of clause 9.

Mr Chairman, I think this worry is not founded on rigorous examination and study but on assumptions, possibilities and imponderables. Is it fair to reject or oppose our amendment on this pretext? I initiated a motion debate on this subject on 18 January this year and the motion was amended by the Honourable Edward HO and the Honourable TAM Yiu-chung. Since then, we have been posing questions to the Administration and giving them seven months to study the matter in order to come up with the answers. We have been posing these questions since the Bills Committee first started its work. These questions were asked during five or six of the meetings of the Bills Committee. The Administration’s answer has invariably been: No time to carry out a study or investigation. My conclusion is that the Administration, up to this very moment, that is, 5.25 pm on the 28th day of July 1995, has yet to produce an example of how the variation of contractual terms would bring the Administration face to face with huge compensation claims. The Administration has failed to come up with an example. Have we given the Administration ample opportunity to produce such an example? Yes, seven months we have given them. Have we given the Administration the opportunity to defend their position during the Bills Committee deliberations? Yes! But they did not bother to defend. They only said they had no information, no time and no

manpower. I feel that this is unfair to the Legislative Council and to the small landowners of Cheung Chau.

Mr Chairman, as I said in the earlier part of my speech, if we did not delete clause 9 Cheung Chau residents would be differently treated under the same Bill. Cheung Chau residents would absolutely oppose this unequal treatment. Those residents who fail to get protection under the present Bill will certainly approach and complain to the Legislative Council again when the Council resumes next October. Shall we then set up yet another ad hoc committee to study the matter or consider further amending the law? I am in favour of treating all sub-leases in the same way and deleting clause 9. Thank you, Mr Chairman.

*Proposed amendment*

**Clause 9**

That clause 9 be amended, by deleting the clause.

*Question on the amendment proposed.*

CHAIRMAN: I will call upon the Secretary for Planning, Environment and Lands to speak on the amendment proposed by Mr LEE Wing-tat as well as his own amendment, but will not ask the Secretary for Planning, Environment and Lands to move his amendment unless Mr LEE's amendment has been negated. If Mr LEE's amendment is agreed, that will by implication mean that the Secretary for Planning, Environment and Lands's proposed amendment is not agreed.

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, the Honourable LEE Wing-tat might have argued eloquently on his proposed amendment. But the Administration considered that his proposal touches on two very important principles and that is, whether legislation should have retrospective effect and whether private contracts should be respected. The original clause 9 of the Bill upholds the important principle that legislation should not have retrospective effect.

I quote the original wording of this clause: For the avoidance of doubt nothing in this Ordinance shall affect any transaction between ..... and any person on any lot under the ..... before the date of coming into operation of this Ordinance.

I believe the Honourable Andrew WONG will have borne this important principle in mind in the drafting of clause 9 of the Bill. I fully share his spirit as reflected in the clause and hope that he will continue to uphold the principle.

The other important point of principle involved refers to private contracts. The Administration firmly believes that contracts entered into by private parties should be respected and should not be interfered with. If it is absolutely necessary to do so, such interference should be kept to the minimum.

The amendment proposed by the Honourable LEE Wing-tat is contrary to both of these important principles and the Administration therefore opposes it. The Bills Committee, as Mr LEE admits, also has no consensus on the amendment. The Official Members will vote against the amendment and urges Members to do so.

We take the view that the Bill should not have any retrospective effect on agreements between Wong Wai Tsak Tong and the sub-leases which have been granted or renewed for any period extending beyond 9 November 1994 and under which agreement the Tong and the sub-lessees have agreed on the amount of rent payable to the Tong after 30 June 1997.

These sub-leases have been granted or renewed before the commencement of the Bill and should not be deemed as Crown leases upon the commencement of the Bill.

In addition, Mr LEE's proposed amendment may increase the Government's compensation to the Tong which is taxpayer's money. There is no reason for subsidizing those sub-lessees. Some of them being property developers who have already renewed their sub-leases with the Tong under private arrangements.

Mr LEE also queried whether the Government could quote an example on the contracts or the external compensation. I should like to point out that it is again a private transaction between the Tong and the sub-lessees and the Government has no authority to enter into the Tong's premises and demand to see the records. Hence those sub-leases which have been presented to Members by Mr LEE might have been lopsided or just slanted towards one side of the sub-leases on Cheung Chau, and I doubt whether Mr LEE Wing-tat has or has not seen all those sub-leases, some of which were signed very voluntarily.

In addition, the number of sub-leases which has been granted or renewed beyond 9 November 1994 is unknown to us. The terms they contain may vary significantly from one to another. It cannot be assumed as Mr LEE does that all of them are of similar terms as the previous sub-leases. There is therefore a danger that Members may be given an incomplete picture or even misinformation about the financial implications of the proposed amendment on the Government. Nevertheless the original clause 4 of the Bill requires some clarification. I therefore intend to move an amendment to the Bill so as to exempt sub-leases extended beyond November 1994 and under which the amount of rent payable to the Tong after 30 June 1997 have been agreed by the Tong and the sub-lessees from the provisions of sections 4 and 5 of the Bill.



In addition, I would also propose an amendment to stipulate that these sub-leases should be deemed to be granted upon the commencement of the Bill new sub-leases by the Wong Wai Tsak Tong for the residue of their terms. I would further propose that upon the expiry of the current term of these sub-leases, the sub-lessees will be deemed as Crown lessees. This will be done under an amendment to clause 5 which I would move later in the event that my proposed amendment to clause 9 has been supported by Members. There would also be a number of other consequential amendments.

Thank you, Mr Chairman.

CHAIRMAN: Members may now debate the amendment moved by Mr LEE as well as the amendment proposed by the Secretary for Planning, Environment and Lands.

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, I believe that even after the Honourable LEE Wing-tat and Mr Bowen LEUNG have spoken, many Members are still “in a haze” and do not know what it is all about. If some Members want to clarify for the benefit of other Members, I hope they will rise to explain what the matter is all about.

A while ago I vigorously criticized the Honourable Andrew WONG for failing to write a compensation provision into his Private Member’s Bill. Of course, compensation would be paid out of public funds. Yet this is no excuse for his Bill’s failure to manifest such spirit. At least such spirit must be present before the Bill can be regarded as not seeking to expropriate private property.

With regard to the Honourable Albert CHAN’s criticism of me, I must say he has failed to appraise his own clout in his own constituency. I do not need to solicit votes in that constituency. We are all after one thing, that is to say, we are upholding the spirit of protection of private property.

Mr LEE Wing-tat spoke at great length on his proposed amendment to clause 9. What he said was all rubbish. It is because the most important thing for us to do is to uphold the spirit that those who have entered into a contract and abided by it cannot be made to suffer loss, otherwise we would be allowing those who have held out against signing the contract to derive benefit from playing tough. I think this is the major point at issue, not the point, as alleged by a Member, of arbitrary entry for the purpose of inspecting the premises. I take the latter point to be no more than an assumption. They have already explained the reason. Therefore the spirit we must uphold in this regard is that since the two Bills seek to attenuate other people’s rights and interests they must not be permitted to do so. We must, at least, seek to maintain or present some semblance of fairness.

Mr Chairman, how did such a state of affairs come about? About 90 to 100 sub-lessees then observed the term which required sub-leases to be renewed every five years. Among these sub-lessees, there were of course developers and owner-occupiers. They signed contracts with Wong Wai Tsak Tong and abided by them. They are law-abiding people. But the other several thousand sub-lessees did not do the same. The Government is now enacting the present Bill to protect the latter while those who abided by the terms of their contract are not so protected. I personally think this is unreasonable.

Therefore, in spirit and in fact I support Mr LEE Wing-tat's proposed amendment but not because of the sheer length of his speech. What actually is the purpose of speaking at such great length? To grab votes. Indeed there is no need to say so much by way of explanation. What is most important is to ensure a fairer state of affairs. Hence, if ever we buckle down to something, we must do it in a fair manner.

The present Bill before us today is essentially to serve a morally good purpose. Its introduction is also based on facts. Regarding this Cheung Chau Wong Wai Tsak Tong affair, to put it bluntly, how many of those who were involved in the 1905 dispute are still living today? Many of the present owners in Cheung Chau bought their property in the past 10 to 20 years. They understood their legal position when they bought their property. Since they are aware of what their legal position is, they know what rights they will enjoy if the present Bill is passed. Therefore, I would like to take this opportunity to remind Cheung Chau residents that the present Bill, despite being passed by this Council, will still be subject to interpretation by the courts. Members of course hope that the Government will do what it should do and implement the Bill that we pass today so that no legal disputes will arise in the future.

Mr Chairman, I support the proposed amendment to clause 9. But that does not mean I agree with what Mr LEE Wing-tat said at such vast length. What I really support is that since we are dealing with this matter we may as well protect those who entered into contracts because of other factors. Although the Government says these are contracts between private individuals, yet, if these contracts are unfair, I think the Government should take the risk and find out how much the compensation will be.

Mr Chairman, I so submit.

MR ALBERT CHAN (in Cantonese): Mr Chairman, a while ago a Member let drop a remark that we had failed to appraise our own capability. In terms of wealth, we are of course no match for the Honourable CHIM Pui-chung. If we were only talking about financial clout, I would agree with what he said. It is because he rides in a Rolls Royce while I drive only a Toyota.

Mr Chairman, with regard to clause 9, Mr Bowen LEUNG, the Secretary for Planning, Environment and Lands, has argued that the Administration should not seek to alter, through legislation, the contractual system and contractual relationships between private individuals. But let us take a look at a number of Ordinances enacted in the past, particularly the Buildings Management Ordinance which was deliberated and enacted at the beginning of 1993. At that time, the Honourable Allen LEE and many Members from the Liberal Party took part in the deliberations. Mr LEE vigorously supported the proposal to legislate so as to provide for “retrospectivity” in relation to the Deed of Mutual Covenant. In other words, it was a move to change, through legislation, the contractual relationship under the Deed of Mutual Covenant, that is to say, the original relationship between the developer and the flat owners. Many Deeds of Mutual Covenant had expressly set out the date on which an incorporated body of owners was to be established. But later, through legislation in the form of the Buildings Management Ordinance, all flat owners in Hong Kong have been empowered, pursuant to the said Ordinance, to override the relevant restriction prescribed in the Deed of Mutual Covenant and to set up incorporated bodies of owners. Members from the Liberal Party supported then the amendments to the said Ordinance. Mr Allen LEE advocated and supported it. Therefore, to change, through legislation, the contractual relationship between private individuals is not unprecedented. There are precedents to it and many Members supported it.

Our present move to seek to change, through legislation, the relationship between Wong Wai Tsak Tong (the Tong) and Cheung Chau small landowners, particularly with regard to the question of lease renewal after the summer holidays in favour of the small landowners, is based on the same spirit as above described and there is little difference. We are doing this because what has been happening is very unfair. It is lawful but very unreasonable and unfair. There are a multiplicity of reasons for such a state of affairs. The small landowners give their version of the story while the Tong gives a different version of its own. The question then is to find out which side is suffering greater loss and whether it is reasonable. The Honourable LEE Wing-tat has given a number of reasons. If Honourable Members here were the small landowners concerned, would you have been willing to enter into a contract which would permit the head lessor to enter your premises at any time as is so provided under clause 8 of the contract referred to by Mr LEE Wing-tat which gives the right to the Tong to enter as it pleases the private premises of the small landowners in whatever circumstances? Obviously, the small landowners who signed these renewed sub-leases did not understand what the documents were all about and were misled into signing them.

On the question of compensation, Mr Bowen LEUNG, the Secretary for Planning, Environment and Lands, has argued that if clause 9 is deleted the Administration will have no means of knowing how much compensation it will be liable to pay. However, according to our understanding and having regard to the historical background of the whole affair and the lease renewal data of the Tong, it is evident that there is an express provision to the effect that sub-leases shall be renewable on the same terms as before. But last year when the sub-leases were renewed many of the contractual terms were changed. If the Tong wants to claim compensation, it will have to argue its case before the Lands Tribunal and the Administration may contest it. The Administration of course holds an edge in terms of legal expertise and other advantages. If the Lands Tribunal is not given the opportunity to deal with the case, the small landowners who have had their sub-leases renewed will be bound for another four years by these unequal treaties. I hope Members will consider this state of affairs. Of course, the position in respect of development contracts will be different but, in regard to the small landowners who have had their sub-leases renewed, the problem will continue to exist.

As regards the Wong Wai Tsak Tong question, if we care to look back on the past four years, we will find that Cheung Chau tops the list of Legislative Council petitioners in terms of the number of petition trips and the size of the petition group. All these years, Cheung Chau residents, harbouring grievances and chafing under unfair treatment for decades, have petitioned this Council numerous times. Patently, an unreasonable and unfair state of affairs does exist. Members are aware that it is not at all easy to mobilize the requisite forces in order to organize successfully petitions, demonstrations or processions. Image this. A host of resident groups, of their own accord, have mobilized so many people to come from Cheung Chau to Central so many times. The people are not coming on foot to the Legislative Council from nearby. This can serve to prove that a very serious and unfair state of affairs exists.

I hope Members who are voting today will try to understand the dire straits of the Cheung Chau small landowners and support Mr LEE Wing-tat's proposal to delete clause 9. Thank you, Mr Chairman.

MR ALLEN LEE (in Cantonese): Mr Chairman, moments ago the Honourable Albert CHAN mentioned the Buildings Management Ordinance. I was then the chairman or convenor of the ad hoc group to scrutinize the Bill concerned. The Ordinance allows owners to form incorporated bodies of owners. This differs somewhat from the issue of land rights affecting Wong Wai Tsak Tong (WWTT).

As Members are aware, the WWTT question is a question left over from history. There are certain unfair aspects to it. Yet Hong Kong is a society under the rule of law. WWTT has entered into contracts with the present landowners. The Honourable LEE Wing-tat is proposing that the relevant clause in the Bill be deleted to have the matter over and done with. I think that in a society governed by the rule of law this way of doing it will somewhat scare the citizens. It is because under the law the contracts are legally executed instruments. I am of the view that a reasonable way to do it would be for the Administration to offer compensation so as to eliminate the unfairness that dates back to the past. Hence, I think there is considerable difference between this question and buildings management, by which I mean the incorporation of owners' bodies to protect the right to manage the buildings.

We will support the Administration's proposed amendment and oppose Mr LEE Wing-tat's proposal to delete clause 9.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would like to respond to the Honourable Allen LEE's remarks. In fact, the principles involved in the two situations are not much different. At that time, we overruled, by means of legislation in the form of the Buildings Management Ordinance, a provision in the Deed of Mutual Covenant (DMC). The DMC is a private contract between flat owners and private developers which contains provisions as to management rights, such as which company is to be responsible for management, for how many years the management rights are to last, and the relationships involved. It is purely a private agreement. There are tens of thousands of DMCs in Hong Kong many of which have been in force for several tens of years. We enacted legislation to regulate afresh the relationships between the developer and flat owners and between the management company and flat owners. Some DMCs provide that no incorporated body of owners shall be established in certain housing estates until after 1997 and that such restriction be subject to further extension for 50 years until after 2047. We enacted legislation to change the relationship provided under the DMC. Such change would make many management companies lose their management rights and would affect the original rights of the developer in the housing estate concerned. Therefore, to a certain extent, we redefined the contractual relationship between flat owners and the real estate developer.

Of course, to a certain extent, this question was slightly different from the Wong Wai Tsak Tong question and the Honourable LEE Wing-tat's proposed amendment to delete clause 9. This I agree. But in terms of principle and spirit, the two questions are the same. In terms of impact, property rights affected and scope of operation, the Buildings Management Ordinance enacted two years ago probably surpasses the present Bill. It is because the DMCs covering all private buildings completed before 1988 would be affected. In terms of coverage and the number of people affected, the Amendment Ordinance enacted two years ago had a greater impact. Why could we accept such an Amendment Ordinance two years ago but cannot accept the present Bill?

I hope Members will think this over. In order to protect the rights of small landowners and Cheung Chau residents, to terminate an unfair state of affairs and to revoke an unfair contract, would Members please seriously consider Mr LEE Wing-tat's proposed amendment and lend it support?

MRS MIRIAM LAU (in Cantonese): I rise to speak in response to the remark made by the Honourable Albert CHAN a while ago. He argued that the spirit and principle underlying the Buildings Management Ordinance passed by this Council some years back were the same as those relating to the proposed termination of Wong Wai Tsak Tong's (WWTT) status as Crown lessee.

The Buildings Management Ordinance provided then that the service contracts of certain management companies could be terminated after a certain period of time. There was no grace period. The present proposal to terminate WWTT's status as Crown lessee involves the question of forfeiture or expropriation of private property as well as the question of compensation. The Buildings Management Ordinance then did not involve the question of compensation whereas the present Bill does. Therefore, I do not agree that the two are the same in terms of principle and spirit. Thank you, Mr Chairman.

MR ALFRED TSO (in Cantonese): Mr Chairman, this is a complicated problem that we are dealing with. I am responding to the Honourable CHIM Pui-chung's call that whichever Member who knows a little bit more about this problem should rise to speak. Hence, I will concisely give my views on this matter.

The present Bill is in fact seeking to divest people of their rights and interests in private property. This is a most controversial arrangement. Initially, I was very hesitant as to whether we should adopt this method to resolve the Wong Wai Tsak Tong issue. But I considered that we should give the Cheung Chau residents a reasonable set of arrangements which would appear to be the only effective solution to this historical problem. Therefore, I support the present way to resolve by legislative means this dispute relating to rights and interests in land.

Clause 9 relates to the question of compensation. The way we draw the line will have a direct bearing on the question of compensation. If, according to the Honourable LEE Wing-tat, we are to include sub-leases recently renewed and place them under the protection of the present Bill, a new controversial question with regard to the amount of compensation will probably arise, as alleged by the Administration. Members must consider this carefully. The Administration may have to face up to the question of paying compensation to Wong Wai Tsak Tong and such compensation is of course paid out of taxpayer's money. I think Members must very carefully and cautiously draw the line. In other words, while we support this Bill, we must estimate how much compensation will be payable once this Bill is passed and place a ceiling over it. Otherwise, it would be unfair to the taxpayers in general.

In the circumstances, I think the Administration's proposed amendment is a more reasonable arrangement. Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Mr Chairman, I would like to respond briefly to the arguments advanced by the Honourable Allen LEE and the Honourable Mrs Miriam LAU.

I was the deputy convenor of the ad hoc group to scrutinize the Bill concerned. Mr Allen LEE was the convenor then. The Bill passed at that time was similar in nature to the present Bill. Why do I say this? Let me cite an example. If, pursuant to the Deed of Mutual Covenant, the services of a management company are enlisted, the management contract itself may be worth a lot of money. For instance, there may be provisions to the effect that no incorporated body of owners shall be formed or that the company shall never be divested of the right to manage the building concerned. In other words, supposing a large housing estate enlists the services of a management company, the profit accruing to the company within one year will be to the tune of \$1 million. Again, supposing the housing estate will be redeveloped after 50 years, the accrued profit will be even higher. However, after the enactment of the Buildings Management Ordinance, the owners can set up an incorporated body if a resolution to that effect is carried at an owners' general meeting with 50% of the owners backing it. The management contract can then be revoked without any compensation payable. Let me repeat this : the management contract can be terminated without the payment of compensation.

Some Members seated in this Chamber are company directors. They should know that if a director's contract or his services are suddenly terminated without any reason given and without reasonable compensation, the affected party can commence legal proceedings to recover compensation. At that time I deliberated the question of whether it would be right to terminate a contract without compensation. I eventually decided that the contract was basically the product of a very unfair deed of mutual covenant. Therefore, I considered it to be an exceptional case.

If Members make a decision on this matter for political reasons or based on consideration of different or special factors, then I will respect their decision. But if Members argue that the situation then was entirely different from the present situation, then that will be open to challenge. As a matter of fact, both situations involve the question of contractual interest. What we are now discussing is contractual interest and what we discussed then was also contractual interest. The question we are facing now is the termination, by means of legislation, of contractual interest without compensation or, if compensation is to be payable, how much. Both situations involve questions of a similar nature. It cannot be argued that the questions are essentially different. Such an argument, if advanced, will be based on a wrong analysis.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I thank those Members who drew a comparison moments ago to enable us to consider the matter better. I feel this is a pretty good thing to do. Having heard Members' arguments, I think, perhaps, what we did then was not entirely right. Indeed we might have, through legislative means, divested the parties concerned of a right or interest. But, a past mistake does not mean that it has to be repeated now. We cannot, by legislative means, expropriate other people's property. We cannot do this simply because there are enough votes in this Council to ram the measure through. Ours is a society which respects private property rights. Therefore, we cannot do this. We cannot take away other people's property rights as we please. We cannot say other people are in the wrong and so we take away their property rights forthwith.

We need not dwell too exhaustively on how we did it last time. Maybe, after the present debate, we may develop a different view. Maybe, when we legislate next time, we shall reconsider this. But, this time, we must consider this matter very clearly. We cannot take away other people's property rights this way and tell them that as of tomorrow they will lose their property rights. And following that, no compensation is paid. I think this is most unreasonable. Thank you, Mr Chairman.

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, I shall say just a few words.

It would be simple to support the Administration's amendment. Originally, several thousand Cheung Chau residents were protesting outside; now only about 200 protesters are staying outside. Members' thinking is that it would be scary to have several thousand people protesting but just 200 or so protesters would be no cause for worry. Is this fair? This is precisely the attitude adopted by the Administration.

Besides, if we support the Honourable LEE Wing-tat's amendment, the Administration may have to pay an unknown amount of compensation. But the amount may not be too excessive. The question is as simple as that. It would depend on what Members would choose to do.

A while ago the Honourable Mrs Selina CHOW said we cannot expropriate private property as we please. But, in fact, we have already taken away other people's property rights. What remains is the question of how much the compensation will be.

The voting result just now is 50 to five. We have already taken away other people's property rights. This is a fact.



MR ANDREW WONG (in Cantonese): I would like to describe briefly the original purpose of drawing up clause 9.

Initially, clauses 9 and 2 were both derived from the same concept. I tried to have the clauses couched in the clearest possible terms. The simplest way to do it was to specify the date to be 18 March 1905. It is because the Block Crown Lease specified then that the superstructures on the land belonged to those who renewed their sub-leases every five years.

Later, we discovered that the new leases also provided for renewal once every five years. It might be that there were express and implied terms when the Government granted land leases which required that the land in question had to continue to be subleased to other people. Therefore, this would not have much bearing on clause 9 or clause 2. The present amendment proposed by the Secretary for Planning, Environment and Lands to clause 9 has his real intention under disguise. The Secretary's real intention is not to amend clause 9, but clauses 4, 5 and 6 so as to avoid the so-called retroactivity as well as revocation of private contracts.

As regards the question of principle that clause 9 involves, I have sought legal advice. The advice given is that neither the existence nor absence of clause 9 will affect any transaction previously entered into by Wong Wai Tsak Tong (the Tong). Therefore, it will do just fine even without clause 9.

I would like to respond to the comments made by the Secretary for Planning, Environment and Lands with regard to the question of retroactivity and revocation of private contracts. In respect of retroactivity, unless the Ordinance specifies which provisions will have retrospective effect starting from which date, the question of retroactivity will never arise. Deletion of clause 9 will not give rise to retroactivity.

As regards private contracts, contracts between the Tong and its sub-lessees are private contracts subsisting for a term of five years. But, before the private contracts were entered into, the amount of money payable would need to be considered. And if the money had been paid, the transaction would be deemed completed because it was supported by valuable consideration. If money had already been passed, the transaction would not be affected with or without clause 9.

We must pay attention to this. The purpose of the present Bill is to deem all sub-lessees holding Cheung Chau lots or part thereof under sub-leases renewable every five years to be Crown lessees holding directly from the Crown. In that case, the most direct way to do it would be to delete clause 9 altogether. As a matter of fact, it will be all right even if clause 9 is retained. But we cannot accept the amendment proposed by the Secretary. The Administration is not really after clause 9, it wants to amend clauses 4 and 5.

In the Bills Committee, two ways to resolve the problem were initially suggested. One was to delete clause 9 and the other was the suggestion put forward by the Honourable Mrs Miriam LAU which has been embodied in the amendment now being proposed by the Secretary. In fact, it does not matter which proposal is eventually adopted. But, I have particularly considered the Secretary's arguments as to principle, retroactivity and the sanctity of private contracts. This, coupled with my hope that the matter be resolved once and for all, has prompted me not only to accept, but also to support, the amendment proposed by the Honourable LEE Wing-tat, that is to say, to delete clause 9.

MR LEE WING-TAT (in Cantonese): Mr Chairman, having heard the responses of the Honourable Albert CHAN, the Honourable James TO and the Honourable Andrew WONG, I do not need to say too much by way of supplement. I must say I was rather shocked by the Honourable Mr Bowen LEUNG's speech in which he cited certain major principles. The pressure thus brought to bear on us was tremendous. I would hate to use words like threat or intimidation. But Mr LEUNG seemed to say that if Members supported my proposed amendment to delete clause 9, it would amount to a breach of many of the basic principles relating to contractual relationships in a capitalist society. But this is not going to be the case at all. Mr Andrew WONG has already said that the question of retroactivity does not arise. As regards the question of revocation of contract, we have already debated this.

There is one point I hope the Honourable Mrs Selina CHOW and the Honourable Allen LEE will not misunderstand. Deletion of clause 9 will not amount to abolition of private property rights. It will not be like what Mr Allen LEE said, namely, that the matter will be over and done with after the contract has been revoked. It is not going to be like that. If, after deletion of clause 9 and a compensation claim can indeed be filed, then compensation will be awarded. This will represent an improvement on what we did when we enacted the Buildings Management Ordinance way back in 1993.

Mr James TO said a while ago that many large housing estates (no need to mention names) used to enforce a so-called clause 2A which provided that the management company be never replaced. These management companies earned profits each year. Viewed from this angle, the profits derivable by the management companies from managing the housing estates for tens of years right up to redevelopment were taken away from them in one go. It is because after the incorporation of an owners' body the services of the same company may not be enlisted further. This is not what we are proposing to do. We are proposing to give compensation.

Mr Chairman, I will not waste Members' time. I agree with Mr Andrew WONG's analysis. Thank you, Mr Chairman.

*Question on Mr LEE Wing-tat's amendment put.*

*Voice vote taken.*

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are one short of the head count. The vote is on Mr LEE Wing-tat's amendment to clause 9. We are still one short of the head count. There should be 57, but we are one short of the head count. Members please double check to ensure that they have voted.

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mrs Elsie TU abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Mr LEE's amendment to clause 9 has not been agreed, I will call upon the Secretary for Planning, Environment and Lands to move his amendment now.

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 9 be amended as set out under my name in the paper circulated to Members. Clause 9 is concerned with transactions before the Bill comes into operation. As I said earlier, the Administration considers that private contracts should be respected and that the Bill should not interfere with such contracts or if it must do so, such interference should be kept to the absolute minimum.

The Bill should therefore not have any retrospective effect on agreements between Wong Wai Tsak Tong and the sub-lessees which are being granted or renewed for any period extending beyond 9 November 1994 and under which agreement the Tong and the sub-lessees have agreed on the amount of rent payable to the Tong after 30 June 1997.

Clause 9(1) therefore proposes that these sub-leases should be excluded from sections 4 and 5 of the Bill. Clause 9(2) stipulates that these sub-leases should be deemed to be granted upon the commencement of the Bill new sub-leases by the Wong Wai Tsak Tong for the residue of their terms.

I further propose that upon the expiry of the current term of these sub-leases, the sub-lessees will be deemed as Crown lessees. I would therefore move an amendment to clause 5 later. There would also be a number of other consequential amendments.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 9**

That clause 9 be amended, by deleting the clause and substituting —

**“9. Special sub-leases**

(1) Sections 4(1) and 5(1) do not apply to a sub-lease which by agreement between Wong Wai Tsak Tong and the sub-lessee has been granted or renewed for any period extending beyond 9 November 1994 and under which agreement the Tong and the sub-lessee ave agreed on the

amount of rent payable to the Tong under the sub-lease after 30 June 1997.

(2) A sub-lessee under a sub-lease referred to in subsection (1) is deemed, immediately on the date of the deemed granting of a separate Crown lease to Wong Wai Tsak Tong under section 6(1), to be granted by Wong Wai Tsak Tong a new sub-lease as from that date for the residue of the term of that sub-lease on the same terms and conditions as the sub-lease referred to in subsection (1).”.

*Question on the amendment proposed, put and agreed to.*

*Question on clause 9, as amended, proposed, put and agreed to.*

Clauses 4, 5 and 6

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clauses 4, 5 and 6 be amended as set out under my name in the paper circulated to Members. They are either consequential amendments to clause 9 that Members have voted support earlier or further refinement to improve the Bill.

Mr Chairman, I beg to move.

*Proposed amendments*

#### **Clause 4**

That clause 4 be amended, by deleting the clause and substituting —

#### **“4. Sub-lessees under the Block Crown Lease are deemed Crown lessees**

(1) As from the commencement of this Ordinance, all sub-lessees, other than the sub-lessees of the sub-leases referred to in section 9(1), are deemed to hold the land or undivided shares in land to which they are respectively entitled under the sub-leases directly from the Crown as Crown lessees.

(2) As from the expiration of the current term of a new sub-lease deemed to be granted under section 9(2), the sub-lessee is deemed to hold the land or undivided shares in land to which he is entitled under the new sub-lease directly from the Crown or the Government, as the case may be, as Crown lessee or lessee.”.

**Clause 5**

That clause 5 be amended —

- (a) by renumbering the clause as clause 5(1).
- (b) in subclause (1) -
  - (i) by deleting “As from the date this Ordinance comes into operation, all sub-leases are” and substituting “As from the commencement of this Ordinance, all sub-leases, other than the sub-leases referred to in section 9(1), are”;
  - (ii) in paragraph (a), by adding “and extended under the New Territories Leases (Extension) Ordinance (Cap. 150)” after “(Cap. 152)”.
- (c) by deleting subclause (1)(a)(i) and (ii) and substituting -
  - “(i) the same covenants, exceptions, reservations, powers and conditions contained in the Block Crown Lease, so far as they are applicable, provided that the sub-lessee who is deemed to be the Crown lessee under section 4(1) shall replace Wong Wai Tsak Tong as the party bound;
  - (ii) without prejudice to subparagraph (i), a covenant by the sub-lessee who is deemed to be the Crown lessee under section 4(1) to pay directly to the Government in the same manner and on the same days as specified in the Block Crown Lease the Crown rent applicable under section 7(1) and to pay the rent applicable under section 7(2); and”.
- (d) by adding -
  - “(2) As from the date immediately after the expiry of the current term of a new sub-lease deemed to be granted under section 9(2), the new sub-lease is deemed to be a direct lease from the Crown or the Government as if a lease had been granted by the Crown or the Government to the sub-lessee as from that date until the expiry of 30 June 2047 in place of the new sub-lease and the direct lease is deemed to contain -

- (a) the same covenants, exceptions, reservations, powers and conditions contained in the separate Crown lease deemed to have been granted to Wong Wai Tsak Tong under section 6, so far as they are applicable, provided that the sub-lessee who is deemed to be the lessee under section 4(2) shall replace Wong Wai Tsak Tong as the party bound;
- (b) without prejudice to paragraph (a), a covenant by the sub-lessee who is deemed to be the lessee under section 4(2) to pay directly to the Government the rent applicable under section 7.

(3) A sub-lease which is deemed to be a Crown lease under subsection (1) and the Crown lease deemed to be granted to Wong Wai Tsak Tong under section 6 are Crown leases for all purposes.

(4) A new sub-lease which is deemed to be a direct lease from the Crown or the Government under subsection (2) is, for all purposes, a lease granted directly by the Crown or the Government.”.

## Clause 6

That clause 6 be amended, by deleting the clause and substituting —

**“6. Lots not sub-leased and lots to which sections 4 and 5 are inapplicable**

(1) A separate Crown lease of all the land or undivided shares in land held by Wong Wai Tsak Tong under the Block Crown Lease but in respect of which sections 4(1) and 5(1) have no effect is, on the commencement of this Ordinance, deemed to have been granted to Wong Wai Tsak Tong as from that date as Crown lessee for the residue of the term of the Block Crown Lease as renewed under the New Territories (Renewable Crown Leases) Ordinance (Cap. 152) and extended under the New Territories Leases (Extension) Ordinance (Cap. 150) and that Crown lease contains the same covenants, exceptions, reservations, powers and conditions contained in the Block Crown Lease, so far as applicable.

(2) As from the date of the deeming, under section 5(2), of a new sub-lease referred to in section 9(2) to be a direct lease from the Crown or the Government, the land or undivided shares in land held under the separate Crown lease deemed to have been granted to Wong Wai Tsak Tong under subsection (1) to which the deemed direct lease relates are deemed to have been surrendered to the Crown or the Government, and the separate Crown lease is deemed to have been modified to exclude that land or those undivided shares in land.”.

*Question on the amendment proposed, put and agreed to.*

MR ANDREW WONG (in Cantonese): Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

It is the wording of the English and Chinese versions of clause 5 that is in question. This amendment will expressly provide that the effect of the Ordinance shall be that all sub-leases be deemed “separate Crown leases”, which is the wording employed in the English version. The purpose of the other amendments is to improve the language of the clause.

Mr Chairman, I move the amendment.

*Proposed amendment*

### **Clause 5**

That clause 5 be further amended, by deleting “另一份就集體官契” and substituting “一份獨立官契，以取代每一份分租契；年期為集體官契”。

*Question on the amendment proposed, put and agreed to.*

*Question on clauses 4, 5 and 6, as amended, proposed, put and agreed to.*

Clauses 7 and 8

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, I move that clauses 7 and 8 be amended as set out under my name in the paper circulated to Members. They are either consequential amendments to clause 9 that Members have voted to support earlier or further refinements to improve the Bill.

Mr Chairman, I beg to move.



*Proposed amendments***Clause 7**

That clause 7 be amended, by deleting the clause and substituting —

**“7. Rent for deemed leases**

(1) Crown rent payable for the period until 30 June 1997 for a sub-lease deemed to be a Crown lease under section 5(1) or for the Crown lease deemed to have been granted to Wong Wai Tsak Tong under section 6(1) is, in respect of the land or undivided shares in land, the subject of the deemed Crown lease or the Crown lease deemed to have been granted, in the amount specified in the Block Crown Lease in respect of the land or undivided shares in land.

(2) Rent payable to the Government for the period from 1 July 1997 to 30 June 2047 for a sub-lease deemed to be a Crown lease under section 5(1), for a new sub-lease under section 9(2) deemed to be a direct lease under section 5(2), or for the Crown lease deemed to have been granted to Wong Wai Tsak Tong under section 6(1) is, in respect of the land or undivided shares in land, the subject of the deemed Crown lease, the deemed direct lease or the Crown lease deemed to have been granted, an amount equivalent to 3% of the rateable value from time to time of the land or undivided shares in land.”.

**Clause 8**

That clause 8 be amended —

- (a) by adding “or direct lease” after “new Crown lease”.
- (b) by adding “, the new sub-lease under section 9(2)” after “the sub-lease”.
- (c) in paragraph (a), by adding “or charge” after “mortgage”.

*Question on the amendments proposed, put and agreed to.*

MR ANDREW WONG (in Cantonese): Mr Chairman, I move that clause 8 be amended as set out under my name in the paper circulated to Members.

As with the other amendments proposed earlier, the present amendment is intended to standardize the terms concerned to make them consistent with similar terms in the Chinese versions of other Ordinances.

Mr Chairman, I move the amendment.

*Proposed amendment*

**Clause 8**

That clause 8 be further amended —

- (a) in the heading, by deleting “責任” and substituting “負擔” .
- (b) in subclause (a) by deleting “無論是法定的或衡平法上的，又無論是否在土地註冊處登記冊上註冊” and substituting “無論是法律上的或衡平法上的，又無論是否已在土地註冊記錄冊上註冊” .
- (c) in subclause (c) by deleting “責任” and substituting “負擔” and by deleting “由文書產生” and substituting “但由文書設定” .

*Question on the amendment proposed, put and agreed to.*

*Question on clauses 7 and 8, as amended, proposed, put and agreed to.*

Clause 10

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 10 be amended as set out under my name in the paper circulated to Members. Clause 10 is concerned with compensation. The Wong Wai Tsak Tong is a block crown lessee and grantee of certain land in Cheung Chau. The Administration considers that it is wrong in principle for property rights to be expropriated albeit with compensation. Unfortunately, since the majority of Members have voted to support such a course of action, I am forced to propose that the Tong should be entitled to claim compensation for the termination of the block crown lease and grants. The Tong should also be entitled to claim compensation for the deemed surrender of its land to the Government upon expiry of the current terms of those sub-leases which are by mutual agreement between the Tong and the sub-lessees being extended beyond 9 November 1994 with agreement regarding the rent payable from 1 July 1997. The amount of compensation payable would be determined in accordance with sections 10, 11 and 12 of the Crown Lands Resumption Ordinance as if the land, where resumed, for public purpose under the Ordinance. The Tong shall within 12 months of the commencement of the Ordinance submit a claim to the Lands Tribunal for determination for the amount of compensation to be paid to the

Tong. The proposed amendment adheres to the principle that compensation should be payable when land is taken by the Government from private owners. The amount of compensation to be awarded will be determined by the Lands Tribunal and that is, it will be a judicial determination rather than an administrative decision.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 10**

That clause 10 be amended, by deleting the clause and substituting —

**“10. Compensation**

(1) Wong Wai Tsak Tong is entitled to claim compensation under this section -

(a) for the termination of the Block Crown Lease under section 3 in respect of the land or undivided shares in land in respect of which sections 4(1) and 5(1) have effect; and

(b) for the deemed surrender of the land or undivided shares in land under section 6(2),

and the amount of compensation is to be determined in accordance with sections 10, 11 and 12 of the Crown Lands Resumption Ordinance (Cap. 124) as if the land or undivided shares in land were resumed under that Ordinance on the commencement of this Ordinance or on the date of the deemed surrender under section 6(2), as the case may be.

(2) Wong Wai Tsak Tong shall, within 12 months from the commencement of this Ordinance, submit a claim to the Lands Tribunal for determination of the amount of compensation (if any) to be paid to Wong Wai Tsak Tong under subsection (1).

(3) Subject to this section, no action or suit lies against the Crown or against any other person for any loss or damage suffered by any person as a result of the termination of the Block Crown Lease or any other matter under this Ordinance.

(4) Part III of the Lands Tribunal Rules (Cap. 17 sub. leg.) and the relevant Forms in the Schedule to those Rules apply, with any necessary modifications and adaptations, to a claim for compensation by Wong Wai Tsak Tong under subsection (2) as if the claim were a claim under section 8(2) of the Crown Lands Resumption Ordinance (Cap. 124).”

*Question on the amendment proposed.*

MR LEE WING-TAT (in Cantonese): Mr Chairman, on behalf of the Bills Committee, I welcome the addition of a compensation provision to the Block Crown Lease (Cheung Chau) Bill. Indeed, it is at the unanimous request of the Bills Committee that the Administration agrees to introduce such a provision, but only it was done after repeated parleying, deadlocks and delays. Members of the Bills Committee are convinced that the best solution to the long-standing disputes between Wong Wai Tsak Tong (the Tong) and its sub-lessees is to deem the sub-lessees Crown lessees. The solution, however, is susceptible to criticism of expropriating private property if the Tong is not given a right to claim compensation for any loss it may incur for the termination of the Block Crown Lease.

The proposed compensation provision will entitle the Tong to make a claim, within 12 months from the commencement of the Bill, to the Lands Tribunal for compensation as if the land were resumed under the Crown Land Resumption Ordinance. The Bills Committee thanks the Administration for taking on board its suggestion of extending the initially proposed time limit of six months from the commencement of the Bill within which the Tong has to make a claim. Twelve months should be a reasonable time for the Tong to take action in relation to the claim. Although we appreciate the complexity of the issues involved and their contentious nature, Members of the Bills Committee do wish that the Administration and the Tong can reach an amicable settlement on the compensation to the Tong without resorting to the Lands Tribunal to resolve the problem.

Mr Chairman, with these remarks, I support the amendment.

MRS MIRIAM LAU (in Cantonese): As I said during the Second Reading debate on the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill, if the amendment to clause 10 is not approved by this Council, the Liberal Party will be unable to support the present Bill. Therefore, the Liberal Party calls on Members to support the Administration's proposed amendment. Thank you, Mr Chairman.

MR ANDREW WONG (in Cantonese): Mr Chairman, the Administration is willing to add a compensation provision. I have to thank them for it. I would like to take this opportunity to respond to the allegation of immorality made by the Honourable CHIM Pui-chung. A Private Member is not entitled to propose any Bill that will have a charging effect on public revenue. Obviously, if a compensation provision was added, no Private Member could propose such a Bill. Only the Administration could propose it. However, the Administration has been unwilling to do so. Hence, Members are having no alternative but to have me do it. I hope Mr CHIM will understand this.

Finally, I have to thank my colleagues once again for the concerted effort we have made. Although the problem has not been completely resolved, yet, at least, the question with regard to the sub-lessees of Cheung Chau Wong Wai Tsak Tong has been settled. Now the sub-lessee who signed a sub-lease before or after 9 November 1994 whose term extends beyond that date may have to put up with it for five years longer, at most. After five years, the sub-lessee will become the Crown lessee when he will then be free to negotiate with the Administration in relation to development matters.

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, I personally think that the addition of a compensation provision by the Administration will make up for the deficiency in the Honourable Andrew WONG's Bill. Yet I query if it is right for the Administration to apply the Crown Land Resumption Ordinance. The said Ordinance sets out four conditions for resumption, namely, firstly, the land in question poses a health hazard; secondly, it hinders redevelopment; thirdly, resumption necessary in time of war; and fourthly, resumption in the public interest. The Wong Wai Tsak Tong question has nothing to do with any of the four conditions. I query the Administration's proposal to resume land in the present case through the invocation of the said Ordinance.

Secondly, as the Honourable LEE Wing-tat observed a moment ago, the Bills Committee had requested the Administration to do their best to discuss and negotiate, not to refer the matter to the Lands Tribunal for assessment of compensation as Mr Bowen LEUNG said just now, in which case the Administration would be free from further responsibility. I very much hope that the Administration will state their view on this matter once again. It is because the Bills Committee requested the Administration to discuss the matter with the affected parties in a friendly manner rather than to resort to coercive tactics like "take it or leave it". I hope the Administration will not harbour such an attitude and that all parties concerned will discuss the matter in a way consistent with the needs of the situation. I hope the Administration will make clear its stance.

DR TANG SIU-TONG (in Cantonese): As chairman of a sub-committee under the Legislative Council Environmental Affairs Panel to look into the Wong Wai Tsak Tong (WWTT) question, I would like to point out that we had scrutinized in exhaustive detail every aspect of the WWTT issue. We knew that under the existing law the holder of the WWTT Block Crown Lease was the landowner and that disputes with the sub-lessees, or small landowners as they are commonly called, should normally be resolved through recourse to the courts. But it was certain that the court could not come to a conclusion with regard to the disputes. Therefore, the sub-committee then decided to consider re-vesting the ownership rights in the sub-lessees. But, there was a principle that should be adverted to and that was the compensation principle. I am now very happy that the Administration has accepted this principle. If this amendment is passed, I can support the present Bill.

MR JAMES TO (in Cantonese): I would like to point out to the Honourable CHIM Pui-chung that his worry is unnecessary because it is provided in express terms that compensation will be payable as if the land in question were resumed under the Crown Land Resumption Ordinance. This refers to the way compensation is to be assessed. It does not mean that the ground for resumption must be one of the grounds prescribed under the said Ordinance. I see the Honourable Moses CHENG nodding his head.

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, I have nothing more to add to what I have just said.

*Question on the amendment put and agreed to.*

*Question on clause 10, as amended, proposed, put and agreed to.*

Heading before	Consequential Amendments
New clause 11	Lands Tribunal Ordinance
New clause 11	Ordinance under which matters may be submitted to the Tribunal for determination

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, I move that the heading before the new clause 11 and new clause 11 as set out in the paper circulated to Members be read the Second time. The new clause 11 which amends the Schedule of the Lands Tribunal Ordinance is a consequential amendment to clause 10.

Mr Chairman I beg to move.

*Question on the Second Reading of the clause proposed, put and agreed to.*

Clause read the Second time.

SECRETARY FOR PLANNING ENVIRONMENT AND LANDS: Mr Chairman, I move that the heading before new clause 11 and new clause 11 be added to the Bill.

*Proposed addition*

**Heading before new clause 11 and new clause 11**

That the Bill be amended, by adding —

“Consequential Amendments

Lands Tribunal Ordinance

**11. Ordinances under which matters  
may be submitted to the  
Tribunal for determination**

The Schedule to the Lands Tribunal Ordinance (Cap. 17) is amended by adding -

“ of 1995. Block Crown Lease (Cheung Chau)  
Ordinance.””.

*Question on the addition of the heading before new clause 11 and new clause 11 proposed, put and agreed to.*

Long title

MR ANDREW WONG (in Cantonese): Mr Chairman, I move that the long title be amended as set out under my name in the paper circulated to Members.

This amendment is mainly intended to point out unequivocally that Block Crown Lease refers to the Block Crown Lease of Cheung Chau to make it consistent with the English version. To replace “黃維則堂的集體官契” with “黃維則堂的長洲集體官契” will patently demonstrate that the Block Crown Lease of Cheung Chau is being referred to and this will be consistent with the English version.

I beg to move the amendment.

*Proposed amendment*

**Long title**

That long title be amended, by deleting “黃維則堂的集體官契” and substituting “黃維則堂的長洲集體官契” .

*Question on the amendment proposed, put and agreed to.*

Council then resumed.

**Third Reading of Bill**

MR ANDREW WONG reported that the

**BLOCK CROWN LEASE (CHEUNG CHAU) BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

**Second Reading of Bill**

**EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL**

**Resumption of debate on Second Reading which was moved on 5 July 1995**



DR LEONG CHE-HUNG: Mr President, before I start, I would like to take your leave of presenting the three Bills together. I do hope you will give me more than 15 minutes, but I can assure you I shall not take 45 minutes. Mr President, after the marathon debate on 28 June 1995 on the Sex Discrimination Bill, I rise to speak again on three equal opportunities Bills together. These Bills were introduced by the Honourable Ms Anna WU, covering seven other groups of discrimination, namely, family responsibility, sexuality, age, race, religious or political conviction, trade union activities and spent conviction.

As Members are aware, these three Bills originate from the Equal Opportunities Bill introduced by the Honourable Ms Anna WU in July 1994. As explained in my speech on 28 June 1995, she has taken the initiative to reorganize her original Bill into these three new Bills, excluding sex and disability (because of the subsequent introduction of the Sex Discrimination Bill and Disability Discrimination Bill by the Administration), to facilitate Members of this Council in considering their preference when voting. Once again, I would like to thank the Honourable Ms Anna WU for her pragmatic approach in dealing with these Bills.

In contrast, with regrets, this has not been the attitude of the Administration. Let me reiterate.

*Government determined to scuttle anti-discrimination Bills*

The Bills Committee has held a total of 34 meetings and met 34 deputations. The Administration only attended those on Sex Discrimination and Part 2 of the Equal Opportunities Bill relating to sex. Other than that, in spite of repeated open invitation, the Administration was conspicuous by their singular absence.

Oddly enough too, up to today the Government has not introduced any amendment to these three Bills nor to the original Equal Opportunities Bill, although most of us have heard that there are some secret documents being passed, possibly from the Government to certain Members on the directions of how they should vote.

Why is the Government taking this attitude? What would happen and how would the Government implement the Bills if by any stroke of luck these Bills were passed by this Council today?

The answer, Mr President, is simple. For with a stroke of the pen, the Government has signed off the fact that these Bills are not workable and start its initial lobbying with the hope to scuttle these Bills and kill them at the resumption of Second Reading and put them out of sight!

*Consultation a mere delay tactic*

The Government has repeatedly said they support the spirit of anti-discrimination, but they have a different agenda. The Government has repeatedly said that they would need time for consultation to establish that there are discrimination in the areas covered by these Bills. But Mr President, the evidence are so clearly written on the wall. Examples on advertisements for jobs showed blatant discrimination in age even within government departments not too long ago. Books and books of newspaper clippings were presented to the Bills Committee by deputations to the degree of ad nauseam.

The Government says it needs consultation. Yet when deputations eagerly came to present their views to the Bills Committee, the Government was not there to absorb the public's grievances; when the Bills Committee was in session, the Government was not there to take the views of the public's representations.

*Government branches at variance over anti-discrimination*

The Government has repeatedly said it has its own agenda. Yet, repeatedly it was unable to produce a timetable to show Members of the Bills Committee its commitment. Indeed, it was obvious to us to see that the different government branches are at variance with one another. This was splashed all over the newspaper.

At one point in time, Mr President, when pressed, the Secretary for Home Affairs "surrendered" and advised the Bills Committee to go to a highly governmental level. I respect Mr Michael SUEN for his frankness. Even then, it took some time for the Chief Secretary to intervene. The Government came out with a lukewarm response. They will start the consultation process by the end of the year, it was said. This will take about a year before the Government can come to any conclusion on whether legislation is needed and if so on what scope. This consultation process was ultimately demoted to "interdepartmental assessment", though initially it was supposed to be a public one.

*Content of the Bills*

I now, Mr President, move to say a few words on the Bills themselves, the details of which will be covered by the Honourable Ms Anna WU as these are her Bills.

The Bills together as a start covers seven areas of discrimination. Each of the areas is effective for direct and indirect discrimination in work, education, provision of goods, services and facilities, accommodation, land, clubs and other activities. The Bills propose to make discriminatory acts or practices, in general, civil wrongs triable in the District Court. They further propose that the court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit.

The Bills also propose that each party to litigation will ordinarily bear that party's own costs. The court may, however, award costs as it thinks fit in exceptional circumstances.

These Bills do not make provisions for the establishment of a similar body as the Equal Opportunities Commission in the Sex Discrimination Ordinance, principally because of the difficulties faced by a private Member under Standing Order 23.

The majority of Members who frequented the Bills Committee (and they are not many) supported the Bills which are more comprehensive than the anti-discrimination legislation introduced by the Administration so far. They particularly share deputations' feelings on age and family status discrimination.

#### *Amendments to the Bills*

Mr President, during the thorough study of the Bills, Members have raised a few concerns. In response to these, the Honourable Ms Anna WU has agreed to amend the Bills. I would just highlight the more important ones.

- (1) Deletion of exceptions for hiring domestic helpers;
- (2) Exception for family responsibility discrimination and nationality discrimination in admission decisions made in certain circumstances by private schools;
- (3) Exception for school admissions in compliance with government-formulated admission schemes;
- (4) Amendment to provide that mandatory retirement ages do not constitute unlawful age discrimination;
- (5) Exception for legal entitlements, obligations or disqualification of persons under 18, and laws protecting the welfare of persons under 18; and
- (6) Exception for age discriminatory laws and acts done under their authority, to expire in two years, and may be extended up to another two years, subject to Legislative Council resolution.

And of course there are other areas. I leave it to the Honourable Ms Anna WU to explain to Members the details and rationale for these amendments.

In addition to these amendments endorsed by the Bills Committee, the Honourable Ms Anna WU will also be moving some other amendments on her own account. Dr the Honourable TANG Siu-tong will also be moving an amendment to clause 22 of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill.

*Members not to blindly follow the Government*

As the Administration did not attend meetings of the Bills Committee in the scrutiny of the relevant parts of the original Equal Opportunities Bill relating to the three new Bills, we have received no details from them on the specific comments on the Bills, nor there indication to move any amendment.

Mr President, the Bills before us are extremely substantial covering many areas of discrimination and scope of activities. It is obvious that Members may support some and not others. As the Chairman of the Bills Committee, I am not here to ask Members to agree to all the clauses and the amendments brought forward. I am only appealing to you all to support the Second Reading of the Bills as this must be at least the first step towards anti-discrimination and equal opportunities.

It would be most unfair to the public and the Bills Committee if Members were to say they have not gone through the Bills in detail, or the Bills are too complex to them, or to just blindly follow the Government's underhand directions as these Bills have been scrutinized by the Bills Committee for over a year which, except for the summer and Christmas breaks, has held weekly meetings.

Mr President, before closing, I must pay tribute again to the Honourable Ms Anna WU for the tremendous amount of her time, effort and resources in promoting equal opportunities in Hong Kong. Whatever the outcome on the debate of these three Bills tonight, she has laid the cornerstone of equal opportunities for the community of Hong Kong.

Mr President, with these remarks, I recommend Members to support these three Bills.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, first, I would like to thank the Honourable Ms Anna WU for her painstaking effort in promoting public awareness and concern with regard to discrimination. Her dynamism and working zeal deserve our admiration. I also thank Dr the

Honourable LEONG Che-hung, Chairman of the Bills Committee, and other committee members for the time they have spent and the devoted work they have done in scrutinizing the Sex Discrimination Bill, the Disability Discrimination Bill and the three Equal Opportunities Bills presented by Ms Anna WU.

The three Bills laid by Ms Anna WU before this Council today are intended to eliminate discrimination on a variety of fronts. In promoting equal opportunities Ms WU has fully demonstrated her persevering spirit. But we must not forget that all these are the work targets the Administration has been striving after over the past years. As far back as 1991, the Administration already promulgated the Bill of Rights Ordinance (BORO) to ban discrimination on grounds of race, colour, language, religion, political or other conviction, ethnic origin, social standing, financial means, parentage or other capacities. The BORO is binding on the Government and public bodies. Since promulgation of the BORO, the Administration has amended a number of Ordinances to correct provisions which import a discriminatory element. It has actively promoted the concept of equal opportunities. The Sex Discrimination Bill proposed by the Administration was endorsed by this Council and passed into law last month. The Disability Discrimination Bill has just been passed earlier today. That being the case, why does the Administration not support the three equal opportunities bills presented by Ms WU? The answer, in fact, is simple enough. These Bills have been drafted without extensive public consultation and have not taken full cognizance of the special needs and conditions of Hong Kong.

Discrimination is a question closely related to one's outlook on life, education, academic achievement and personal creed. Therefore, somewhat extreme views may sometimes be heard during debates or discussions in this regard. This, perhaps, is understandable. But, as a responsible government, we must adopt a balanced and reasonable attitude in dealing with this question. We have on different occasions clearly and unequivocally expressed the Administration's stand. In Hong Kong, anti-discrimination laws still form a relatively new branch of law. The general public still does not fully understand the impact these laws will have on society, the economy and the legal system. Under such circumstances, we must go about it in a gradual and progressive manner. It would be imprudent of us if we set about legislating in a over-hasty manner.

Anti-discrimination laws will invariably limit one's choices. And herein will lie two extremes. The first extreme is that, under obvious circumstances, no understanding person will object to the limitation of choices based on anti-discrimination. For example, in providing emergency services, we should not discriminate against any person. And who will doubt this? At the other end of the scale, the implementation of anti-discriminatory measures to limit personal

choices will place people in an embarrassing situation. For instance, I believe no one will propose anti-discrimination laws to limit one's choice of spouse. There are plenty of grey areas lying in the middle between the two extremes of black and white. When proposing anti-discrimination laws, we must strike a balance between freedom of choice and freedom not to be discriminated against. Otherwise, the enacted laws will not be supported or accepted by the public. In order that such a balance be struck, we must conduct public consultation on an extensive scale. Otherwise, so far from serving the purpose of stopping discrimination, the laws enacted will have quite the opposite effect and will lead to yet more serious acts of discrimination.

A vast majority of the Hong Kong public has not taken part in the discussion of Ms Anna WU's three Bills. They have no idea what is being proposed in the three Bills. Neither are they aware that these Bills will have an impact on their daily lives nor have they prepared themselves in order to adapt to the requirements prescribed under these Bills. The Sex Discrimination Ordinance and the Disability Discrimination Ordinance prohibit two kinds of acts of discrimination and harassment. The three Bills introduced by Ms Anna WU propose to make illegal another eight kinds of discriminatory acts. If all the anti-discrimination bills were passed, any person, in choosing, say, his tenant or employee, would have to ensure that he did not fall foul of any of the provisions under the anti-discrimination Ordinances with regard to the 10 kinds of discriminatory acts. Let us ask ourselves this: How can we expect the public to understand and adapt to so many restrictions at one jump?

I entirely agree that the three Bills are well-intentioned. But the general public has not had the opportunity to study in detail the various questions of discrimination covered in the Bills. Ms WU has failed to assess thoroughly the possible impact the Bills will have on people concerned, such as the relationship between employer and employee or between landlord and tenant. Besides, she has not fully considered other means, statutory or otherwise, to solve the problem. I would attempt here to give a clearer analysis.

Take for example the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill. Can a school refuse to employ as teacher a practising homosexual? Would it be a breach of the law if a company refused to employ a person aged over 45 as salesperson to promote products designed to highlight the attractions of youth? If we just guarantee to the public that, under certain circumstances, to treat an individual differently may not constitute a breach of the law, that will not be too helpful as far as the general public is concerned. It is because they may not have the necessary legal knowledge to help them make a judgement in this regard. Furthermore, the Bills may be inconsistent with some of the existing laws. For instance, under the Employment Ordinance, people with a certain family condition can enjoy different treatment. How will the Bills impact on these provisions under the Employment Ordinance? It is only

through an exhaustive study and review of existing laws that we can find out the inconsistencies and come up with ways to eliminate them.

The Equal Opportunities (Race) Bill will similarly create a situation of uncertainty. For example, if this Bill was passed, would a company implementing a localization policy be in breach of the law? This would be an uncertain area. Yet this Council is of the unanimous view that the localization policy is reasonable as well as necessary. Why do I say this? Two weeks ago, a Member raised a question in this Council asking the Administration to give a briefing in relation to the implementation progress of the Mass Transit Railway Corporation's policy to localize its senior management echelons. If, after no more than a few weeks, this Council passed this Bill which cast doubt on the legality of the localization policy, would it not appear inconsistent and puzzling to the public? We should not forget that the Bill is modelled on the law of an overseas jurisdiction where the social and political backgrounds are wholly different from those of Hong Kong. No understanding and discerning person will think that deep-rooted racial problems exist in Hong Kong. Do we really need to legislate hastily to ban discrimination in this respect? In terms of the Administration's legislative schedule, would Members let this Bill enjoy the highest priority?

The Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill will cause people to doubt acts and policies which have long been accepted as reasonable. For instance, in granting loans or credit, a finance company would certainly have to consider the credit standing of the client, including whether he has a criminal record. And when a person enters into a business partnership with another, he probably would not want to co-operate with a partner who has a spent conviction. If this Bill was passed, would they be allowed to continue doing the same thing they have been doing? Would this Council agree to subject the aforesaid decisions to undue intervention through the enactment of this Bill?

During the past two weeks, Ms Anna WU has been busy drafting Committee stage amendments and adding exclusion clauses to improve or rectify uncertainties or unreasonable provisions in the Bill. However, we are of the view that this still fails to address in a proper manner the various questions involved because certain exclusion clauses are couched in generalized and vague terms so much so that all unclear or controversial provisions are all subsumed under a blanket exclusion clause. And so, if the Bill was passed into law, any problems arising would be left to the Administration to deal with. Is this a responsible way to legislate? As asked by Dr LEONG Che-hung earlier, if that be the case why does the Administration not propose its own amendments to make the Bill more readily acceptable? As a matter of fact, Members should be aware that we are adopting a gradual and progressive approach. We do not propose amendments on our own because we are not yet well prepared to put forward sound proposals. I must emphasize here again that unless we have conducted adequate public consultation and have thoroughly studied the impact of the Bill, we cannot be sure that the proposed amendments will render the Bill

more readily acceptable to the public and be capable of catering to Hong Kong's special needs. We are adopting a gradual and progressive approach. But this does not mean that those who need help will be neglected.

The BORO protects the public from being discriminated against by the Government and public bodies. Many of the provisions in the existing Ordinances also accord protection to these people. At the same time, education work is most important. Therefore, we are doing our best to promote civic education in order to enhance people's knowledge of equal opportunities and to cultivate a social ethos where other people's rights are respected. In this respect, we have allocated the necessary resources to the Civic Education Committee to promote work on this front. In the current year, the work programme of the Civic Education Committee will include "Equal opportunities for ethnic minorities" as one of its main themes.

We have also proposed legislative measures to address areas related to these Bills. For instance, in 1993, the Administration enacted laws to prohibit local television stations from broadcasting programmes that might arouse racial hatred. As regards spent conviction, the Rehabilitation of Offenders Ordinance has been in force for a number of years. Earlier this year, the Administration introduced the Supervision of Discharged Prisoners Bill. In relation to the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, I would draw Members' attention to some important points.

First, with regard to family conditions, the Sex Discrimination Bill already covers discrimination on grounds of marital status. This represents a major step forward in terms of promotion of equal opportunities. I believe the Administration should first be given the chance to draw experience from its implementation and enforcement of the Sex Discrimination Ordinance and then it would decide whether further legislation should be enacted in respect of family conditions. Only in so doing would it be deemed a wise move.

In Hong Kong sexuality is still a very controversial and highly sensitive issue. Does the general public identify itself with the sense of values underlying this Bill? Legislation which fails to reflect social values would be hard or even impossible to enforce and would be counter-productive. This would aggravate discrimination which the legislation had been originally intended to prohibit.

Third, on the question of age discrimination, Members should not lump together the two issues, namely, age discrimination and unemployment arising from economic restructuring. The reason I say this is that some people think that the recent rising unemployment rate is becoming a cause for public concern. This is understandable. Other people think that age discrimination is seriously affecting middle-aged workers, particularly the job opportunities of women aged between 30 and 40. This has led the general public into believing that, if a law is enacted to prohibit age discrimination, it will be of considerable help in alleviating the problem of unemployment. I think this is an oversimplistic way of looking at the problem. Those who advocate it have neglected



to take note of the fact that Hong Kong's labour market operates according to supply and demand. And anti-discrimination laws will not bring more job opportunities to workers. For example, if two people apply for one job vacancy, one of them is bound to fail and be disappointed. No law to prohibit discrimination against age will turn one job vacancy into two vacancies so that the two applicants will happily settle into their jobs. In this respect, the Administration of course understands the disappointment felt by those who fail to find employment wherever they try. But we have to prescribe the right remedy for this problem. We should adopt special measures to deal with unemployment.

I believe that Members are well aware that after he convened a summit meeting on 13 June the Governor indicated that the Administration had the *bona fide* intention to propose measures to resolve the problem of unemployment. The Governor announced on 13 June that the Administration would propose 13 short-term, medium-term and long-term measures so as to increase as soon as possible employment opportunities. Now this series of measures are being actively implemented. For example, to beef up its crackdown on illegal workers, the Administration carried out 275 raids in June alone. As a result, 312 people were arrested and 136 employers and employees were prosecuted. Moreover, the Administration has expanded the Job Matching Pilot Scheme. At a large-scale job matching seminar held on 22 June, personnel managers indicated that there were then 1 700 job vacancies. The Employees Retraining Scheme has been expanded to cover people above the age of 30 and to launch a retraining programme for semi-skilled workers. It is only through the adoption of such measures which are designed to remedy the problem that effective control of the unemployment situation can be assured. This measures can achieve what anti-discrimination laws fail to do. If the public is misled into believing that anti-discrimination laws will constitute a panacea to cure the unemployment malaise, I believe those who have high expectations of this Bill will be disillusioned sooner or later.

If employers are required to abide by so many hastily drafted and unclear anti-discrimination provisions, it will only increase their operating costs. It is because they do not know how such laws will affect their operations and so they will have to consult experts in order to improve their work procedures. Honourable Members, please do not overlook this. At the present economic juncture, in terms of creating job opportunities, such extra costs will be of no help at all.

Of course, we should proceed step by step to eliminate discrimination. The Administration does not rule out the possibility that at some point in the future it will legislate to prohibit age discrimination or other forms of discrimination. Under this principle, the Administration has already promised this Council that it will carry out a study in respect of discrimination on grounds sexuality, family conditions and age. The study will include a comprehensive public consultation exercise. Moreover, we will consult the views of this Council. We will consult the public as to the seriousness of this

problem and the measures to deal with it, including the need to legislate. When consulting the public on legislative measures, we will let members of the public refer to the Bills presented by Ms Anna WU so that they will be able to express their views as to the legislation's coverage, implementation timetable and enforcement mechanism. The Administration will buckle down to the study as soon as possible and will brief the Legislative Council in the next Session on the results of the study. If, after exhaustive consultation, we decide that legislation is the best way to deal with the problem, the Administration will, subject to availability of resources, table the relevant Bills to the Legislative Council for scrutiny in 1996-97.

To adopt a gradual, progressive and well-deliberated approach in dealing with the discrimination problem is absolutely not equivalent to supporting discrimination. It reflects that we understand the complexity of the problem and the undesirability of resorting to hasty action. Therefore, I would urge Members here to support the Administration's gradual, progressive and well-deliberated approach in dealing with the question of discrimination and to vote against the motion for the Second Reading of these Bills.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, the Honourable Ms Anna WU will explain in detail the contents of the three Equal Opportunities Bills (EOB) laid before this Council today. Members from the Democratic Party will later express support for these three Bills and will clearly explain the Party's stand. So, what I am going to say today will cover the Administration's way of dealing with the Bills throughout the introduction process.

In order to block the passage of the EOBs, Secretary for Home Affairs Mr Michael SUEN has employed offensive and high-handed tactics. This is another instance of reprehensible tactics being employed against a democratically elected assembly following last year's withdrawal of the Employment (Amendment) Bill by Secretary for Education and Manpower Mr Michael LEUNG upon resumption of Second Reading debate. The Secretary for Home Affairs, as I see it, committed a number of serious mistakes throughout the scrutiny process of the present Bills. First, in order to block the EOBs, the Administration had no qualms about wrecking the working mechanism of the Bills Committee of this Council which is an organ for consulting public opinion for the Administration's benefit. During the period of scrutiny of the Bills, officials only appeared before the Bills Committee at its first meeting to ask questions and never again bothered to appear for the rest of the scrutiny period which lasted for over a year. Neither did the Administration present any opposing views. It was not until one week before the Bills were scheduled to be put to the vote, that is to say, after the deadline for filing proposed amendments with the Administration, that the Administration surreptitiously and selectively sent to some Members 23-page document which launched a blistering attack on the Bills. The purpose was, of course, to urge the Members concerned to reject the Bills. Before the media uncovered such a document, not even Ms Anna WU, the Member sponsoring the

Bills, nor Dr the Honourable LEONG Che-hung, Chairman of the Bills Committee, nor the majority of the Committee members, had received a copy. I would like to ask the Administration this: In the eyes of officials, is the Bills Committee only a flower vase which the Administration can either keep or dash to pieces depending on whether it is good-looking? I hereby express my strong resentment and censure against the repeated playing of tricks by the Administration who thereby wrecked the important mechanism for co-operation between the executive and the legislature and to trample underfoot the parliamentary spirit.

Apparently, the Administration's strategy throughout the scrutiny process of the Bills was to withhold their views from the Bills Committee, to hide their stance and finally to launch a surprise attack. This is a shameful tactic which breaches the democratic principles espoused by a parliament which conducts its business in an open and above-board manner. Right from the start, the Administration, which professes to be a defender of fair deals, never had the *bona fide* intention to amend these three Bills. The Secretary for Home Affairs repeatedly said the Administration was not opposed to Ms Anna WU's proposals. But the way the Administration dealt with the Bills in fact reflected how keen they were to nip the EOBs in the bud. In sharp contrast to this, the Bills Committee attached great importance to the Administration's views. During the Committee's first meeting, the Home Affairs Branch sent officials to appear before the Committee to put a series of questions. In the light of these questions, members of the Bills Committee drafted amendments and gave responses. This was indicative of the Members' sincerity in scrutinizing the Bills. But, the Administration, having kept silent for more than one year, waited until the Bills were due to be voted on before firing a barrage of criticisms. In response to the Administration's views, Ms Anna WU was obliged to draft further amendments within a short time in order to perfect the Bills. And time was running out. But the Home Affairs Branch, reversing the order of cause and effect, alleged that Ms WU still set about introducing important amendments to the Bills two weeks after their gazettal with the result that the Branch had insufficient time to study the Bills and propose amendments thereto. This was like "a thief calling his victim a thief" or "an oppressor filing suit against his victim". It was most unfair to Ms WU.

On the question of legislating to protect equal opportunities, the Secretary for Home Affairs used to stress that he absolutely supported the principle of equal opportunities subject to the qualification that a gradual and progressive approach be adopted to deal with various aspects of discrimination one by one. At the same time, he used to stress that a responsible government should very exhaustively consider and study a matter before formulating a new policy. I absolutely agree with this way of doing things. However, the question is that the Secretary said one thing but did another. A responsible government should have long ago legislated to provide comprehensive protection to members of our society who are still subject to discrimination. But the past performance of the Administration indicated that they had no clear cut stand on this question, nor did they have an overall policy orientation. They only adopted a passive

approach and responded when public pressure was mounting. Even in the Green Paper *Equal Opportunities for Men and Women* published by the Administration last year, the Administration still had grave reservations with regard to the mitigation, by legislative means, of inequalities between men and women. The Home Affairs Branch, under public pressure, promised last year to this Council that it would study whether to legislate against discrimination on grounds of family responsibility, sexuality and age, which is precisely the subject of the first EOB before us today. But this promise of a study was changed to public consultation last February and is now “shrunk” to the dimensions of just an internal review. Is this a gradual and progressive approach? I would say this is a gradual and retrogressive approach. It has now dawned on us that the Administration’s so-called step-by-step approach is in fact a surreptitious, retrograde approach and that the Administration’s professed respect for human rights has led to the conclusion that a “delaying” strategy be adopted. It was not until recently that the Home Affairs Branch, in response to Ms Anna WU’s three Bills, reiterated that they would continue to follow up on the work to bring about equal opportunities. They said they would carry out a study and conduct public consultation next October in respect of family conditions, sexuality and age but they gave no guarantee that upon conclusion of the study in 1996 they would surely legislate to eliminate discrimination. I must point out that Ms WU’s EOBs took almost two years to gestate and mature. During the interim, there were public consultations which of course covered the business sector and the grassroots people. If the Administration indeed had the determination and the *bona fide* intention, why would they have delayed carrying out a study and failed to pay heed to the consultation results of the Bills Committee? Why should the Administration have waited until after one full year’s discussion and public consultation by the Bills Committee before indicating that they would start doing what had already been done?

Mr President, to legislate to protect equal opportunities requires the right social conditions as well as adequate study and consultation on the part of the legislature. I believe no one will dispute this. But, at present, discrimination within our society has, in effect, threatened the daily living of our citizens. Currently, Hong Kong’s unemployment rate stays high. And this, coupled with problems stemming from age and sex discrimination — for instance, the difficulties encountered by women aged over 30 in finding employment, has become a matter which cannot be solved by the launching of training or retraining programmes alone. As a matter of fact, the Administration has admitted that these problems should be given priority. Although legislation is not the only means to promote equal opportunities because equality and mutual respect is built on civic education and the citizens’ awareness in that regard, yet legislation is after all a means to accord basic protection to society’s vulnerable groups so that their fundamental rights will not be trampled upon. Therefore, the Administration should employ a delaying strategy no more. They should as soon as possible eliminate all forms of discrimination by introducing comprehensive protection under the law.

Moreover, I would like to take this opportunity to call on Members to support the Second Reading of Ms Anna WU's EOBs first. Some Members are saying, "This sitting has been drawn out too long. Today is already the third day. Since I might not support the Bills, it would be better to vote them down at the Second Reading. Then I can go home to sleep." I think they should never do this. The Bills are not only the result of a full year's brainstorming endeavour by Ms WU and other Members, they also embody the expectations of a vast multitude of citizens who are striving after equality. Therefore, we should let the Bills go through their Second Reading and then vote to decide on the pace of realizing the equal opportunities goal at the Committee and Third Reading stage.

Finally, I would like to remind the Administration that I have got wind that if the three EOBs passed their Second Reading today the Administration would reject every amendment during the Committee Stage irrespective of whether they were reasonable so that the Bills, in their flawed and hobbled form, would not pass their Third Reading. Mr President, I have no means of knowing what the Second Reading vote will be. But if, after the Bills passed their Second Reading, the Administration indeed opposed the proposed amendments just for the sake of opposing them by casting a "No" vote at every turn, that would be another instance of the Administration making a decision what shocked and shamed Hong Kong people and caused them deep regret.

Mr President, with these remarks, I fully support Ms Anna Wu's three EOBs. In the past few weeks, we vigorously lobbied for votes on behalf of Ms WU. Our lobbying efforts surpassed any of the previous efforts we had made in respect of motions or Bills sponsored by the Democratic Party. It is because I feel that such a way of bearing down on an independent Member, such a way of zeroing in on an independent Member's Bills is immoral and at times revolting. Thank you, Mr President.

MR FREDERICK FUNG (in Cantonese): Mr President, the Universal Declaration of Human Rights states: "People are born free. They are equal in terms of dignity and rights. They are endowed with reason and a sense of right and wrong. They should get on with one another in harmony and love one another like brothers and sisters." Every society is formed by people of different races, classes, characteristics and convictions. They are each a member of society. People cannot be identical to one another. In some respects, some people form the minority and in other respects they may form the majority. Since everyone has the chance to become part of the minority, people in the majority should respect the rights of the minority. They should not unreasonably interfere with the minority. This is a principle which a democratic, free and human-rights-upholding society should resolutely adhere to and which a pluralistic society must accept. Irrespective of whether a person's race, sexuality, background or other attributes are different from other people who are deemed to be "normal", that person should be entitled to the same respect, treatment and acceptance.

The purpose of the Equal Opportunities Bills introduced by Ms Anna WU is, I believe, to enable the minority who have been discriminated against in the past to make their plea to society and to regard as illegal the acts of discrimination committed against the minority in order to protect the vulnerable and neglected groups in society. In a highly civilized place like Hong Kong, I think no Member will have sufficient reason to oppose this proposal, this principle and this spirit.

I feel that, in terms of work to promote social equality, government officials have been dragging their feet. They have been either employing delaying tactics or holding up programmes on grounds of a charging effect on public revenue. At first, Ms Anna WU had proposed to table an “omnibus” Equal Opportunities Bill. But the Administration did not accept. In the event, the Bill had to be broken down into smaller Bills of which only the Sex Discrimination Bill and the Disability Discrimination Bill were tabled. The Administration would not deal with any other forms of discrimination. They explained that study and consultation of public opinion would be needed. They further argued that age discrimination was unrelated to disability discrimination. In respect of some very straightforward and commonly known problems, such as age discrimination against job seekers, the Administration refused to take action. They only indicated that a study of discrimination on grounds of family responsibility and sexuality would be undertaken at the end of the current year and that a decision would be made after the conclusion of the study as to whether legislation would be needed. What surprised people even more was that the Administration claimed that the study would take one year to complete. What sort of attitude was that? If that was not stalling, what else could that be? According to the timetable proposed by the Administration, would it not mean that we would have to wait until after 1997 when a socialist sovereign power has taken over before victims of discrimination on grounds of race, age, family responsibility, religious or political conviction could be given protection by society? I feel that, currently, Hong Kong society and the Government have sufficient means and resources to carry out work in this respect.

The fact that job-seekers are subject to age discrimination is beyond dispute. It is not only women alone who need legislative protection. Men are similarly subject to age discrimination, only that the age trigger for such discrimination may be older in the case of men than women. Men aged 40 or over often find it hard to get a job in Hong Kong. Therefore, prohibition of acts of discrimination on grounds of age will protect the two sexes, not just women alone. The Administration contends that there is insufficient evidence to convince them that legislation against age discrimination is needed. I would like to ask government officials to leaf through the job advertisement pages in the newspapers or to call at the Labour Department to find out how many job vacancies carry an age requirement. I can say that job advertisements which carry an age requirement are too numerous to count. In the old days when the manufacturing industries were booming, men and women were hotly sought after on the labour market and, because of keen demand, there was no age

requirement in respect of female workers. But, since the relocation of manufacturing industries to China and replacement of same by the service trades, employers have started to impose an age requirement in respect of female employees, particularly for jobs such as secretary, clerk, office assistant and hotel worker. In respect of these jobs which pay low wages, offer no security, impose harsh conditions of work, and are easily replaced or dispensed with, applicants are normally required to be between 30 and 35 years of age. Why is the Administration blind to all this?

Apart from age discrimination, many in our community are discriminated against on grounds of race, family responsibility, sexuality, religious or political conviction. For instance, when advertising vacancies for clerical jobs, some schools or churches unreasonably require that the applicant must be a member of a certain religion. Some employers reject an applicant or employee on grounds of his sexuality or his past political activities. People may say the above instances are few and far between and will not do much harm. But I think they are wrong in so saying. As I stressed a moment ago, minorities in society must be respected and fairly treated. We cannot discriminate against another simply because he differs in some respects from us.

Many countries in the world are offering protection to homosexuals, and people of different race or different religious or political conviction. The purpose of the three Bills introduced by Ms Anna WU is to address acts of discrimination so that victims can file their complaints through proper channels under the law. There is no intention to impose on public or private organizations an unreasonable burden or obligation. Of course, some people think that such protection can be available through self-regulation within a private organization without the need for legislation. But, in a society under the rule of law where social justice is assiduously upheld, the law plays a very important role. Legislation, though it may not be able to change every thing, is yet indispensable. Of course, besides legislation, education of the public is also important. Therefore, I suggest that, if the Bills are passed, the Administration should, in the light of the contents of the Bills, formulate a set of sound policies to educate the public so that they will understand the importance of mutual respect among members of the community. Finally, I hope Members can, out of their better judgment, understand that Hong Kong is an affluent society and has sufficient means as well as resources to carry out the work envisaged in the three Bills tabled by Ms Anna WU. I hope Members will vote in favour of Ms WU's three Bills.

These are my remarks.

MRS MIRIAM LAU: Mr President, the Liberal Party pledges its support for the laudable principle of equal opportunities for all. Today's debate, however, is not on the merits of this principle. Today's debate focuses on the appropriate measures to be adopted to promote equal opportunities in Hong Kong. The Honourable Ms Anna WU has put before us three Bills on equal opportunities.

These three Bills cover a total of eight types of discrimination, four types of harrassment and vilification in nine areas of activities. No doubt, dear Anna, for whom I have the greatest of respect, believes that we should legislate against all forms of discrimination in Hong Kong. That must be the social ideal. Stamp out all discrimination at all cost as quickly as possible, that is what she appears to be saying. I am sure that Anna is well-intentioned. However, the Liberal Party regrets that we cannot support the proposed Bills. I shall elaborate on the details of our reservations.

Hong Kong is an international city where people of different race, age, religions and political affiliations work and live together. We are famous for the harmonious relationship among the members of the community. There is mutual respect for the worth of each other. As social development gathers momentum, people's social network widens. More choices and opportunities in terms of employment, education and services are made available to us. We are also faced with new modes of social behaviour and new forms of relationships. Yet, in the midst of such developments, some may feel that we have not dedicated as much attention as one should to the interest of some minority groups and that positive action should be taken to promote their well-being, to provide them with equal opportunities so as to enable them to contribute further to the further development of Hong Kong. Pressure for social changes including anti-discrimination measures emerges. Such developments are not uncommon in other societies. Measures aimed at protecting the rights of the minorities may take a number of forms — to enhance public education, to initiate administrative programmes, to cater for the special needs of these groups, and to introduce legislation to outlaw discrimination. In the past, the Hong Kong Government has always relied on public education to promote the concept of equal opportunities. In a free and open society, public education is indeed the right approach to influence public attitudes and rectify biased stereotyping. The Liberal Party supports the enhancement of public education in the area of anti-discrimination. The Committee on the Promotion of Civic Education, whom this Council has approved funding of \$20 million, will focus on equal opportunities this year. This Committee ought to step up its programmes and activities without delay. And the Administration should report regularly to this Council on the work progress.

The institution of legislation is a serious matter. The Liberal Party does not believe that we should rush into legislation whenever there is perceived to be a social wrong or a mode of human behaviour which some of us may find objectionable. I cite the example of having mistresses in China. Shall we legislate against such behaviour? Let us not forget that it is our duty to make legislation for the benefit of the public and not to create difficulties or to embarrass them. We should not lose sight of their sentiments and whether they are ready for the new norms of behaviour which will be imposed upon them by statute.

A month ago we passed the Sex Discrimination Bill in this Chamber and we have just a couple of hours ago passed the Disability Discrimination Bill to



outlaw discrimination against the disabled. The subject matters of these two pieces of legislation have been thoroughly debated and the legislative approach accepted by members of the public at large. With the passage of these legislation, four types of discrimination that on the ground of sex, marital status, pregnancy and disability have been outlawed. It is only fair and reasonable that the public should be given the chance to digest their new statutory rights and obligations. In this connection, we have serious doubts on whether members of the public are ready to accept another three pieces of legislation which comprehensively cover many other forms discrimination.

I was reading a Chinese article yesterday written by the Honourable Ms Anna WU in which she compares her proposed legislation to traffic lights. As soon as I see traffic lights, I get very interested. According to Anna, these traffic lights will guide the community. True enough, traffic lights are to guide the travelling public. If we have one set of traffic lights at one junction, then the traffic will flow in a very orderly fashion. But if we have 12 sets of traffic lights at the same junction at the same time, what do you expect? Accidents and disasters. In fact, as overseas experience has demonstrated, it is prudent to adopt a gradual approach in respect of anti-discrimination legislation. In Australia, from whom the Honourable Ms Anna WU adopted her Equal Opportunities Bill, their anti-discrimination legislation has evolved over a period of 20 years. The Discrimination Act there was enacted in 1975, followed by the Sex Discrimination Act nine years later in 1984. The Human Rights and Equal Opportunity Commission Act was passed there in 1986. And more recently, the Disability Discrimination Act was passed in 1992. As far as I am aware, there is still no federal legislation against age discrimination, although some of the Australian states have such legislation. In 1992, the Australian Government was in the process of consulting the public on making specific legislation at the federal level against agism. In the same token, the anti-discrimination legislation in Ontario, Canada and that in the United States have gone through a similar process in the course of 30 years. All these demonstrate that it is impracticable to seek to change social norms and attitudes overnight. If western countries have taken so long, 20 to 30 years, to usher in anti-discrimination legislation which in their totality may not even be as comprehensive as those that are now proposed by the Honourable Ms Anna WU, who do we think that we can afford in Hong Kong to do so within a matter of one or two years? To be effective, any legislative measures should be preceded by the creation of a climate of understanding and acceptance. Introducing legislation in haste will have the negative effect of generating unnecessary disputes and litigation, creating confrontation as well. This may upset the social harmony which we value dearly and upon which Hong Kong's economic success over the past 20 to 30 years was built.

#### *Age discrimination*

At a time when our economy is adjusting to the many structural changes, minority groups are more vulnerable to experiencing setbacks. Displaced middle age workers, for example, are hardest hit by economic restructuring as

the employment opportunities for the jobs with which they are familiar dwindles. The Liberal Party holds that positive measures should be introduced to relieve the difficulties of the middle age workers, and the Honourable Mrs Selina CHOW will later on elaborate in this area.

It is widely believed that prevailing age discrimination by employers has exacerbated the problems faced by these middle age workers and that legislation is the panacea. We do not dispute the good intentions behind the Honourable Ms Anna WU's proposals. Our view is that any legislation should be effective. I am concerned that the uncertainties created by the provisions in the Bill may outweigh the protection that it intends to render, particularly in view of the uncertainties entailed in the provisions. For example, would it be lawful for an employer to refuse employment to a 53-year-old person applying to be an executive trainee on the grounds of that person's age? What about a shop which sells youth products, would it be unlawful for that employer to require a younger sales-person? There is no certainty unless a ruling is made by the court. The Liberal Party finds it extremely difficult to lend our support to a piece of legislation which creates uncertainties for members of the public. This very element of uncertainty also casts doubts on the effective implementation of the proposed Bills.

#### *Sexual preference*

The Bill also makes it unlawful to discriminate a person on the grounds of his/her sexual preference. I must say in an oriental society sexuality can be an emotive issue. In 1991, we debated decriminalizing homosexuality, and if one should review the records of Hansard, one would actually know that many of those who supported decriminalization actually still have a great deal of reservation about homosexuality. Whilst we should treat persons of different sexual preference in the same manner, it is also necessary to assess realistically the public's views and their readiness to accept couples with homosexual or heterosexual preferences. Is the public prepared for a piece of legislation which may make it unlawful for them to dismiss a domestic helper on account of the latter's sexual preference? Anna says these people need jobs. But the question is: Is the public prepared to accept legislation against this at the moment? Can a school principal require a homosexual teacher not to preach his way of life to students? If the answer is in the negative, that is, that the school principal is not entitled to so reject the teacher's request, then what would parents think? These are very sensitive and very emotive issues, but nonetheless very realistic.

I am disappointed that the Government has done very little in terms of public education to remove biased attitudes towards homosexuals and heterosexuals. We should first create the right social climate before seeking to impose a new moral value on the public. Hasty legislation on this type of sensitive social issues would only create more misunderstandings and reinforce biased stereotypes. As I have read in some articles, actually anti-discrimination legislation, unless we deal with it very carefully, would foster and further enhance discrimination rather than the other way round.

*Other types of discrimination*

The Honourable Ms Anna WU has also proposed two other Bills outlawing discrimination on the grounds of race, religious and political conviction, trade union membership and spent conviction. I will not dwell on the details of these two other Bills. Suffice it for me to say, the cumulative effects of the three Bills would only serve to magnify the uncertainties that I have highlighted above.

*Enforcement*

The enforcement provisions in the Bills, I am afraid, still leave much to be desired. Under the Bill, all cases of unlawful discrimination would be dealt with by the District Court. Is this arrangement appropriate? Should we be urging people to go to the courts? Should we not encourage aggrieved parties to conciliate and resolve their differences? Is our Judiciary ready to absorb the vast amount of cases that is expected to be generated from the Bill? Are there adequate legal experts, other than of course Anna, to provide assistance to the aggrieved? All these questions have yet to be answered.

The effective implementation of any piece of legislation would hinge on whether an appropriate enforcement infrastructure is in place. Such a structure, I am afraid, is not yet within sight. I do not think responsible legislators should endorse a piece of legislation which cannot be effectively implemented. One may argue that the Government need not bring the provisions into force until the necessary enforcement framework is in place. I take exception to this view. What is the purpose of passing a piece of legislation when there is no implementation date in sight and when society is not yet ready for it?

I must state again that the Liberal Party fully subscribes to the principle of equal opportunities for all. We cannot agree to the present form of the Bills before us. The legislation, which is copied from the Australian law, has failed to take into account Hong Kong's domestic circumstances, Hong Kong's history, the present social climate and needs. We believe that the public ought to have a chance to air their views on some rather sensitive issues and to digest the proposals put before them. They should have the opportunity to help to define the scope of exceptions in the Bill and to participate actively in developing anti-discrimination legislation caters for the specific needs of Hong Kong. And in this regard, I think the Government ought to take a lead. In this regard, I also note the undertaking given by the Secretary for Home Affairs earlier on to immediately conduct a study with wide and open consultation on the measures, including legislative measures, to eliminate discrimination on the grounds of age, family status and sexual preference.

We believe that as prudent legislators truly committed to upholding the long-term interest of Hong Kong, we should not rush into adopting a piece of legislation which is invested with enforcement difficulties and uncertainties.

MRS PEGGY LAM (in Cantonese): Mr President, to achieve equal opportunities is an ideal as well as a target every one would strive after. I have always been advocating equality among members of society so that all can give full play to their talents and enjoy equal opportunities in order to participate in social activities. However, in terms of eliminating all forms of discrimination, I believe there are many effective ways to do it and legislation is not the only means. In my speech delivered on 28 June I said it was possible to change one's thinking through education. Now I would like to point out that the problem can be addressed through the availability of opportunities and the provision of apposite services to cater to the needs of people of different religion, sexuality, marital status and race. Of course, through publicity work and absorption at the receiving end of such messages as equality, mutual respect and understanding, people's predisposed views towards another can undergo changes in course of time. When the social ethos is ripe for change or when need really arises, we can consider eliminating discrimination by means of legislation.

The Honourable Ms Anna WU is a Member who commands respect and admiration. I have known her for years. I remember I first made her acquaintance when I founded the New Territories Zonta Society. She was one of the founding members. I am happy to have had the opportunity to work with her as one of my colleagues in this Council for the past four years. I know that in the past several years she spent a lot of her time, energy and even money on drafting and preparing the Equal Opportunities Bills. Here I have to pay her my respects. As this Council has already passed the Administration's two Bills on discrimination, I and the Hong Kong All Women Joint Progressive Society that I represent exhaustively studied the three Bills introduced by Ms WU. We discover that the Bills have a very extensive coverage and many of the proposals in the Bills are at variance with the existing legal and moral standards in Hong Kong. Furthermore, unlike the Sex Discrimination Bill or the Disability Discrimination Bill, the present three Bills have not undergone the process of consultation by way of a Green Paper or other consultative means to find out how Hong Kong people would view these Bills. True, legislation is a common enough way to give effect to decided policies in Hong Kong. But before adequate public discussion is held, we must consider with caution whether we should let Ms WU's three Bills define moral values for the citizens and restrict their conduct. As Legislative Council Members, we must think carefully if members of the public understand and are adequately prepared for this so that they can enjoy the rights and take up the obligations under these Ordinances. On the other hand, how much does the general public know about the terms of the Bills and their impact?

I can recall that before the Administration introduced the Sex Discrimination Bill, an extensive consultation exercise had been launched. In the Wan Chai District Board alone discussion was twice held on the question of equal opportunities for men and women. The first discussion dealt with the major principles enunciated in the Green Paper. The second discussion directly addressed the contents of the Sex Discrimination Bill and its possible impact. No one will oppose the sublime principle of “equality”. Consonant with my stated stance at the beginning of this speech, we, as legislators, should not accept broad principles alone without regard to details. There are indeed some nebulous points in Ms Anna WU’s three Bills. For instance, if the Bills were passed, would a landlord be justified in refusing to let a room to a homosexual couple because of their sexuality but letting it to a heterosexual couple instead? And could we dismiss a domestic helper because of her race and hire a local instead? Or, could a school refuse to let a certain religion group use its hall because of the creed of that group? I think these questions would have to be left to the courts to decide according to the merits of individual cases.

True, there are certain worrying features about these three Bills. If a couple of sections were taken out and studied in isolation, Members might not appreciate the impact the Bills would have. But if one would care to count them, one would find that there are no fewer than 172 acts listed as illegal in the three Bills. This does not include the other acts listed as illegal in the sub-sections. Many people said to me that if these Bills were passed Hong Kong people would have to be most wary of everything they do. It is because they would not know if the thing they were doing was illegal. Moreover, they would have to watch what other people were doing to see if that was illegal. This would strain interpersonal relations and there would be enmity between people. Chinese people have always taken peaceful co-existence and harmony as the fundamental precept of life. Since the public is so worried about what will happen after these Bills are passed, should we not therefore think thrice?

Three days ago, 11 district women groups came to the Complaints Division of the Legislative Council to meet Members. They represented more than 10 000 members. They expressed considerable reservations with regard to these three Bills. They were worried that the Bills would have a negative impact on social stability. Let me quote a paragraph from a joint letter they submitted. “To achieve their ulterior purpose, some people have resorted to irrational action and created an overwhelming body of opinion to the effect that opposition to the three Bills will be synonymous with opposition to equality. In order to express the sentiment of women in the districts, we are sending this joint letter to Legislative Council Members. We hope that, when Ms Anna WU’s three Bills come before the Council for Second and Third Readings, Members will consider the negative effects the Bills may have on society. If these Bill were unfortunately passed, Hong Kong people would feel the heat and worry lest they should fall into the trap and become law breakers.”

Mr President, I and some members of the public are very concerned about the age discrimination problem. In the previous two sittings of this Council, I repeatedly called on the Administration to adopt positive measures to eliminate age discrimination. We support the move to legislate against age discrimination. The Administration has today promised that they will undertake a study this year, extensively consult Hong Kong people and table a Bill to the Legislative Council next year. I hope the Administration will fulfill this promise. I also hope that the Administration will, in a positive manner, take Ms Anna WU's Bills as the basic framework for the future Bill and, after revising the framework, present the new Bill to the public for consultation. On the other hand, I would urge the Administration to beef up education to combat age discrimination. Apart from promoting civic education, the soon-to-be-established Equal Opportunities Commission should launch large-scale education activities to encourage the public to change their concept and thinking.

Mr President, I will not support Ms WU's Bills. This does not mean that I do not support the sublime principles enshrined in the Bills. I only think that time is not yet ripe for passing these three radical anti-discrimination Bills. The realization of ideals should be undertaken with due regard to Hong Kong's practical conditions. Finally, let me remind the Administration again that they must carry out work in this respect as soon as possible and present an age discrimination Bill to this Council next year.

Thank you, Mr President.

7.33 pm

PRESIDENT: As dinner has been arranged for 7.30 pm, I will now suspend the sitting.

9.17 pm

PRESIDENT: Council will now resume. It is now past eight o'clock and under Standing Order 8(2) this Council should now adjourn.

ATTORNEY GENERAL: Mr President, with your consent I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

*Question proposed, put and agreed to.*

MR JAMES TIEN: Mr President, I am sure a lot of Members are not quite ready to speak yet and neither am I. But if I do not raise my hand, the Second Reading will be over.

Mr President, employers in Hong Kong support equal opportunity and employment and fair practices in the workplace without any discrimination. We also believe that promotion, education and voluntary self-regulation are effective means for promoting equality of opportunities and good employment practices.

In this connection, five employer's associations including the Federation of Hong Kong Industries and Hong Kong General Chamber of Commerce have joined hands and developed a practical guide to equal employment opportunity. This guideline provides important advice to employers and also raised their awareness on the need to develop equal opportunity policies.

While we have no strong objection to introducing some legislative measures to complement the education and promotion of equal opportunity, we feel very strongly that a cautious step by step approach should be adopted in introducing anti-discrimination legislation.

We therefore find it difficult to support the three Bills on equal opportunities put forward by the Honourable Ms Anna WU. I shall elucidate my arguments.

We see no pressing need for comprehensive legislation against discrimination as far as I can recall. We have debated on measures pertaining to gender equality and employment opportunities for women in the past four years. However, little has been said about discrimination on the grounds of, for example, sexual preference, religion, spent conviction or race. Is there a genuine community concern in these matters which warrant the introduction of comprehensive legislation?

In relation to discrimination, we have the view that priority must be placed on sex and disability discrimination. This Council has just passed the Sex Discrimination Bill and the Disability Discrimination Bill. It is also in the pipeline and had been passed. I expect the provisions in these two pieces of legislation will soon come into force. Employers have yet to understand the new obligations placed upon them as a result of the two Ordinances. Many would need to develop new personnel policy and administrative setups. For example, a company which has no established promotion procedures may need to consider developing promotion standards to avoid allegations of sex discrimination.

Employers who carry vicarious liability for the actions of their employees would also need to establish guidelines on good office practices and provide training for all employees. All these are not easy tasks. Although many large business establishments in line with good employment practices have already developed their internal guidelines, there is a significant difference between self-regulatory measures and legislation. To ensure compliance with the provisions in the law, some employers may need to resort to their lawyers and personnel consultants, when, for example, they develop their recruitment and training policies.

In endorsing the Sex Discrimination Ordinance we are fully aware of our obligations and employers have made it clear that they support the legislation. Nevertheless we are not prepared for eight other types of discrimination which I am afraid will be enforced through an entirely different regulatory regime. The scope of the three Bills is too broad and revolutionary rather than evolutionary. It does not allow us time to accrue experience from the operation of the Sex Discrimination Ordinance. Under the three Bills, all proceedings will have to be settled by the court.

Overseas experience tells that most of the disputes under anti-discrimination legislation are in respect of employment matters. So employers have a legitimate concern over the enforcement regime.

I note that in most jurisdictions which have enacted anti-discrimination legislation there invariably exists a mediator tasked to screen off complaints and provide people in disputes with a chance to conciliate. A mediator is lacking in all the three Bills. I am concerned that in the absence of a mediator to reconcile the differences and to explain the rights and obligations to all relevant parties a lot of complaints would arise and inevitably end up in the courts.

This system is confrontational and undermines the good working relationships between employers and employees which are essential to Hong Kong's economic success.

There is the suggestion that those who do not support the Honourable Anna Wu's three Bills are condoning discrimination. There is no truth in this allegation. As employers we are objecting to the legislative approach. That does not imply that employers discriminate or that we do not care.

We firmly believe that the business sector would need time to absorb their new duties and to understand the two pieces of legislation on sex and disability discrimination before proceeding further especially the small companies.



I understand that to address the concerns of the business sector, the Honourable Ms Anna WU will be moving Committee stage amendments aimed at empowering the Secretary for Home Affairs to make regulations so as to provide transitional arrangements for different types of businesses. While I appreciate Anna's thoughtfulness, I am afraid that such a proposal creates more uncertainty than it is intended to solve.

The Secretary for Home Affairs is not obliged to make the transitional regulations and I have not heard that he has given any undertaking to do so. Even if the Secretary is minded to make such regulations, it is uncertain when such regulations would be made, the scope of the temporary exceptions and how long the transition period would be. All these are matters of principle and should have been addressed and debated before finalizing the Bill. I am afraid that it is not appropriate to support a piece of legislation which leaves so many questions unanswered. I would like to remind fellow Members that in respect of the sex and disability legislation, the transitional exceptions are stipulated in the primary legislation, not a subsidiary.

In the light of the recent developments in the labour market, there has developed an argument that discriminatory practices adopted by employers, in particular age discrimination, have contributed to the growth and unemployment of the middle-aged. As an employer I cannot subscribe to this view. The objective of any business organization is simply to make profits. The labour market relies solely on the forces of supply and demand. There is no incentive for an employer to discriminate because there is simply no advantage for him to let his personal bias to influence his rational business choice and profit.

Discrimination will only work to the disadvantage of the employer. Mr President, our labour market now is faced with this strange phenomena of having unemployed persons and unfilled vacancies simultaneously. This is the result of economic restructuring. Displaced workers who have hitherto been employed in the manufacturing sectors now need to seek to have their skills updated in order to rejoin the workforce. Effective training programme and matching placement services are essential in helping this group of employees to brush up their skills.

The Government would need to work harder to implement the 30 measures put forward by the Governor at the Summit with Employer and Employees in June. The Administrative measures proposed by the Governor are positive measures to tackle the problem of mismatch of unemployment and unfilled vacancies. I do not see how job opportunities could be created or that the mismatch could be rectified by instituting comprehensive legislation against the many forms of discrimination as stipulated in the three Equal Opportunities Bills.

Turning to the provisions in the three Bills, I can also see practical difficulties with certain provisions. To quote just a few examples: The family status of a particular person will have an impact on his ability to repay bank loans. It will also be imprudent for bank or other business establishment to enter into a long-term commitment with a person of advanced age. Would these practices be made unlawful by virtue of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill? I think only judges can tell with certainty.

The Bill in respect of race discrimination may also have an impact on the localization policy in the private sector. Would companies be accused of race discrimination if they replace their overseas staff with local recruits? Some Chinese businessmen prefer offering partnerships to their family members and clansmen. Would such preference constitute race discrimination? It is just reasonable for financial institutions and business establishments to take into account the spent conviction of their clients in credit and business decisions. Nonetheless, the Bill in respect of spent conviction provides no exception. In respect of discrimination on the grounds of religious belief, cases in Canada have held that religion includes all aspects of religious observance and practices as well as beliefs. Would it be lawful for an employer to require the followers of a particular religion to work on certain days which was designated as non-working days by the employees' religion? What about the performance of religious practices during working hours? Would it be lawful to grant routinely Christian holidays and refuse to permit workers of other faith to take days off on non-Christian religious festival days? Again there can be no certainty unless the particular cases or complaints are brought to court. If we accept that the preferential treatment of persons in the above examples are reasonable, I will prefer to see them formally exempted from the operations of the three Bills.

Mr President, I must say that the Honourable Ms Anna WU's three Equal Opportunities Bills are well intended. Nonetheless, the detailed provisions have left many areas of uncertainties and may create animosity rather than to promote harmonious relationship between employer and employee.

With these remarks, Mr President, the Liberal Party and the business sector do not support the three Bills.

MRS ELSIE TU: Mr President, a very short speech. No one could possibly accuse me of not believing in equal opportunities with which principle I have lived all my life. If anything were to persuade me to support these Bills fully today it would be my respect for Ms Anna WU. But respect for a person is not the right motive for supporting a Bill the consequences of which are very far reaching.

I believe in all the principles embodied in Anna's Bills. What I doubt is how we can expect all inequalities to be addressed through legislation to be enforced on the whole community regardless of whether they can accept those principles.

Not everyone has the education to understand things as well as Anna and some other liberally educated people. I have talked to Anna personally because it hurts me not to give her full support because of her dedicated efforts which I believe would make an excellent blueprint for education of Hong Kong students. Indeed, Anna's principles are suitable for universal education to root out every kind of prejudice found in the world. My worry is that to use punitive measures on people who are not even conscious of their prejudices is like beating a small child for failing to do something beyond his understanding.

Mrs Miriam LAU has eloquently expressed my own views and I wish to express my support but I will not repeat her arguments. I have encouraged Anna to use her principles for educational purposes because unless the community is properly educated on those principles, it will be heavy handed if we were to force them on the community, giving the impression that we are taking away some of the freedom that people feel are their rights.

I welcome the promise made by the Secretary for Home Affairs to consult the public and consider legislation on the principles laid down in Anna's Bills.

MISS CHRISTINE LOH: Mr President, despite the fraternizing that has just gone on in the dining hall I still regret to say that the Administration's agenda is to do everything that it can to thwart the Equal Opportunities Bills. It is too easy to claim it needs more time. The Administration had ample time but chose not to use it constructively. So why should we now allow its belligerence to confuse us?

If the Administration is concerned about a private Member taking over this entire area of policy it only has itself to blame. It should have seized the opportunity. Indeed it had an obligation to do so after the passing of the Bill of Rights Ordinance by leading the debate instead of trailing behind and then pulling a long face.

For those Members who are thinking of not supporting the Bills, please at least have the decency to allow the debate to go ahead tonight. Tell us why you are against them and then have the courage to state your stance to the community by voting them down at Committee stage.

Mr President, the issue of equal opportunities has implications for the way we manage our public and our private lives. It means looking afresh at conditions in the home, in the school, in places where people socialize and in the work place. It follows that any proposals for change, if they are to succeed and to endure, must display a sensitivity to the political and social climate.

In examining whether the Honourable Ms Anna WU's Equal Opportunities Bills have struck the right balance, I suggest that we ask two fundamental questions first.

The first question is: Is it right that people should participate in society on equal terms? I trust there is no disagreement that the answer is a resounding yes.

The second question to ask is: Should legislation be used to help achieve this objective? The answer must inevitably be more nuance. Legislation can never in itself be the whole solution when the real job is one of changing attitudes. I think so far I agree with Members of the Liberal Party. The law is one of society's main instrument for regulation. The law is usually reserved for areas in which a clear line needs to be drawn between acceptable and unacceptable behaviour and where the consequences of unacceptable behaviour are likely to be damaging.

Those who do not believe in using legislation in the area of equal opportunities say that what is needed is more time and more public education. They believe only that will in the long term change attitudes. They also point to overseas experience where legislation has not eliminated discrimination. True, laws have not removed inequality but equally we do not suggest that laws against murder or theft are without value because acts of murder and theft continue to occur.

Perhaps we should ask a third question and that is: Does the law make things better than they would otherwise be? I think obviously it does, Mr President. Miss WU's valiant efforts have already persuaded, for example, the Chambers of Commerce to establish codes of practice in the field of employment. The Honourable James TIEN admitted this much last night. Although I think it is instructive for us to note that those codes surprisingly and regrettably excluded discrimination on grounds of political conviction and trade union activities. Having a law there will remind the whole community what will be considered unacceptable behaviour. Against that background we can then continue to push for more public education.

Some people also argue that people can never be equal because they are born with different qualities. I think those who hold this view missed an important point. They confused equality that does exist with equality that ought to exist. For example, to say that the Honourable Roger LUK with whom I have sat next to him now for three years, is taller or older or has different political beliefs than I is simply making declaratory statements that we are unequal in height, in age and whatever. However to say that Roger and I should receive the same pay for the same work in this Council is a prescriptive statement of what ought to be the case. And this really is what discrimination laws are about. The prescriptive nature of the Equal Opportunities Bill is what we should consider tonight. Nature is neither just nor unjust in the gifts it bestows on individuals. We should not use nature or for that people other people's attitudes as an excuse for our own prejudices. Only human beings can

be just or unjust in the proposals they advance with regards to an equality of conditions or with regard to an inequality of results.

When inequality of conditions exist but ought not to prevail, justice may call for rectification by putting in place equality in its place as Ms WU is trying to do with the various Bills on age, sexuality, family status, race, religion, political conviction, trade union activities and spent conviction.

One might ask, you agree with all of that but we might be moving too quickly towards equality legislation. How can we be when the Bill of Rights Ordinance was passed already in 1991? Some people are asking us why we have taken so long. I would also like to say that I believe Ms WU's Bill struck the right balance in terms of the political and social climate in Hong Kong today. The notion of equality of non-discrimination have gripped the public's imagination in the last two years. I think the public is ready for it.

To end, Mr President, I would also like to thank Ms WU for her tireless and selfless effort in putting these Bills before us. She has singlehandedly pushed the issue of anti-discrimination into the forefront of public policy. I find it hard to understand why the Administration resist the excellent Equal Opportunities Bills with such misplaced vigour. I wish that they had instead put the same energy into promoting anti-discrimination.

Since as an appointed Member I cannot claim to represent anyone, I can only thank Ms WU personally. But I am sure many Hong Kong people including people from the public who have joined us tonight and those who have slept for three days in front of the Legislative Council will want to join me in expressing their heart-felt thanks to Ms WU.

Mr President, we will miss Anna in this Council next Session. I hope that her spirit, her tenacity and her professionalism will live on.

DR YEUNG SUM (in Cantonese): Mr President, does Hong Kong need a Bill of Rights? Chinese culture does not cherish the human rights concept. The concept of a bill of rights originates from western societies. The Bill of Rights basically is copied from western societies. Our traditional culture has no concept of human rights. But the Administration and this Council passed a Bill of Rights and made it part of domestic law. Certain disciplined services and some members of the public are of the view that the enactment and enforcement of a Bill of Rights is too hasty. The above arguments have been used by Members today to oppose the Honourable Ms Anna WU's Bills.

Our traditional culture has no such thing. We are copying it from Australia. It is too hasty. But why did we pass the Bill of Rights? It is because we feel that it is very important for us to protect human rights. Why are we so keen to support Ms WU's Bills? It is because we feel that it is very important that equal opportunities be made available to all and sundry in society. Ms

WU's Bills are not meant to apportion and distribute to every person social resources in equal and identical shares. Ms WU's Bills do not demand that all should enjoy equal and identical results from their competition endeavours. She only says that society should be equitable and equal opportunities should be made available. We can come into this Chamber to hold meetings with other Members. But those on wheelchairs cannot come into this Chamber. Some people may be discriminated against on grounds of colour, sex, sexuality or education standard and thus denied the social opportunities which would otherwise have been available. In fact, Ms WU wants equal social opportunities to be made available to every one so that they can make use of the opportunities to partake in free competition, unhindered by their inborn traits or qualities or by customs peculiar to certain communities, which would otherwise have barred them from fair competition and denied them the opportunities. Therefore, there is ample reason for us to support the Bills introduced by Ms WU today. We cannot say we will not support the Bills because of cultural difference or because they are hasty measures. If there is need, we must do it.

Of course, a number of Members will say that the Bills cannot change the social ethos even after they are enacted as law. They are right. It is also correct to say that we must educate. It is of course correct to say that we must start to educate people while they are young and implement civic education. To change the social ethos is like wind erosion. It will take a long time for wind to have effect and therefore a lot of effort, that is to say, education effort, must be put in before it can be absorbed and assimilated. And legislation itself is, in fact, another means of educating people. The debate we are holding today on the Bills serves as a means to promote vastly civic education. The Honourable Mrs Elsie TU told Ms Anna WU not to worry so much because even if Ms WU's Bills are eventually rejected they will still have an educating effect. In point of fact, the legislative process is also an education process. The debates we have been holding these past few days have had considerable social repercussions. The work done by Ms WU during the past year has had considerable social repercussions. Hence, the legislative process also has an educational effect. There will be such a promoting effect whenever legislation is enacted.

I very much want to criticize the Administration for the way they conducted themselves. Moments ago, we were having a very happy get-together. Today is a day of parting after four years. After today, we may not have the chance to come into the Legislative Council. Hence, we are treasuring and savouring this moment of parting. We appreciate the officials seated on the Government Bench there and they appreciate us. Be that as it may, I still have to say a few words. The way the Administration dealt with the present Bills was grossly wrong. Viewed from the constitutional angle of scrutiny of Bills, we have discussed Ms Anna WU's Bills for over one year. Last time, the Honourable Mrs Miriam LAU spent a lot of time doing work related to Members' interests. Some Members were opposed to it but they did not make known their opposition earlier. We did work on these Bills for over one year. That, I think, is a pretty long period. This is the longest work stint I have ever

done since joining this Council four years ago. At first I was afraid. The data were voluminous and the laws were complex. I am not a member of the legal profession. I looked at the job before me and wondered whether I could make it. I thought that was an Australian piece of legislation, a western thing. Would it be too hasty to transplant it to Hong Kong? But after more than one year's participation, I have discovered that Ms WU indeed did a lot of work. A moment ago, Members, the Honourable James TIEN for one, raised a vast number of questions. All these questions had been discussed during our scrutiny of the Bills and a solution found. Just now, the Secretary for the Treasury asked what would happen to the qualifying age for entitlement to retirement protection if there was age discrimination. He should have taken a good look at Ms WU's Bill. It says that, in the case of mandatory retirement protection, age will be exempted as a factor for consideration. Therefore, in the case of recruitment of students based on religion or employment of teachers of the same religion, what shall we do? Or, if a worker has to pray during working hours, what shall we do? All these questions had been discussed before. Some Members say they are not clear about this. But that is because they did not take part in the scrutiny of the Bills. Some other Members say they are not clear about another point. That again is because they did not read the Bills Committee report. The report in fact covers all these. All the questions raised just now by the Administration and Mr James TIEN had been discussed by us. That indeed is the case. I am not deceiving Members. There is record to that effect.

Therefore, basically, I feel that the Administration this time is trying to block the Bills altogether. In fact, if Members had had views of their own with regard to Ms Anna WU's Bills, they should have attended the Bills Committee meetings where they could voice their opposition to this, that and the other. One Secretary might have this view and another Secretary might have a different view. But they did not do so. Officials just appeared before the Committee once, lined up to ask questions and then never put in an appearance again. They stalled for time and it was not until the very last moment that they responded. That being the case, a very bad precedent has been set, which is that the Administration will conduct themselves in this way in respect of Private Member's Bills that are not to their liking. They will not take part in the discussions nor will they provide the necessary data or information. When the legislative process starts, they will buckle down to lobbying and when the Second Reading debate resumes they will block it. Some Members here are saying, "This marathon sitting has been going on for days. We are tired. It would be better to sink the Bills on resumption of Second Reading debate. Then we can immediately go home to sleep." A moment ago I asked Members whether they would support the Second Reading. A Member said, "No. I am too tired. Better have this sitting over and done with." Such an attitude as displayed by a Member of the Legislative Council really shocked me. It is our basic right to scrutinize Bills. Therefore, I call on Members to support the Second Reading. After the Second Reading, Members can rise to say why they are opposed to some clauses of the Bills. Even if they do not rise they can appropriately press the voting buttons before them. Please do not deny this

Council the chance to discuss the Bills at their subsequent legislative stages. It is now not too late into the night. I hope Members will support the Second Reading.

Another thing I would like to say is that, commenting on age discrimination a moment ago, Mr Michael SUEN argued that passage of the Bills would not resolve the problem of unemployment. This is true, of course. There are numerous factors contributing to unemployment. We never argued that the unemployment problem would be resolved with the passage of the Bills. We only said that the unemployment problem was getting more serious with job seekers vastly outnumbering job vacancies and that this would aggravate age discrimination. It is because, having to compete with too many job seekers, a person aged 30 or above indeed has little chance to find a job. We are not saying that, this Bill against age discrimination having been passed, age discrimination will be eliminated and the unemployment problem will be resolved. We are saying that with the worsening of the unemployment situation age discrimination will worsen. As a matter of fact, this is something we can readily feel and comprehend.

Hence, I very much hope that, when it comes to voting, Members will try their best to let Ms Anna WU's three Bills pass their Second Reading. Then we will go over the clauses one by one in the course of which Members can give their own reasons and the Administration can give theirs. Thank you.

MISS EMILY LAU (in Cantonese): Mr President, the Legislative Council passed the Sex Discrimination Bill on 28 June and earlier today it also passed the Disability Discrimination Bill. However, a number of amendments proposed by Dr the Honourable LEONG Che-hung on behalf of the Bills Committee were voted down. So people are saying these two enacted Bills cannot thoroughly solve the discrimination problem.

In fact, in numerous past debates, Members commented that the Administration basically had no intention to address the various discrimination problems existing in our society. Some might allege that disability discrimination would be an exception because the former Secretary for Health and Welfare had said so. But it was the Honourable Ms Anna WU who had mentioned this to the Secretary in the first place. Therefore, we can see that the Administration is now trying every means to block Ms Anna WU's Private Member's Bills. Many Members are surprised at and indeed angry with this. As I said earlier, many people doubt if the Administration really has the intention to eliminate various forms of discrimination. The Administration, of course, would say such doubt is unfounded. But denial is meaningless unless the Administration demonstrates to society and to us by word and deed that they really are not opposed to Ms WU's proposals. I believe that only in so doing could the Administration convince Members. But it was not until this very evening that the Administration said they would do something. Is this too late? I would like to ask the Chief Secretary and the Secretary for Home Affairs:



after such a long lapse of time — more than one year spent on fruitless discussion, as Dr the Honourable YEUNG Sum observed — why has the Administration failed to put forward any proposal? And it is not until this very moment that the Administration says they are going to do it. I believe Members are not pleased with this.

Dr YEUNG Sum, and indeed many other Members too, commented a while ago that the Administration is making an all-out effort to lobby some Members. These Members probably will not support the motion for the Second Reading of the Bills. Mr President, indeed, this is a common enough phenomenon in this Council Chamber where the votes of Members from the “Breakfast Party” will tip the balance, particularly when the two large parties (the Democratic Party and the Liberal Party) are divided in their views with regard to a certain issue. At this moment, there are no Breakfast Party Members in this Chamber. Maybe, they are still having a good time wining and dining — wait a minute, there may be a couple of people from the Party, here is one for sure. Mr President, I got wind yesterday that the Breakfast Party might rediscover their conscience or might burst into a cataclysmic shower of light like a dying star — metaphorically speaking, of course, not that I mean they are dying. I thought we might well have a chance and I told Ms WU it looked like we were going to make it. But I am more sober now after the first flush of euphoria and I am finding that it is not that optimistic. Anyway, we have to do our best. Frankly speaking, the outcome is entirely in the hands of these 18 Members from the Breakfast Party. It is indeed unfortunate but that is the way with reality. I hope these Members will do what is in the best interests of the community.

Mr President, I do not intend to speak on each of the Bills. So I will give my views now on some major issues relating to the Bills. The Administration has long since made known their stand that they would oppose these three Private Member’s Bills. But they have maintained that they are against discrimination. Now we see what the Administration is doing. I said earlier that the Administration had done nothing. If indeed they had done something, they should have come forward to prove it. It would be meaningless just to say so.

In his speech given earlier, Mr Michael SUEN continued to troop out those well-worn excuses like gradual and progressive approach, study, and public consultation. If the truth be told, the Administration simply does not want to find a radical solution to this problem. A couple of days ago, Mr SUEN promised that a study would be undertaken at year’s end with regard to the three aspects, namely, age, family conditions and sexuality, insofar as they bear on the question of discrimination and that the next term Legislative Council would probably be briefed on the results of the study. If it be possible, said Mr SUEN, legislation would be introduced in 1996-97. But, frankly speaking, what if, after conclusion of the study, Mr SUEN reports to us saying that he has found nothing wrong with these three aspects and hence there is no need to legislate? Frankly speaking, I shall not be surprised if he says this. Let me cite

a recent example rather than one from the distant past. Many of the ladies up in the public gallery will recall the incident about the proposed introduction into Hong Kong of the United Nations Convention for the Elimination of All Forms of Discrimination Against Women. How long had it been under discussion? How many consultation exercises had been launched? Then what followed was a promise that the Convention would be introduced into Hong Kong. What about now? Now, it has fallen through. Mr President, when we had a meeting with Mr SUEN on Tuesday, Dr the Honourable Conrad LAM asked him how the matter was progressing. Mr SUEN said the Administration had to discuss it with China. There was so much ado about this thing. Now, as far as we are concerned, nothing seems to have borne fruit. It is no surprise that Mr SUEN is now up to his old tricks again. Hence, I am very worried. He will have a hard time convincing Members unless he later pulls out another promise out of his hat.

Faced with the Bills laid by Ms Anna WU before this Council, Members should ask themselves this: Does discrimination exist in Hong Kong? Mr President, I would not want to repeat the numerous facts or arguments that we have heard because many Members have already cited a multiplicity of examples. About age discrimination, I often hear women say that because they are over 30 years of age, many jobs are not available to them.

Another form of discrimination is racial discrimination. I believe this is a very explosive issue. The Administration is also aware of this, particularly in relation to the Vietnamese boat people question. Explosive though it may be, that does not mean we should dodge it. Mr SUEN asked a moment ago if this would affect localization. He asked: what if a person is dismissed on racial grounds and a local is hired instead? I believe Mr SUEN's thinking is somewhat confused. To my knowledge, localization is not about race or skin colour. But, to the Administration, localization is about race. The Administration's Immigration Ordinance defines permanent residents in terms of race. We in this Council have criticized the Administration numerous times. I feel they should amend this Ordinance. They should not take permanent resident status as the criterion for determining if a person is a local and whether or not to give him a job. Localization, be it carried out within the Government or private organizations, is not about race. The two should not be lumped together. If a person is dismissed because the colour of his skin is white or black and his job is then given to another whose skin is yellow, this of course will be racial discrimination.

Another sensitive issue is homosexuality. I know of many friends who are homosexuals. I know many of them are under tremendous pressure and ostracized by others. Whatever job they are after, they dare not tell people they are homosexuals. I believe the Administration should pretend ignorance no longer. This problem does exist.

Some people who are opposed to these three Bills are saying that education is the best and most important way to eliminate discrimination. To legislate against discrimination here and now would cause disturbance to society and upset social harmony. Education of course is important. But how much effort has the Administration made in this respect? Furthermore, if to legislate to protect the rights of those who are discriminated against would damage social harmony, how much would that harmony be worth if it is built on a group of unfortunate victims? Should we ourselves be ashamed of it? In fact, as Dr YEUNG Sum said a while ago, legislation is an educational means which will enable the public to know their rights and at the same time respect other people's rights. Therefore, legislation and education would not clash over this. I hope the Administration and some Members will not once again take education as the "shield" and thus reject the Equal Opportunities Bills.

The most strident opposition is coming from the Administration and the business sector. What puzzles people is this: What impact would the three Bills have on the Administration? The Bill of Rights Ordinance was enacted in June 1991 which binds the Administration and public bodies. Within a government which constantly stresses and abides by the principle of fairness there should be no room for discrimination. Therefore, I fail to understand why the Administration should feel that the three Bills will have an impact on them. But the more vigorously the Administration resists it, the more we are worried. In fact, there may be many serious instances of discrimination within the Administration.

Mr President, the Administration is saying that the three Bills are complex, their coverage is extensive and their impact on society will be far-reaching. Therefore, time is needed to scrutinize them. But I think that the most important consideration is whether the Bills are good or bad and whether the reforms are necessary. In the past couple of days, we passed the Court of Final Appeal Bill and the Mandatory Provident Fund Bill. These Bills were also very complicated, with a far-reaching impact on society. But how much time did the Administration give to Members to scrutinize the Bills? By way of comparison, as a Member observed just now, this Council set up a Bills Committee last July under the chairmanship of Dr LEONG Che-hung to scrutinize the Equal Opportunities Bills. More than 30 meetings were held. But, with the exception of the Sex and Disability Discrimination Bills, the Administration seldom took part in the Committee's discussion. It was not until last week when Ms Anna WU proposed that the Second Reading of the Bills be resumed that the Administration hastily filed a number of questions. The Administration did not make good use of the year past to confer and discuss with Members in the Committee the various issues covered by the Bills. Neither did they give Members, Ms Anna WU in particular, any opportunity to respond nor did they give Members any opportunity to propose amendments. This is not the way a Bills Committee of this Council operates. But the Administration, behaving as they did in the present case, has, I think, shown utter disrespect for the rules of the game.

Some of the questions raised by the Administration were very misleading and imported a discriminatory element. For instance, as regards sexuality, one question asked: If a school refuses to employ a homosexual or bisexual teacher to teach students ethics or to counsel students, will this constitute discrimination? In fact, Ms Anna WU, in a paper responding to the Administration's points, already explained very clearly that if a teacher kept teaching the students to follow a certain sexual orientation the school could terminate his service and this would not constitute discrimination. What surprises me is that the points raised by the Administration probably reflect their thinking that a homosexual or bisexual person is morally depraved and is not qualified to counsel other people. These discrimination-tainted arguments advanced by the Administration worry me very much. The Administration is now proposing to carry out a study about sexuality. I really do not know what the outcome of the study will be. Therefore, the Administration's attitude all the more makes me feel that we should immediately legislate to eliminate discrimination.

The way the Administration criticizes the three Bills borders on discrimination against some Members. It is because the Administration selectively sent their comments to some Members. I was a member of the Bills Committee to scrutinize these Bills. But I did not receive any of those papers. Dr LEONG Che-hung was the Chairman but he did not receive any paper either. Even Ms Anna WU, the sponsoring Member of these Bills, did not receive any. Eventually, Dr LEONG wrote to the Administration and it was not until then that we were given those papers. I would like to ask the Administration: Why did they have to comment on the Bills in such a surreptitious manner? Why is it that even Ms Anna WU was not given those papers? Why was she not given the opportunity to respond? In the event, Ms WU was obliged to defer the debate on the Bills until today in order to deal with those comments. That being the case, the Administration failed to give sufficient time to Members to respond nor did they let us find ways to improve the Bills. Was this fair to the Bills Committee? Was this fair to Ms WU? Most important of all, was this fair to those members of our community who are victims of discrimination?

Mr President, some say the reason the Administration is resolutely opposed to Ms Anna WU's Private Member's Bills is this. The Hong Kong Government is an executive-led government. If the Administration accepted these important Bills, it would undoubtedly constitute an admission that they had in the past neglected their work in this respect. The Administration would lose face because of this. I hope this is not what the Administration has in mind. As a matter of fact, if something need to be done on the social front and yet the Administration neither does it nor allows other people to do it, then the Administration will not have much authority to speak of, will it? Another reason for the Administration's vigorous opposition to these Bills is, I believe, related to our business sector. Our friends in the business sector always stress that they do not discriminate and that they only want to employ the most suitable people to work for them. If that is the case, what is there for Members from

the business sector, the Honourable James TIEN for one, to be afraid of or be opposed to?

Mr President, Hong Kong is a free society. The business sector should have its operation freedom. These Bills are not targeted at the business sector nor are the Bills meant to impose restrictions on them. Members of the public only want to enjoy equal opportunities in terms of living and working and be free from unreasonable discrimination and unfair treatment. This is the spirit of the Equal Opportunities Bills. I hope the Administration and Members will face up to discrimination which does exist in society. I hope they will support Ms Anna WU's Bills. Let me pay respect to Ms WU again. I hope she will be with this Council next term. It is because there is a lot of work waiting to be done. She will know that we cannot finish the work no matter how hard we try. Therefore, she must come back and join this Council and fight shoulder to shoulder with us.

With these remarks, I support the motion for the Second Reading of the Bills.

MR LEE CHEUK-YAN (in Cantonese): Mr President, I hope those Members who are opposed to the present three Bills will stay drunk during the whole of our discussion of the Bills.

I heard Mr Michael SUEN's speech loud and clear. I feel he was resorting to subterfuges because he had run out of valid arguments. The way he dealt with the Bills was detestable. He said the Bills were hasty. I would like to ask him this: What other Bill is more hasty than the Mandatory Provident Fund (MPF) Bill? It has been more than one year since the Honourable Ms Anna WU first presented her Bills whereas it took no more than two months for the MPF Bill to go through all its legislative stages. Yesterday, Members said with one voice that the MPF Bill was tabled to this Council in too hasty a manner. I never thought Mr SUEN would today allege that Ms WU's Bills were too hasty. If we care to draw a comparison, we will find which of the Bills is more hasty.

Mr Michael SUEN went on to say that there were many problem areas in these Bills and he cited a number of examples. I would like to ask him this: Why did he not point out his so-called problem areas to the Bills Committee? Why did he not broach these questions for discussion in the Bills Committee so that Members might clarify or debate them? Would it not be too late to bring up all these now? As a matter of fact, there were not that many problems with the Bills. Mr SUEN only plucked them at random out of the air at the eleventh hour because he had no valid arguments to advance. He was attempting to confuse his audience in the hope that the Bills be eventually voted down.

Mr SUEN again alleged that there had not been adequate consultation. But I heard Dr the Honourable LEONG Che-hung, Chairman of the Bills Committee, say that during the past year the Committee had held 34 meetings and met more than 30 organizations. Moreover, the community has been discussing this question and has been asking the Administration to legislate. But the Administration has refused to do so. It is fortunate that Ms Anna WU are now proposing these Bills. Again, let us compare them with the Administration's Court of Final Appeal Bill. Did the Administration give the public ample time to discuss it? As soon as the Sino-British agreement was signed, did the Administration not immediately present the Bill? The Administration did not give the public the chance to discuss it. All the Administration does is based on double standards. "Mandarins are free to start a blaze but citizens are not even allowed to light their lamps". The consultation work related to Ms WU's Bills is absolutely better than the consultation work in respect of many of the Administration's Bills.

One point that Mr SUEN made appeared to be "tailor-made" for me. He said some people were lumping together the questions of discrimination and economic restructuring. He went on to say that some people were of the view that elimination of age discrimination would help resolve the unemployment problem. He argued that it was not so simple. I feel that he is completely ensconced in his ivory tower and fails to understand what economic restructuring is. The fact of the matter is that economic restructuring has displaced 500 000 workers. Why are they unable to find work. I do not want to enter into another discussion of importation of labour. There are so many job opportunities in the service industry. Why cannot the industry absorb these displaced workers? Indeed, one of the main reasons is age discrimination.

We can see that many workers aged 30 are beginning to find it hard to get a job. Whenever they apply for a job, people would ask them for their age and would then tell them to go back home to wait for a response over the phone. This is real and true. This is the true experience of the workers concerned. The Confederation of Trade Unions conducted two surveys with regard to job advertisements in newspapers. Some advertisements specified an age requirement of below 30. Some others specified an age requirement of below 35. Some specified no age requirement. But when we rang up to make enquiries, we found that 90% of the prospective employers discriminated against older applicants. About 60% of the prospective employers would only employ people below 30 years of age. The facts are there before the Administration's very eyes. Why does the Administration still fail to see them?

Mr SUEN again said age discrimination had nothing to do with unemployment and when two people applied for one job vacancy one of them would be bound to be disappointed. But the snag is that when two people apply for one job vacancy it is invariably the older one who will be disappointed. And herein lies the problem. Why is it that it is invariably the older applicant who will be disappointed? When we were young, we used to play "musical chairs". It was invariably the young people who successfully homed in on the

chairs. Older people all failed. What did older people fail and why were they invariably displaced? This is what age discrimination is about. This is what we call “It is hard to find a job when one reaches 30”. And this is the cause of unemployment.

Of course, I agree that we cannot create one more job vacancy just because of legislation. But at least legislation will have one effect which is that the service industry cannot just compete for young workers and reject older people. At present, companies are competing for young workers but some bosses are complaining that young workers always job-hop. Of course, they job-hop because they are in hot demand since companies will not employ older people. If companies are willing to employ older people, there will be a disincentive for young workers to job-hop. At least, every one will have equal opportunities and a better chance to find a job. At the same time, young workers will not switch jobs so fast. This will be of absolute benefit to employers.

Mr SUEN cited one example when he said, “Do you expect a person aged over 45 to be employed to sell youth products?” Why not? A 47-year-old lady enrolled as a contestant in the beauty pageant organized by Asia Television. Mr SUEN can invite Miss Coco KUNG to do this job .....

PRESIDENT: We have to observe order.

MR LEE CHEUK-YAN (in Cantonese): Therefore, not every older person will have lost his or her youth. Youth is a criterion which should be devoid of any age discrimination element. Older people can still look very young. Young people can look old. Therefore, there is no connection between the two. One cannot argue peremptorily that it would be age discrimination to employ a worker with a youthful look. This is not necessarily so. Old people with a young look can fill the bill if an employer wants to employ a worker with a youthful look. I feel that this a misconception. Why must employers have young people to sell youth products? I disagree. If I operated a shop, I would invite the Honourable Ms Anna WU, the Honourable Miss Christine LOH, the Honourable Mrs Emily LAU and the Honourable Mrs Miriam LAU to help me sell the goods. I am sure the results would be better than in the case of young workers.

The question as I see it is that it would be conceptually wrong to have only young people in the retail trades. For example, with regard to retailing of cakes, why do cake shop only employ salespersons aged below 25? Why must hotel bellboys be under 30 years of age? I asked some one in the hotel business why it was so. He said if middle-aged workers were required to change bed sheets every two hours their backs would hurt. Are young people’s backs not worthy of care? If employers care for their employees, they should give them less work, not impose an age requirement. These are specific examples. I

always ask why. Can our society accept that the Hong Kong population is middle-aging? Indeed, some cannot find work. Equal opportunities should be give to them so that they will find work.

Mr Michael SUEN also commented on sexuality and posed the question of whether it would be unlawful for a school to refuse to employ a homosexual teacher. What is the connection between a school and its teacher's sexuality? We have laid down no requirement that an administrative officer's sexuality be subject to vetting. Irrespective of sexuality, an officer can perform his or her duties admirably well. What matters is one's work performance. Why do we have to consider sexuality? What is wrong with equality? Why cannot legislation be enacted? We should eliminate the concept of discrimination and this society will be better without it.

Mrs Miriam LAU applied the traffic lights analogy. She said it would be like having 12 sets of traffic lights at a road intersection. Now Ms Anna WU's Bills are not seeking to install 12 sets of traffic lights at one road junction, but to erect five sets of traffic lights, one set at each of the five road junctions. That would facilitate traffic flow. If only two sets of traffic lights were installed, that is to say, the Sex and Disability Discrimination Ordinances, numerous accidents might happen at other road junctions. Therefore, we need five sets of traffic lights because we have five road junctions. I hope Members will support this.

Finally, I very much thank Ms Anna WU for introducing these Private Member's Bills. It is because the drafting of such complex bills is quite beyond me. I had contemplated how to deal with the question of age discrimination before. I could think of no way. I thank Ms WU for having sorted it out for me.

MRS SELINA CHOW (in Cantonese): Mr President, I believe what we are discussing here today is not the question of whether or not we should support discrimination. I believe no conscientious person will ever support discrimination. What we are discussing today is whether we should support legislative measures to punish those whose thinking in respect of certain matters imports a discriminatory element.

I can recall that the talk of the town several months ago was whether the "keeping of concubines" should be criminalized. To a legal wife, concubine-keeping is most unfair. But I recall that a Member of this Council was for a period of time criticized for having advocated a certain course of action. Some would argue that criminalization of "concubine-keeping" would be too extreme a measure. It is because, though concubine-keeping is immoral, it should not be made a criminal offence. Those who so argue are women and legal wives.



I recall that several years ago a very controversial proposal was mooted in this Council. It was about whether we should legislate to punish those parents who leave their children unattended at home. There have been news reports of children who are left unattended at home falling from heights. Every year quite a number of children die this way. These are cases where human lives are involved. But I can clearly recall that at that time many organizations brought enormous pressure to bear on this Council not to legislate to that effect. Even now, the Honourable Mrs Miriam LAU is still saying to me she firmly believes that only legislation can prevent children dying this way through no fault of their own. But up to now, we still have no legislation to prevent this. Why is adultery not criminalized? Why is partiality on the part of a parent not criminalized? Why is the unfair sharing of a deceased person's estate not criminalized? Why is uneven wage rises not criminalized? All these signify some form of unfairness, some form of discrimination which no conscientious person will support. But we do not agree that all these conducts be criminalized in a hasty manner. Many instances of unfairness exist in this world. These unfair instances or situations are the end result of a multiplicity of causes and are subject to the influence of historical factors, cultural backgrounds and sense of values. And in the course of all these, society evolves.

I believe Members will agree that the term "gweilo" is a bit jarring to the ear. But nowadays even foreigners are calling themselves "gweilos". They feel that this is an endearing term and carries a humorous nuance. Why? When this term first came into use, it imported a derogatory and discriminatory sense. But having been in usage for a long time, it has acquired a different shade of meaning and is no longer a derogatory term nor a term importing a discriminatory element. I am glad the Honourable Jimmy McGREGOR has just come back to this Chamber. Members will recall that there was a rather heated verbal exchange in this Council with regard to this term. I do not know if Mr McGREGOR would deem it a salutation or name-calling when someone calls him "gweilo". Of course, from a subjective angle, this would in large measure depend on how he would take it. I can tell from the Honourable Miss Emily LAU's facial expression that she does not approve of this term. But I see also Mr McGREGOR's smiling face which seems to mean he is not too averse to it. This in fact reflects that discrimination varies according to how one would measure it or take it and whether a third party would view it as discrimination. This is the grey area which calls for special attention from us.

To return from my digression, let me deal with the important question of principle. Should laws be enacted to punish "discrimination"? To what worrying proportions must discrimination worsen before we legislate to mete out punishment? Apart from legislation, is there any other means to impose punishment? I am of the view that there are other ways. In this free society of ours, there are a number of alternative ways to punish, censure and educate. We can freely express our opinion on and debate this matter. We can censure or "discriminate" against those who discriminate against others in an effort to changing their thinking. The decision to legislate or not to legislate will have to depend on the extensiveness of discrimination, the consensual view of society

with regard to discrimination, the gravity of the problem and the feelings of those who are being discriminated against. I understand many of my colleagues in this Council think that there is serious discrimination in certain areas or aspects of Hong Kong society and therefore they think legislation is needed. But I have to point out that other people may not necessarily share their views.

Let us hear what a housewife who rang up the “Nineteen Nineties” Programme had to say. She argued that she would not want to hire a homosexual or lesbian person to help her look after her children. Do Members think she has the right to do this? I think she has a right to choose. I feel that some of my colleagues in this Council often overlook one thing. When we legislate, we will not be just legislating against the shop G2000, we will be legislating against this housewife as well.

For some personal reasons, a landlord does not want to rent out his flat to a family with three to four young children. We may not agree with his way of doing it. We may think it is morally wrong for him to do so. But should his conduct be deemed a criminal offence?

I think the aforesaid examples constitute a huge grey area. When we legislate, we may not specify that only a corporate body or a large organization shall be subject to the restrictions imposed by law. In the event, you or I or grassroots people who cherish concepts of discrimination may be subject to the restrictions. We do not agree with such discriminatory thinking but should we enact legislation to punish people for it?

On the question of education, some of my colleagues said a moment ago that education was surely needed in respect of almost everything, that in the present case education alone was not enough and that legislation was necessary. I agree that to a certain extent legislation is necessary. For instance, this Council has agreed that the disabled people, being a very unfortunate group, need special help. Or, knowing of the seriousness of sex discrimination, we have exercised our judgement as to when it would be the right time to legislate. But what we are now discussing are grey areas. In the examples I have cited, under what circumstances should we decide as to whether legislation should be enacted to stop such discrimination and unfairness?

In considering this question, I believe the most important thing we must be on guard against would be over-correction by adopting as criteria the moral concepts of certain people, of yourself or myself, based on which to mete out punishment against those whose view and thinking are different from us or even to restrict their freedom of thought or action. This would be patently wrong. To prosecute and punish as a means to resolve whatever problem would be an abuse of power and recourse to draconian law. A free and open society should resort to communication, dialogue, education and debate to find out the correct course of action to take. This might need time but time is on our side.

I would like to say here that during the legislative process of the present Bills many people have stuck “labels” onto the Liberal Party. They have criticized us in slogan-like terms. They have depicted us in what we consider to be wholly irrational terms. I think this amounts to discrimination against the Liberal Party. Many other people think the same way as we do, including a number of Members seated here and many outside people. A democratic society is a pluralistic society. People can have different views and different ways of thinking. I believe it would not be in Hong Kong’s interests to use “cultural revolution” terms to censure those who have different ways of thinking. I think Hong Kong people would hate to see this. I absolutely support peaceful assembly and demonstration which is a right enjoyed by Hong Kong people. I believe Members very much support the freedom of expression and will be ready to protect it. I just want to unmask those democrats who keep bragging about openness and justice. I just want the public to see what they really look like.

I wish to commend the Honourable Ms Anna WU here. I feel that throughout the whole process the way she acted was perfectly rational although our views on this matter differed widely in that she was in favour of resolving the problem by legislative means whereas I was against it. She motivated the whole community into discussing this matter in an in-depth manner. I believe society has taken a huge step forward in this respect.

I would like to point out that, in regard to certain problems, the failure to legislate does not mean that there is no other way to resolve them. Let me make one point. The Liberal Party and I have actively discussed the question of workers’ age with the Employees Retraining Board to see how best to enable older workers to receive retraining, to increase the allowances payable to them, to enhance their opportunities for retraining, and to assist those who cannot adapt to certain jobs or cannot find suitable jobs because of economic restructuring. As regards certain jobs, age, so far from being a disadvantage, might turn out to be an advantage. Why do they not switch to other job types? We have discussed various aspects of this question with the Employees Retraining Board. And discussions are continuing.

We must understand that what we are talking about is the question of choice in a free society. We must respect the freedom of choice. I believe we must allow people some latitude if their exercise of the freedom of choice does not harm others though not without some degree of unfairness or discrimination. We hope that this state of affairs can be changed but we must not resort to coercive tactics. If we do, not only will we fail to convince people and change their attitude, we will provoke passive resistance. The matter will worsen and perhaps victims of discrimination will become yet more isolated. This can happen. In fact, there were instances of this.

Mr President, I have spoken a lot. But basically I just want to tell why I am not in favour of resolving the problem by legislative means. I hope a majority of Members will agree with this view. Thank you.

MR SZETO WAH (in Cantonese): Mr President, I guess that these three Equal Opportunities Bills will be smothered and die a quick death at the Second Reading stage. It is because the trap that has been laid has been dug deep; the bows are fully drawn with poisoned arrows nocked; the hired killers have unsheathed their swords. Though the three Equal Opportunities Bills will die this evening, yet I firmly believe that the spirit of the Bills will, like a wronged soul awaiting vindication, forever walk this Chamber until it is eventually resurrected.

The Honourable Ms Anna WU, please do not grieve or feel disappointed. Supporters in the public gallery, please do not grieve or feel disappointed. Members of the public who slept outside this Building for several nights, please do not grieve or feel disappointed. Victims hurt or affronted by unequal treatment, please do not grieve or feel disappointed. We will come back and have another go. The fight does not end this evening. Now is only the start of our fight. We will come back and try again.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the Democratic Party fully supports the three Equal Opportunities Bills (EOBs) introduced by the Honourable Ms Anna WU. This Council have already passed the Sex Discrimination Bill and the Disability Discrimination Bill which will represent a start in terms of legislation to ensure gender equality and to protect disabled people. With regard to other aspects of equality, I hope Members will this evening support the Bills so that another start will be made. Ms WU's EOBs cover nine areas. This Council has passed Bills covering two of the areas. The present EOBs which cover the remaining seven areas are now awaiting Members' support and this Council's endorsement.

Members have already commended Ms WU for her endeavour. She spent money, time and energy in drafting the EOBs which have given rise to extensive discussion among the community. Many groups and organizations actively support the EOBs. There is a modicum of opposition, though. But this did not appear until rather late in the scrutiny stage of the Bills when the detractors started to give their opposing views. As a matter of fact, during the past year or so, there have been clear indicators which point to a consensus among the community that we need to legislate to protect the important social principle of equality. Therefore, I hope Members will, as far as possible, support the three EOBs this evening.

As pointed out by some Members, a number of discrimination problems still exist in society. We may not have noticed them because they are not too obvious. Hence, we need to have legislation to protect the minorities who are being discriminated against. As regards the question of age, a number of Members have spoken on it and I shall say no more about it. On the question of sexuality, it would be unacceptable if the Administration should argue that their knowledge in this regard was scanty. It is because as early as 1983 the Administration already published the Law Reform Commission report which proposed that homosexuality be decriminalized. Many groups or organizations opposed the proposal then. In 1991 the Administration reintroduced the proposal which led to the relevant statute being amended to decriminalize homosexuality. But since then the Administration's work in this respect has come to a standstill and the question has not been followed up. Now Ms Anna WU is introducing a Bill to further promote acceptance by the public of homosexual people. But the Administration argues that they do not have sufficient understanding of the matter. As a Member said just now, the simple fact is that few employees would dare let their superior or boss know they are homosexuals. I believe nine out ten would not dare let their superior know because they doubt if their superior would accept this sexuality of theirs. Hence, we really need to legislate to protect these people.

On the question of spent conviction, I recently received a complaint that some Regional Services Department cleaning workers responsible for keeping the swimming pools clean were dismissed. They were female workers. I understand that they had been convicted of minor criminal offences. Later it was discovered that the dismissal had been caused by a mistake on the part of some officers who did not know that the relevant law had been amended to the effect that past conviction shall not constitute grounds for dismissal. So, government departments have made improvements in this respect. Why is this well-intentioned measure not given a chance to develop further? The Administration has put in a lot of efforts to counsel, help and rehabilitate discharged prisoners. Why cannot further help be given to these people? We should get started on this. The Administration has been saying that society is not yet prepared. As a matter of fact, during the past year, views from members of the public and concern groups have clearly shown that society is well prepared. It is the Administration who is unprepared. Therefore, I hope the Administration will effect positive improvement in this regard.

As a number of Members have observed, the Administration should have raised doubts and asked questions about the Bills at the Bills Committee meetings, But the Administration put off asking these questions until now. And some of the questions asked are irrelevant. Some Members have expressed reservations and doubts. In fact, all these were discussed in the Bills Committee. If Members think the provisions are lax, can the provisions be tightened up? I feel they can be. Most of the scrutiny work was done in the Bills Committee where Members' views were discussed and taken account of. But some Members failed to present their views. As a result, the aspects of equality may not have been precisely defined.

Mr Michael SUEN mentioned the promise he had made. But I feel that the promise or commitment had been couched in rather loose and equivocal terms. Mr SUEN said two years later Bills relating to family responsibility, sexuality and age might be introduced depending on the results of an opinion survey. He said he was not sure that such Bills would be introduced. Why could he not say clearly that Bills would be introduced? Moreover, what about other aspects of equality? What about the other four areas that remain to be tackled? Will a timetable be given to Members? Is the Administration determined? There is not too much work for the Administration to do. Laid before us here are the Bills. What matters now is determination. As is the case with the Disability Discrimination Bill passed earlier in this sitting, some people — employers or other people — may have to pay a price. But this will help the minorities acquire the basic rights enjoyed by ordinary people. This is protection of human rights. Therefore, I call on Members here to do their best to have these three Bills enacted as law. I hope Members will, out of love, do their utmost to help. I hope Member will give equal opportunities a chance.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I had not intended to speak because the more I spoke the more I might get it wrong and broadsides would be fired at me. But the Honourable SZETO Wah, when he spoke a moment ago, gave encouragement to those people gathered outside this Building. I would like to take this opportunity to say to him, “This is the first time I drank with you, not the last time. Maybe this is a good start. We may yet have another chance to share a drink”.

This evening, we are dealing with the present three Bills in a serious manner. In fact, Chinese people used to be looked down upon. Even now, in the United States and countries in Europe and America, Chinese people are being slighted by others. Newspapers often carry articles urging Chinese people to self-regulate and behave. I am saddened by these newspaper articles. Hong Kong people sometimes are over-conceited. They say those Chinese people who are being slighted are not from Hong Kong. Those who say this are conceited smugs. Therefore, I think that insofar as laws and regulations are concerned, Hong Kong already shows great respect for certain classes of people.

Of course, what I have said already constitutes criticism of others. I would not want to do this. Sometimes, what I say would offend others and, in this regard, I know myself only too well. The question is that, in point of fact, Hong Kong has been seeking to strike a balance in many respects. As regards disabled people, Hong Kong scored very good results in the Sixth World Sports Meeting recently held in China. The Chief Secretary's uncle helped and contributed to this success. And this must not be overlooked. I am saying this simply to show that all have equal opportunities depending on whether they would strive for it. But we have to admit that fact is fact. The fact is that sometimes one can succeed where others have failed. In that case, there is no point in trying further. This is true of drinking. I can drink two to three bottles whereas Mr SZETO Wah cannot. If he has the guts he is free to stand up

to challenge me! He may be a “disabled person” as far as drinking is concerned. This evening, the Honourable Martin LEE came over to me with a glass of white wine in his hand. I said to him, “Please back away”. After doing a couple of turns, he silently walked away. What I am trying to say is simply this : that there is a difference. And to know of the difference will be enough for us. After knowing it, we shall try our utmost to strike a balance so as to maintain an equilibrium under which all will interact and give of their best.

Though what I am saying may sound like a joke, yet a joke is a way of expression nevertheless. A clown will shed tears. This may be the last time I spoke to Members to tell them my views. Of course, this is a possibility. But I firmly believe I shall be here with Members next October to speak to them again. But, anyway, during my four-year tenure with the Legislative Council, my speeches might have given Members joy or might have provoked criticisms. A divergence of political views does not mean anything because truth will forever exist. You, Mr President, have said on different occasions that what impressed you most was a remark made by me, CHIM Pui-chung. Let me repeat the remark: “Dipping one’s hand into one’s pocket, one finds one has got money but he only holds a CI”. The CI epitomizes the sadness of Hong Kong people because it is the lowest grade travel document. You, Mr President, understand what CI means. But the holder ultimately has money in his pocket. This is the mentality of Hong Kong people. I did not personally hear this comment of yours, Mr President. It was relayed to me by other people. I am most grateful to you, Mr President. What has impressed you most is precisely this mentality of Hong Kong people.

Indeed, I had not intended to speak. I have in mind my support for the Honourable Anna WU. With regard to the subject we are now discussing, I saw a caricature downstairs which depicted me with two locks of hair falling off. It called upon me to “know what to do”. This has enraged me and so I will not vote in favour of the Bills. What does it mean by “know what to do”? When policy secretaries lobby me, I think I am not accountable to them. It is because during my four-year tenure with this Council, I have worked wholly on my own. I stated my stance on the Wong Wai Tsak Tong question which we dealt with earlier today. I worked earnestly and solidly during the past four years with Members. Such an opportunity will present itself again in the days to come. If Members lose me, they will miss a lot of humour and joy. And they will miss the truth. Such truth, of course, can be heard from Queen’s Counsel Martin LEE when he addresses the High Court. But a touch of irony will be missing.

Let me say sorry to Ms Anna WU. I would like to take the opportunity to state my stance. I will not support her Bills. Moments ago, Mr SZETO Wah already wrote his regret on Ms WU’s behalf and he indicated he would continue to fight for equality. I hope Ms WU will continue to fight for it. However, we firmly believe that Hong Kong has a bright future. Members will remember Ms WU’s endeavour. Despite this, I hope Ms WU will not take too much pride in what she has done because her effort may not necessarily be a proven fact or

success. It is because Hong Kong's future will depend on efforts made by various sectors of society. These three Equal Opportunities Bills do not represent the be-all and end-all of things.

Mr President, I so submit.

MR MARTIN LEE: Mr President, I thought it is not time yet for valedictory speeches but I thought Mr CHIM just delivered one for himself. But Mr CHIM will know that in this Chamber we do not discriminate against clowns so he does not have to worry about anything. And I can tell Mr CHIM that the cartoon, which was not very complimentary of his hair because he has got more than two, was not drawn by Anna. So please do not vote against this Bill because of that cartoon.

Now, Mr President, speaker after speaker told us that he or she is in support of the spirit of the Bill but when you hear them longer you find in effect that they have all decided to vote against it. And that is very odd. Speaker after speaker and indeed the Secretary for Home Affairs talked about the necessity of having consultation, of having education. Those of us who read this book, Yes Minister will know that this is the standard British ploy to stall and not to do anything. It reminds me of this name CNTA which many Members will know, cannot try anything. It is another example of that.

Speaker after speaker said that anybody over the age of 30 could be discriminated against. Actually, I have been told by somebody who once worked as a captain in the Hilton Hotel that he knew that as a matter of policy by the Hilton and indeed many first-class hotels that they do not employ anybody above the age of 26. And when I went to dinner at the Hilton Hotel during the last week before it was pulled down, I asked the people there "Have you got other jobs?". The captain said to me, "Yes, these younger fellows are all looked after because the management has got another hotel across the harbour but not people like me?" "Why?" I said. "Because we are too old." Of course these are above 40. So there is no doubt at all that there is discrimination against, at least, age. I have personal knowledge from these people. They told me that. So why do we need to wait? Why do we need a consultation? Why do we need report. Let us get on with it.

And to the Chief Secretary whom we all respect I have this to say. It is far better and far more important that your Government is looked upon as a caring Government than an executive-led Government. The people would love you for that if you can show them that you are a caring Chief Secretary and not just a powerful Chief Secretary.

I was with Mr Allen LEE speaking at a forum at the Hong Kong University with Miss Christine LOH as well on 10 July this year. And Allen spoke rather angrily about his experience when he was a much younger man, graduate from a University in the United States. And he said he could not find a



job. Not that he was not qualified but he said because he has got the wrong colour. Well now Allen is back in Hong Kong, nobody would ever dream of discriminating against Allen but I really wish and hope that he would think of those who are discriminated here in Hong Kong and get his party to vote in support of the Bill or at least give them another free vote.

The Honourable Mr James TIEN said there is no benefit to employers to discriminate against their employees. But why is there discrimination then?

The Honourable Mrs Selina CHOW said that Mr McGREGOR does not like to be called a “gweilo”. Then she complains that her party is discriminated against. Well, I suppose I give her a dose of her own medicine. Maybe after some more time you get used to it, it does not hurt you any more. To those of us who are not discriminated against and whose spouses are not discriminated against, it may well be because your spouses do not have to work. Or may be they are not that old yet. But surely when you look around you, when you go down to the local districts and see the people you ought to say “There go I” or “There goes my spouse”. But for the grace of God. And to each of my honourable friends who has been lobbied and lobbied by our Government, who have been following you throughout this building in the last few days, and if you had already committed yourself to vote against the Bill I have this to say: This is likely to be your last important vote in this Session, and if you are no longer seeking election to this Council then you do not owe any more loyalty to your appointor do you. You have been giving, you have been voting loyally to your appointor on many many occasions. Why not use this last opportunity to vote according to your conscience and vote for the community and those who are oppressed and discriminated against in our community? This will be a far far better thing you do than perhaps you have ever done.

Come on, press the “yes” button when the time for division comes. If you have not met these underprivileged people and you cannot press the button for them, at least do it for Anna.

MR ALFRED TSO (in Cantonese): Mr President, the dinner this evening was a happy occasion. I had a couple of drinks. It was not my original intention to speak. But Dr the Honourable YEUNG Sum moments ago urged Members who were opposed to this Bill to rise to state their opposing reasons. Therefore, I take this opportunity to tell this Council briefly what my view is.

When the Honourable Ms Anna WU lobbied me for support of her Bills, I told her in brief terms that during my college days in the United States in the 1970s, the United States, a rich and powerful nation, was then holding debates as to how this sort of legislation or system could be set up to protect part of its population. But after so many years of development, we can see that numerous problems have emerged in the United States. Today, in the 1990s, a number of problems have cropped up in the United States in terms of economics, social system and interpersonal relationships. I may be a bit biased but I personally

think that these problems might have stemmed from these so-called abstract concepts of attempting to restrict, through legislation, the behaviour of different people in order to influence interpersonal relationships or even the existing systems. In the event, society has been made to bear the cost and this has led to so many problems appearing in the United States. So I told Ms WU frankly that I would not support her Bills.

I think the main causes of Hong Kong's success are no more than two or three. And these we treasure. First, Hong Kong is a free city in the true sense of the word. Second, we have highly efficient systems and a sharp competitive edge which have contributed to the economic success of Hong Kong people. My worry is that, after the passage of these three Bills, some of our qualities or attributes would soon undergo a change. In order to avoid discrimination or because of some misunderstanding or some unintentional acts, friction might occur which would lead to numerous law suits and disputes. Eventually, our efficiency would be eroded. Patently, if these three Bills became law, the public's freedom would be restricted. Based on this paramount principle and direction, I cannot support the three Bills.

The Honourable Martin LEE said he hoped Members would come to a rational decision. Frankly speaking, I made my decision not to support the three Bills after careful deliberation. This is a rational decision. Of course, I very much respect Ms WU's ideals. She hopes to see a perfectly equitable society. But to have an equitable society, legislation is not the only means to achieve this end.

Secretary for Home Affairs Michael SUEN has said the Government will do some work. I very much hope such work will be effective. He has further pointed out that if need arises legislation can be reintroduced in 1996-97 to achieve this end. I think if Ms WU would limit the scope of her Bills to cover only those main areas which currently form the subject of comments, the chance of getting more support from Members would be greater. But I cannot support the three Bills in their present form and substance. I know that many other Members will not support the Bills. Thank you, Mr President.

DR CONRAD LAM (in Cantonese): Mr President, I speak in support of the Second Reading of the Bill.

I believe many people, in their subconscious mind, cherish sentiments of discrimination to a certain extent. In fact, the Honourable LEE Cheuk-yan, when he cited examples moments ago, said he would employ the Honourable Ms Anna WU, the Honourable Miss Christine LOH, the Honourable Ms Emily LAU and the Honourable Mrs Miriam LAU if he should open a shop of his own. Mr LEE's comment already imported an element of discrimination because he had omitted to mention the Honourable Mrs Elsie TU, the Honourable Mrs Peggy LAM and the Honourable Mrs Selina CHOW. It does not matter too much for

people to subconsciously discriminate. What is most important is whether we have exerted ourselves to eliminate discrimination.

Mr President, during the past four years, I took part in many *ad hoc* groups and committees. In joining the present Bills Committee, I had, however, the special feeling that I was important. Normally, I would not have such a feeling. I am no megalomaniac and why did I have such a feeling? My rate of attendance was not too high. But whenever I attended a meeting, I had the feeling that the Committee could not do without me because there would not have been enough Members to constitute a quorum. What does this signify? It signifies that Members had a predisposition to discriminate or be biased against Ms Anna WU's Bill. Was it for this reason that the Administration chose to pass certain documents to some Members but not to others? Maybe, Members who attended the Bills Committee meetings need not be given the papers and those who did not attend the meetings need to know a bit more about what was going on. I hope that was not the reason otherwise I myself would have the feeling of being discriminated against.

Mr President, I agree with what Mrs Selina CHOW said a while ago. It does not matter if one cherishes prejudices. But if such prejudices should hurt other people, that would be bad. We cannot let our prejudices develop into discrimination which will hurt other people. We cannot stand by with folded arms while this happens. The spirit of the present Bill introduced by Ms WU is meant to propel us into work so that we will not stand idly by when prejudices and discrimination are hurting and harming other people.

Mr President, moments ago, many Members censured the Administration. In fairness to the Administration, I would like here to say a few words in their defence. Indeed, the Administration has the responsibility to see to it that the Bill is passed irrespective of whether the motive behind the Bill is proper. Let us look at it this way. "One cannot force another to do something if the latter is not already disposed to do it". In voting to determine the fate of the Bill, Members control all the votes except the three votes in the hands of the *ex officio* Members. If the Administration successfully lobbies some Members, then we will have to ponder why these Members have been convinced by the Administration. Of course, some would say the Administration resorted to coercion or inducement. But I would not look at it this way. My view is that everyone has his own ideals which, arranged in an order of priorities as they are, determine how he would make choices in society. And such ideals and orders of priorities differ between individuals. My observation is that, in terms of ideals, the Democrats and other Members who support this Bill place equality and human rights high in their order of priorities. Everyone of us have to pay a price for our ideals. We are willing to pay a even higher price for what we are striving after but we will not say other people are misers or skinflints who are unwilling to pay the price. Therefore, I will not discriminate against them. I will only say that our choices differ. In fact, Members know full well why the Liberal Party, the Democratic Party and others in the democratic camp have

different sentiments, different orders of priorities and different choices. This may not necessarily be a straightforward question of right or wrong.

Mr President, I heard just now Mr Michael SUEN advocating a gradual and progressive approach. I thought this time things were not going to turn out all right. It is because the same dictum of “gradual and progressive approach” had been used by the Administration when it responded to the fight for direct elections in 1988. Therefore, I know we are not going to make it this time. If my prediction turns out to be correct, Ms WU need not be grieved. As I said, success or failure is not that important. What is most important is that we endeavour to realize our ideals and slog away at it.

Thank you, Mr President.

MR ROGER LUK (in Cantonese): Mr President, having heard a number of emotive speeches, I have also to state my stance. I have said several times in this Council that any Bill must be backed by three consensuses before it can be passed. The first is political consensus — society and Members of this Council must agree that legislation need to be enacted in respect of a certain matter; the second is policy consensus — how the ideal is to be put into practice; and the third is procedural consensus — what procedure is to be adopted to implement it.

In today's sitting, which is the last in the current Legislative Council session, a strange phenomenon has presented itself. Two Bills are seeking to achieve different ends for the same reason. The reason is known as “haste”. The first Bill is described as hasty because there is insufficient time. It is argued that we “should construct the shell first and then create the flesh inside”. The second Bill is described as lacking in preparatory work and it is argued that we should let those concerned have time to do such work. Therefore, a gradual and progressive approach is recommended. Members should know what I am talking about. When we were discussing the Mandatory Provident Fund Scheme, there existed in society a political consensus but there was not much of a policy consensus. The Honourable LEE Cheuk-yan thought that the Administration should bear the greater part of the responsibility. I personally consider it to be a three-tiered structure where the Administration should bear the ultimate responsibility. Man proposes and God disposes. We should first provide retirement protection for ourselves, let the family provide the second layer of protection, and then let the Administration provide the third layer of protection. If the first two layers of protection prove inadequate, the Administration shall have the responsibility to provide full and adequate protection.

The present Bill today involves equal opportunities. There is no social consensus on this question and views are divided. Legislation is like a knife to cut things with. Where should the knife be applied in order to strike the right balance? What we are debating here today is the policy consensus as to how to

go about it. United States President Bill CLINTON's Health Bill sought to reform health and medical protection. When I and other Members visited Washington DC, people were telling me the Bill would founder. It is because President CLINTON had no political consensus on which to base his endeavour. He only wanted to work on policy. This was like loading and unloading from a rail wagon where the effort would be futile because the locomotive was not there. The train would not be going anywhere, would it?

The Administration should be castigated in this matter of the Equal Opportunities Bill. The Honourable Ms Anna WU first presented this Bill one year ago and a Bills Committee was set up. If the Administration had thought they should have taken the initiative, then why had the Administration failed to introduce the Bill ahead of Ms WU? Is it not true that, since introduction of the Bill, the Administration has done nothing? I must admit I was lazy. The Friday meeting of the Bills Committee clashed with my work schedule. In respect of the present Bill, I believe my rate of attendance at the Bills Committee meetings was among the worst. But I read the minutes of every meeting. I noticed that the Administration had failed to respond to Ms WU. The chess game has today reached a terminal stage where the players are having little room for manoeuvre. I think I cannot support it. The chess game being at its terminal stage, I really do not know what is there to support.

Ms Anna WU cherishes ideals which I very much respect. I respect her for spending two and a half years of her time and energy on this Bill. But I think Members all should share the blame for the present state of affairs. Yet I think the Administration should share more of the blame. Why had the Administration not taken the initiative in the first place? Why had they waited until now to advocate a gradual and progressive approach? I had a chat with Mr Michael SUEN over dinner twice. I absolutely agreed with what he said. But we must set about implementing what we have planned. I have worked with the Hang Seng Bank for 20 years. My superiors have taught me that I must go into action to implement what I have decided on. We must buckle down to action, not just talk about it. I feel that the Administration should do a self-examination to see if they could have done better. If the Administration has today promised this Council that they will set about doing this thing, I would hate to see this Council still debating next year whether this thing should be done.

Mr President, I so submit.

DR HUANG CHEN-YA (in Cantonese): Mr President, during dinner this evening I went from table to table to propose toasts. Perhaps, my strategy has paid off because some Members are now nowhere to be found in this Chamber. This is of course what I have been hoping for. That being the case, I suppose we will at least be able to proceed to the Committee Stage. Many Members are saying this and I think so too.

There is none surnamed IP in this Chamber. I believe this is not because we failed to offer equal opportunities to people surnamed IP to join us in this Chamber. There used to be. However, this evening I absolutely believe there should be one person surnamed IP in this Council. Members should have heard of such a story. The Honourable SZETO Wah seemed to have told it some time ago. Here again is the story. In ancient China there lived a man surnamed IP or, to use Pinyin, YE, who often said he liked dragons. The dragon in heaven heard of it and took it that YE really liked dragons. So the dragon paid YE a visit. On seeing the dragon, YE was so scared that he fainted. Afterwards he liked dragons no more. I believe there are a number of YE descendants in this Chamber today. It is because this evening many Members had been saying they believed in equal opportunities and anti-discrimination, but when the Bills on equal opportunities were laid before them, they were scared.

In discussing this subject, I feel the Administration should be the first to do a self-examination. It is because the Administration's arguments have given me the impression that if anyone in society need to be educated on equal opportunities and anti-discrimination the Administration will be the first to need it. The examples cited by the Administration when posing questions as to what would constitute discrimination amply demonstrate the discrimination mentality of the Administration.

However, before I elaborate on the aforesaid point, I would like to address a question raised by a Member earlier on. He asked if it would be discrimination to terminate the services of an employee on racial grounds. The Honourable Alfred TSO made the point that the United States of America has been in continual decline ever since anti-discrimination laws were enacted. It would seem, observed Mr TSO, that such laws have been the cause of the decline. If the United States of America stayed the way it had been during the days when Martin Luther KING fought for equal opportunities for black people, when racial discrimination existed, and when black people were not permitted to dine at restaurants or ride buses, the United States of America would, would it not, have been the most ideal country in the minds of Americans? Would Mr TSO say that was the best of times for the United States of America? My periods of stay in the United States of America were never too long. I was there several times for the purpose of academic visits. But I spent more than 10 years in Australia. During my stay there, I encountered a lot of racial problems. Within the Chinese community in Australia, my work was mainly of an anti-discrimination nature. The Australians I came across invariably denied they harboured sentiments of racial discrimination. But it was evident that when they stayed together with people of different cultural backgrounds and different colours or looks, they would find it hard to get along with the latter. That gave rise to a lot of social disputes. Hence, it would be best if other people would not study at schools attended by Australians, would not move into their neighbourhood and would not immigrate into Australia. They said this would be to the good of other people and in the interest of peace and harmony. They thought this was not racial discrimination. They did not like to have Asian students in their schools nor did they want Asians as their

employees. A company or organization would normally not promote their Asian employees. The organization would say it was not because of racial discrimination and would wonder aloud why people of other races, the white people, got fast promotions ahead of Asians. If these racial questions do not constitute racial discrimination, what else do they amount to? Therefore, we kept fighting — at least during my days in Australia — against racial discrimination. I have no doubt that if an employer terminates the services of an employee on racial grounds it will be discrimination. If need be, we should stop such acts of discrimination by legislative means.

With regard to other questions, such as age and the propriety of letting a 40-year-old woman sell youth products, I feel that the question is already tainted with discrimination. The mistaken view is that the numerical age is equivalent to the physiological age. I believe Members know that the men Elizabeth TAYLOR married were much younger than her. It is because TAYLOR, though fiftyish, was still an attractive and glamorous woman. It was evident that her physiological age was different from her actual age. I can recall that some years ago TAYLOR featured in a cosmetics commercial and that brand of cosmetics sold briskly. Besides, Brigitte BARDOT and Jane FONDA featured in similar commercials. Did they not pull it off fine? This will serve to prove that if one refuses to let a woman or a man sell so-called youth products having regard only to her or his numerical age but not physiological age, or based only on other people's perception of the saleswoman or salesman or based on her or his working ability, that will certainly be discrimination. I believe this question involves no more than common sense. I am surprised that the Administration should have asked us whether that would amount to discrimination.

As regards whether a homosexual or lesbian person can be employed as a teacher, I wonder whether the Administration, who is experienced and knowledgeable, can provide us with solid data. Does the Administration mean that a homosexual or lesbian person cannot be a teacher? But does it mean that a person who indulges in heterosexual relationships is absolutely free to become a teacher? What is the difference between the two? What is the connection between one's sexuality and teaching ability? If a teacher, who does not teach physiology or biology but teaches history or other subjects, keeps discussing with students his or her sex life and sexual experiences, will we consider him or her to be a teacher? I think this indeed is the deciding factor, not whether the person is a homosexual or heterosexual. The Administration can provide us with data as to which sort of cases have a higher incidence — cases of homosexual teachers sexually assaulting students or cases of heterosexual or bisexual teachers sexually assaulting students. Can the Administration not provide us with such data? A decision based on such data would not be discrimination. It would be a decision having regard to the wide gap between the rates of incidence of the two sorts of cases based on solid data. It would be a valid reason, would it not, to reject a person's appointment to a certain post? I believe if the Administration has such data, they should disclose them. Of course, certain people may be unfit for certain jobs. But should the

Administration fail to produce evidence to prove it, what else would this amount to if it be not prejudice or discrimination?

I think the biggest question is that the Administration is adamant that other means, rather than legislative measures, should be resorted to. But, however attentively we have listened, we have had no idea of what specific plans the Administration will be implementing to mitigate discrimination and prejudices within the community. How much out of next year's Budget will the Administration be spending in this respect? And, incidentally, at this very juncture, the Honourable Hamish MacLEOD is leaving the Chamber. Can the Administration tell us how much they have spent this year and how much they will spend next year on educating the community and changing its outlook? If legislative means is not resorted to, what other means will be employed to achieve this end? Can the Administration tell us what their timetable will be and what criteria they will adopt in deciding what means, other than legislative, to employ to achieve the same end? We will be convinced if the Administration can tell us all these in clear terms. If the Administration cannot tell, then I shall feel that what the Administration is doing this evening is not what a responsible government in a civilized society should do. If the Administration thinks that the passage of a Private Member's Bill will make them lose face and erode the power of an executive-led government, then let me tell them they should be aware that their face and respect due to them are founded on their leadership ability, that is to say, their ability to lead society towards greater equality, equal opportunities and nil discrimination, not their ability to lead society round and round in circles to where it originally started, or even a further step backwards.

PRESIDENT: Mr TSO, have you been misunderstood?

MR ALFRED TSO (in Cantonese): Mr President, I would like to point out that Dr the Honourable HUANG Chen-ya moments ago gave a warped interpretation of what I had said in order to fit the example he was citing. In the event, my meaning was distorted. But, of course, he might have misunderstood my meaning in the first place. Anyway, I have no intention to take issue with him any further. Thank you, Mr President.

MR ALBERT CHAN (in Cantonese): Mr President, it was not my original intention to speak on the present subject. However, the Honourable Alfred TSO's speech that I heard has provoked a series of thoughts in me with regard to the question of discrimination. Besides, when I chatted with some Members outside this Chamber moments ago, particularly with Members from the Breakfast Party, I learnt that many Members will vote against the Honourable Ms Anna WU's Bills this evening. Probably the Bills will not survive the Second Reading. I had thought that this evening's sitting would go on rather late into the night. But now it looks like the Council will rise earlier.



Therefore, I had better grab every available opportunity to speak and speak a bit more into the bargain.

Mr Alfred TSO said Hong Kong's success is founded on freedom, competitiveness and high efficiency. This is beyond dispute. But what is there that lurks behind such success? In fact, behind such success there lurk vulnerable groups and people with poor abilities. Hong Kong's success will only add to their difficulties and suffering. It could be said that the greater part of Hong Kong's success is built on the suffering of the weak and vulnerable groups. Furthermore, we are seeing an ever widening gap between the rich and the poor. According to the findings of a number of academic studies, it is a common enough phenomenon in Hong Kong that people aged over 30 are finding it hard to get a job. Many poorly educated, older people are being exploited and suppressed because of Hong Kong's persistent emphasis on success and high efficiency. This phenomenon reflects a marked trend along which Hong Kong society is heading. The trend embodies the sense of values implicit in what is known as Social Darwinism which advocates natural selection and survival of the fittest in a social context. In a jungle, there are many animals and the weaker ones will get eaten. In fact, when they advanced their arguments against Ms WU's Bills, Members invariably said they support the Bills in principle and in spirit. But, in actuality, they espoused what I have referred to as Social Darwinism. During the 1930s and 1940s, there were debates in the United States of America on a multiplicity of issues. Following such development, various states in the United States of America and even the federal government resorted to legislative means to mitigate exploitation and discrimination. Our purpose of legislating is to protect, in appropriate measure, the interests of those vulnerable groups who are being suppressed. Absolute equality is impossible. There cannot be absolute equality between man and woman nor can there be absolute equality between people of different ages. No one is seeking Utopia where resources are shared equally among the people. We just want to alleviate by legislative means the pain and suffering of those vulnerable groups who are being exploited. Man and woman cannot be equal in absolute terms.

A while ago, Dr the Honourable Conrad LAM pointed out that the Honourable LEE Cheuk-yan's subconscious thinking had already been tainted with discrimination. This was also true of Dr the Honourable HUANG Chen-ya. The three film stars he mentioned were all women, two of them being "sex bombs" into the bargain, were they not? It may be that everyone is being subconsciously oriented in a certain way. This is because of our education background and our sphere of daily activities. Whether it be subconscious or conscious as well as deliberate discrimination, this precisely demonstrates that we need legislation to ensure that the vulnerable groups will not be prejudiced by subconscious discrimination. If so many Members are saying that they have to protect the vulnerable groups and accept the basic concept of the Equal Opportunities Bills, they should give Ms WU's present Bill the chance to pass its Second Reading.

I was somewhat saddened by Mr Alfred TSO's speech that I just heard. It is because I worked with Mr TSO for a number of years which included our tenure as Regional Councillors. He received western education and stayed for a rather long period of time in the United States of America. He is also a liberal minded person. Yet he still cherishes the mentality he just manifested in his speech. And it is precisely because of this attitude of his that I am fortified in my conviction that we need to legislate. Some people say we can rely on education. But how many young people can we educate? Such a well educated and best performing young person as Mr TSO is can have discrimination-oriented thinking, whether it be conscious or subconscious I have no means of knowing. If we do not legislate, how can we continue to ensure that vulnerable groups, women aged over 30 and people with relatively poor abilities — perhaps, some tens of thousands or even millions in number — can continue to exist in this highly efficient and competitive society which is Hong Kong? Therefore, I hope Members will think this over.

Unfortunately, the Honourable Vincent CHENG is not in this Chamber. I hope he can hear this in the antechamber. Quite a number of Members are cat-napping there. I hope I can speak a little longer so that they will be too tired to stay but will have to leave for home. Then Ms WU's Bill will probably pass its Second Reading. During the debate on the Airport Authority Bill last time, Mr Vincent CHENG switched his vote in favour of my amendment simply because I had mentioned his name. My amendment was eventually defeated, though. I hope this time he will again switch his vote upon his name being mentioned.

Some Members, when I chatted with them today, said the Hong Kong Government was in a weak position and so they had to support it. If they indeed think that the Hong Kong Government is in a weak position and therefore they have to support the Administration's stand today to oppose Ms Anna WU's Bills, then there is yet more reason for these Members to support Ms WU's Bills. It is because the vulnerable groups are absolutely weaker than the Government. I think none will believe Mrs Anson CHAN to be a weak person. It is because she is strong. She is a strong woman, is she not? If the purported weakness of the Government was used as a reason, then Members would really have to support Ms WU to enable Hong Kong's vulnerable groups, numbering tens of thousands of people, to get appropriate protection after this Bill was passed into law. What we are asking for is only an appropriate measure of protection, not absolute equality. Thank you, Mr President.

MR TAM YIU-CHUNG (in Cantonese): Mr President, I had thought that, after a few drinks, Members would not feel like speaking at considerable length. But it turns out otherwise. It turns out that, after a couple of drinks, one will be keener to speak and speak a lot into the bargain.

Equality, justice, democracy, freedom, human rights and the rule of law are ideals as well as targets human society strives after. This is true of our society and of the organizations to which I belong, namely, the Federation of Trade Unions and the Democratic Alliance for the Betterment of Hong Kong. These are targets we strive for. I believe none in our society will oppose these ideals or targets that human kind cherishes.

I would like to give my views on the question of legislation. The current trend in society, particularly in this Council, is to resort to legislation as a means to deal with social problems. And I was the one who started it. In 1993-94 I was the first one to set in motion the legislative process for a Private Member's Bill. If the Administration wanted to sum up their experience with regard to Private Member's Bills, I could be said to be the prime promoter of this sort of legislative vehicle. On that occasion, I was lucky to have the support of the full Council and my Bill easily got passed. It was probably because of such luck and such ease of passage that Members were encouraged to sponsor more Private Member's Bills. But if we care to look up Hansard, we will find that the chances of Private Member's Bills being passed are fifty fifty. Of course, we will have to see how the present Bills will fare later. I do not know why so many Members from the Liberal Party are so "smart" as to have got wind long beforehand that the Bills will not be passed. And the Honourable SZETO Wah, in particular, is saying the Bills will surely founder. Is the talk of sure loss deliberate spreading of rumour or is it genuine news from an authoritative source? I have no means of knowing. Anyway, it will be known before too long.

Why is it necessary to legislate? I fully understand the reason. It is because the labour sector, too, is asking the Administration to legislate. For instance, when older workers are unable to find jobs, we ask the Administration to legislate to prohibit age discrimination; when foreign labour is being imported or when the unemployment rate stays high, we ask the Administration to legislate to protect the employment opportunities of workers. We hope that the problems can be solved through legislation. And sometimes government officials are willing to resort to legislation as a means to account themselves to the public and as an expedient to satisfy the parties concerned. But, in fact, after legislation is enacted, there are still many things to do by way of follow-up, such as enforcement and publicity work. I think these are important. Whether the Honourable Ms Anna WU's Private Member's Bills will be passed today, I think publicity work will be necessary otherwise people will not know, if the Bills are passed, what rights or obligations the law has conferred or imposed on them. Failure to carry out such work after laws are passed will mean that a hundred to several hundred pages are just added to the statute books which addition will have little significance or purpose.

The Bills are in fact very complicated. I think even if they are passed Members of this Council will not fully understand them unless good publicity and promotion work is carried out. This is because not every Member has taken part in the work of the Bills Committee, not every Member has been closely following-up the matter, not every Member has ample time to study the Bills, and not every Member, particularly those with labour backgrounds, has the necessary legal knowledge. Therefore, I hope people or groups responsible for promotion work will use simple means to get the message across, for example, in the form of comics which is currently a most popular medium. Cartoons or comics can be employed to tell people what rights and obligations the law has conferred and imposed on them. I think we would hate to see enacted laws turning out to be traps or a bewildering mass of rules and regulations known and understood by only a few. We would not want this. We want something easily understood and observed by people.

Of course, a number of Members mentioned subconscious thinking. Such thinking is due to an overriding deciding factor. The very existence of society determines man's thinking. A society, after thousands of years of evolution, has its own ways of thinking and ideologies which cannot be done away with in one go. No legislation can effect complete improvements. I think none will believe this to be possible. But we believe it is possible to put in place regulatory measures through legislation so as to heighten people's alert or cause them to inquire what their rights and obligations are. This, of course, is an advantage of legislation. Based on enacted laws, the law enforcement agencies and the judiciary can operate to discharge their duties.

I feel we must respect the views of Members no matter whether they are for or against the Bills. I would hate to see personal attacks. In recent days, we have been seeing a lot of caricatures, cartoons and bills referring to Mr Michael SUEN by name. Is such a propaganda style necessary? I have reservations with regard to this. It is because ours is a civilized and liberal society. We want the majority of people to support and understand what we are doing. Personal attacks, so far from being effective, may sometimes be counter-productive.

Mr President, I have had a couple of drinks. And so I shall not speak on and on. I shall stop here. Thank you, Mr President.

MR WONG WAI-YIN (in Cantonese): Mr President, if our sitting yesterday had not lasted until 11:30 pm, our valedictory dinner this evening might have been merrier. It is because I understand many Members had wanted to go for the bottle with abandon and to booze until wholly drunk. However, unfortunately, the sitting had still to go on this evening. And many Members showed a lot of restraint when it came to drinking. But some other Members might have drunk too much and they have not since shown up in this Chamber.

How many Members are in fact listening attentively to the speeches delivered in this Chamber?

Mr President, I am not sure whether I am happy or unhappy. Though I might have had a couple of drinks too many, yet I know what I am talking about. In terms of speaking order, I am pretty far back down the list of speakers. Therefore, most of what I had been prepared to say was already said by speakers before me. I shall not repeat it then. What some Members said and what the Administration said moments ago has touched off a few feelings or thoughts within me. But these thoughts are rather amorphous and fragmented. I hope Members who are staying outside will come back into this Chamber and discuss this question together. When we discussed the Court of Final Appeal Bill on the first day of the sitting, I saw that Members seated here, whether they had spoken or were about to speak, listen attentively to every speech. The sight that presented itself then was hugely different from the sight that presents itself now in this Chamber.

Mr President, I have here with me a timetable in respect of the scrutiny of the Equal Opportunities Bills. The day when the Honourable Ms Anna WU first introduced to us the thick volume embodying her Equal Opportunities Bill, which was later split into three under government pressure, is a memorable date. The date was 28 July 1994. And today is 28 July 1995. One whole year has elapsed in between. Last year, on 28 July, Ms WU introduced to us for the first time her Bill. Today, we are discussing her Bill for the last time on the same date one year later. What a coincidence!

This Bill has been tabled to this Council for one whole year. When I first joined the Bills Committee to scrutinize the present Bill I had certain expectations of my own. I had hoped that Hong Kong society would do something to eliminate discrimination. When I attended the first Committee meeting and was given a timetable for meetings, I was shocked to find that there were meetings scheduled for every Friday. I asked myself then if I would have that much time at my disposal to attend the meetings. But, as I had an expectation, I tried my best (I live in Yuen Long which is far away from here) to come out every Friday morning to attend the meetings. The meetings were sometimes held on Thursday to avoid clashing with the Chief Secretary's briefing. I also tried my best to attend. My rate of attendance at the meetings was good. Unfortunately, there were 21 to 22 Members in this Bills Committee. As Dr the Honourable Conrad LAM has observed, Members' attendance at the Bills Committee meetings was vital because there would not be a quorum if we were just short of one Member. Every time we had to wait for over 10 minutes before the meeting could start because we had to have enough Members to constitute a quorum. Over 20 Members had joined the Committee but it was difficult even to get seven Members to make up a quorum for each meeting. Why? What did they join the Bills Committee for? I had suggested that the Bills Committee should write to each Member to ask them if they were still interested in staying as a committee member to scrutinize this Bill. If they were no longer interested, would they withdraw from the Committee so as to

spare us the pain of having to wait for more than 10 minutes each time before a quorum could be formed? The Honourable Miss Emily LAU, who sits in the front rows, opposed this idea. Hence, right up to the last meeting of the Bills Committee, every time we had to wait for a quorum to be present before the meeting could start.

Mr President, as a matter of fact, after Ms Anna WU had tabled this Private Member's Bill, the Administration never did anything to prepare for the legislative process that was to follow. It was not until recently, that is, a couple of days before 19 July, when we were about to resume the Second Reading debate on this Bill to be followed by Third Reading that Mr Michael SUEN presented a 20-odd-page document to some Members. It was public money that Mr SUEN was spending. How could he have selectively passed the document to some Members? Why were we not given the document? I immediately faxed a letter to Mr SUEN to ask for that document. At the same time, I asked Dr the Honourable LEONG Che-hung, Chairman of the Bills Committee, to demand for the document. I failed to understand why Mr SUEN, a policy secretary of the Administration, could have discriminated against some Members and, in so doing, abused public money. He was using public money, not his own money, to photocopy the documents. All Members should have been given a copy. We had very much wanted to know how this Bill was being viewed by the Administration. We had very much wanted to discuss this Bill exhaustively. Unfortunately, we found the Administration's attitude disappointing. As Mr Michael SUEN said at the beginning of his speech, those Members who had not participated in the scrutiny of the present Bill knew nothing about the Bill. I heard it clearly. "Knew nothing about the Bill" was what Mr SUEN said. Therefore, there was no need to do it with such haste, argued Mr SUEN.

Mr President, as I said a moment ago, more than 20 Members had joined this Bills Committee. It had an all-party membership which included Members from the Liberal Party, the Democratic Party, middle-of-the-road parties and independent Members. But they did not show up at meetings. What could we say then? We gave them documents but we had no way of knowing if they had read them. Mr SUEN said at the beginning of his speech that those Members who had not participated in the scrutiny of this Bill knew nothing about it and there was therefore no need to proceed with haste. But a few Members observed just now that the Mandatory Provident Fund (MPF) Bill we had passed was only an Ordinance with an empty shell. And yet, we enacted it just the same, did we not? Moreover, the Administration had given us no more than a few weeks to scrutinize the MPF Bill. We who belong to political parties could discuss the issues related to the MPF Bill during internal party discussions. I do not know what feelings independent Members have had with regard to the Bills we passed during the past couple of weeks. I joined this Council through a by-election. Yet I have served almost four years on this Council. In this last month of the current Legislative Council Session, I feel rather keenly about one thing. We used to have several months to two years in which to scrutinize a Bill. But in respect of the several Bills that recently came our way, we had only one month or just three weeks to scrutinize each. I do not know whether the

votes I cast were rightly cast. The time being so short, did we have enough time to scrutinize the Bills? It has been more than one year since Ms Anna WU first tabled this Bill. It was impossible for the Administration not to have had a clear idea as to the contents of the Bill. This should also be the case with Members of this Council unless they put aside Ms WU's Bill without ever bothering to look at it. If some of my colleagues really acted this way, there is nothing I can say.

Mr President, I originally had a draft speech prepared. I was hoping to say something about the rationale behind this Bill. But, unfortunately, some of my colleagues' minds are already set. Those who have not yet formed a view have probably accepted the Administration's notice as to how to vote. Since those who have not yet formed a view are going to vote according to the Administration's wish, it will be meaningless for me to read out my prepared speech. It is because now is not the time to talk reason. If it were the time to talk reason, the Administration would not have needed, during this three-day sitting, to mobilize and send all their policy secretaries and branch officials to this Council Building to shadow each Member. It is not us they are shadowing (they had unfortunately mistook the Honourable CHEUNG Man-kwong for a Member susceptible to lobbying). They are shadowing some independent Members. They need not lobby Liberal Party Members because the Party has already made it clear that they will not support the Bill. Those officials are after independent Members. The fate of this Bill is in the hands of those independent Members from the Breakfast Party. Many of our reporter friends are always saying that one single question raised in the Legislative Council will translate into between \$20,000 and \$30,000 in terms of cost incurred by the Administration in answering it. But I have been saying to these reporter friends that if we ask no questions the officials will be drawing their salaries just the same despite having no work to do and that we have not been causing the Administration extra expenditure. These past few days, the Administration has been asking officials to lay aside their work and to come here to shadow the Members. I would like to ask the Administration this: How much money are you wasting by sending officials to shadow the Members? If you had good grounds and valid arguments, would you have bothered to use this shadowing tactic? Those middle-of-the-road and independent Members are scared of you. If you had good grounds, would you have needed to do it this way? Is the way you do it to be regarded as coercion or inducement? Many middle-of-the-road Members are scared of such harassing tactics.

Mr President, during the scrutiny of the Bill, I respected the Honourable Jimmy MCGREGOR most. Though his views might be different from the mainstream view, yet he always found time to come to the Bills Committee meetings and to express such views. There were discussions and sometimes clashes. But I respect him very much. Though maybe he will eventually vote against the Bill, yet I respect his views. In contrast, some Members who are opposed to this Bill will not say they oppose. They say they support it but argue there is no need to go about it with undue haste. In the final analysis they fail to give their reason for opposing the Bill. I only hear of two reasons so far: (1) we should not legislate in haste; (2) there are numerous questions about the Bill

that need to be sorted out. It has been more than one year since the Bill was first tabled for scrutiny. Did these Members ever attend the Bills Committee meetings? More than 20 Members joined the Committee but only seven Members appeared at the Committee's meetings. I feel that these Members decided to oppose the Bill first and then thought out a reason later.

Mr President, a moment ago a Member asked if it was appropriate to apply criminal sanctions under the law to those who discriminate against others. If I remember correctly, it was the Honourable Mrs Selina CHOW who asked this. But we already passed the Sex Discrimination Bill and today we passed the Disability Discrimination Bill. Are these not Ordinances which apply legal sanction to those who discriminate against others on grounds of sex and disability? Why cannot we further legislate to protect those who are subject to age discrimination?

Some Members are worried lest our community should become litigious after the enactment of such legislation. But Members can see that Hong Kong has numerous laws and statutes. Do the general public, the grassroots people and people being discriminated against invariably invoke the relevant Ordinances? In fact, they have no confidence to bring their case to court. Dare those who are discriminated against invoke the law?

Mr President, the present Bill is introduced by Ms Anna WU. If she was standing for the upcoming election, people would criticize her for doing this as a stunt to grab votes. Fortunately, Ms WU has said she will not be standing for election. Therefore, many of my colleagues have to find other excuses to oppose the Bill. As a matter of fact, a number of Members have asked Ms WU to continue to participate in the work of this Council. What I feel most keenly about is that the Bills Committee has been at work for more than one year and yet many of my colleagues have not bothered to discuss the Bill. Their minds are already set which is that they will oppose the Bill. Therefore, they have not bothered to listen to any arguments and considered it a waste of time to attend the Committee meetings to state their views.

Mr President, time is almost up. There is no way I can tell more of my feelings. On 12 July, some organizations requested Members to state their stance. Here is a form which lists quite a number of Members who have not done so. I hope they will think this over carefully. Some days ago, the judiciary tried a homicide case where a Vietnamese migrant had been killed. A witness refused to testify because the police failed to accord him adequate protection. At that time the judge said it was a sad day for the judiciary. If today Members rejected Ms Anna WU's three Equal Opportunities Bills at the Second Reading, I daresay today would be the saddest day for this Council.



MS ANNA WU (in Cantonese): Mr President, I would like to say to Members that I am most grateful to them for staying here so late into the night. I would also like to tell them that if they are drunk and do not wish to support these three Bills, they are welcomed to go home to sleep. To the Administration I would earnest say this : There are many people, both within and outside this Council, who support the Equal Opportunities Bills (EOBs); they are most resolute; if today the Bills founder they will come back tomorrow to have another go; and I shall be among these people. I would be willing to stay here with Members to carry on with this debate right past 12 midnight and, if necessary, till daybreak. Of course, the Administration would have to keep us company for as long as we stay in this Chamber.

Mr President, the true meaning of the law is that it permeates the community and effectively helps the victims within it. These victims include, perhaps, people subject to discrimination, divorcees aged over 30 who are seeking jobs, and trade union members who cannot find jobs. And the best way to help these victims is to provide a safety net under the law.

The purpose of the EOBs is to encourage the individual person to support himself by his own labour. The Bills are not meant to ensure identical treatment for every person. Equal opportunities does not mean “eating out of the communal pot” or “being paid the same whether one does work or does not”. It seeks to ensure that different treatment must be based on objective conditions, such as personal qualities or job requirements. The Bills also ensure that employers will have more choices so as to promote our competitiveness and to enable people to support themselves by their own labour. This will help lighten society’s burden and lessen the Government’s social welfare expenditure.

If we uphold the spirit of the rule of law and affirm that everyone is equal before the law, then we must protect those who are subject to various forms of discrimination. I firmly believe that the EOBs will give effect to such spirit. Honourable Members, you have the power to turn these Bills into enforceable law to help those who are being discriminated against. If we talked every day about support for equal opportunities in principle but did nothing to implement it, to what avail would that be?

At the end of 1993, I first presented the EOBs to the Administration in the hope that they would study the questions involved and make a commitment that they would legislate against discrimination. Unfortunately, the Administration made no commitment of the sort. Therefore, I had no alternative but to carry on with the drafting of the EOBs. The Bills were eventually tabled to the Legislative Council in July 1994. They seek to prohibit discrimination on grounds of sex, age, disability, sexuality, family responsibility and race.

According to what the Secretary for Home Affairs said today, it would seem that not only had the Administration assumed responsibility under the Bill of Rights of taking action against discrimination, it had from 1991 onwards started doing so in a planned manner. In fact, individual officials told me a number of times that if there had been no EOB the Administration would not have enacted the Sex and Disability Discrimination Ordinances. Hence, I feel that the Administration's argument in this regard is at variance with actuality.

Many who resist legislation against discrimination are of the view that only through education will it be possible to eliminate prejudices and that legislation cannot effectively eliminate discrimination. I entirely agree that legislation alone cannot eliminate discrimination or prejudices and that education is a very important means. However, legislation can enable the public to learn the anti-discrimination concept faster and it can supplement education where the latter proves deficient. As far as the victims of discrimination are concerned, legislation can at least protect their basic rights. Some would argue that it would be better to implement anti-discrimination measures step by step. But I have to ask this: How much longer are we going to keep those victims waiting?

During the past year, the Bills Committee met once every week to discuss the EOBs. The scrutiny work it did was comprehensive and thorough. People from various strata of society (including the business sector, the grassroots organizations and victims of discrimination) actively reflected their views to the Committee. I am happy to see that major trade associations have drawn up employment guidelines in an effort to eliminate various forms of discrimination. Patently, the Hong Kong community is willing and prepared to further eliminate discrimination in Hong Kong.

The Administration has repeatedly criticized me for failing to carry out consultation in respect of the EOBs. As a matter of fact, before and after the drafting of the Bills, I had met numerous groups, trade associations and individuals. I had distributed more than 2 000 copies of the consultation paper in respect of the Bills.

I have proposed some amendments to the three EOBs to do away with certain controversial aspects or to clarify certain questions. These amendments include clarifications of the provisions with regard to sexuality to ensure that the existing marriage system and adoption arrangements will not be affected. They also include clarifications of the provisions with regard to age to ensure that laws on the retirement age and protection of minors will not be affected. These amendments are the fruits of the Bills Committee's work during the past dozen months.

Moreover, to ensure that the Ordinances, if enacted, will be implemented in a gradual and progressive manner, I suggest that the Administration may set different commencement dates in respect of different trades or enterprises of different sizes. At the same time, my amendments also propose to confer power on the Administration to draw up regulations (to be endorsed by the Legislative Council) to grant exemptions where the merits of individual cases so justify. I believe these will quell the worries of the Administration so that they will accept the Bills.

To ensure that the Administration's two discrimination bills be passed as soon as possible and to simplify procedures, I, of my own accord, dropped the sex and disability discrimination parts from my EOB and then split what remained of the Bill into three Bills.

At the same time, because of a rather unusual request by the Administration that the clauses of the Bills be voted upon separately, Members can now make their choices and cast separate votes in respect of the Bills or parts of the Bills. Of course, I hope Members will accept the clauses in their entirety.

The value of anti-discrimination legislation is beyond question. What is ironic about this legislative exercise is that although the Administration keeps stressing their "stance of supporting equal opportunities in principle", the Administration has been mobilizing policy secretaries to rack their own brains in order to come up with something to "block" the EOBs. Behind the scenes, the secretaries are vigorously lobbying Members against the Bills. The Administration has been saying that they have insufficient resources to legislate for a full and comprehensive package of measures against discrimination. And so they are using such scarce resources as are available to oppose any legislative move to protect the basic rights of discrimination victims.

Last week, a couple of days before the Bills were due to be voted on, the Administration put in place certain technical arrangements. I believe they were perhaps thinking that if the Bills should pass their Second Reading the important clauses in the Bills could be voted down one by one so that no more than a hollow shell would remain of the legislation. Indeed, a responsible government should be above doing this, should it not?

During the past year, I was hoping all along to co-operate with the Administration in drafting jointly a comprehensive set of anti-discrimination laws. But the Administration deliberately evaded my overtures and refused to take part in the scrutiny work of the Bills Committee. When the Second Reading debate on the Bills was due to be resumed, the Administration levelled a copious amount of criticisms against the Bills and selectively issued private document to a small number of Members. Such a strategy adopted by the Administration clearly demonstrated that their purpose was not to improve the

Bills but to block them. The legislative process should be transparent and open. But the Administration did not respect this and took it for naught.

Most of the criticisms levelled by the Administration against the EOBs had been discussed during the Bills Committee meetings. The rest of the criticisms are frivolous. The Administration alleged in the document that if the Bills were passed it might mean that an incestuous marriage could be legalized. I wonder on what grounds the Administration's conclusion was based.

The Administration has indicated that we cannot regulate moral or ethical conduct through legislation. Let me ask this : What else do laws and statutes regulate if they do not regulate moral or ethical conduct? Do laws against crimes, do laws on decriminalization of homosexuality, do laws against corruption or do laws relating to business or professional conduct regulate, in the final analysis, moral or ethical conduct? The Administration has probably forgotten that they are bound by the international covenants to act against discrimination.

The Bill of Rights requires that the Hong Kong Government legislate against discrimination. The Bill of Rights was introduced in 1990 and enacted as law by this Council in 1991. I believe Members will not forget that one section of the Bill states that the Administration is to legislate to eliminate discrimination. This is our stance and also our starting point. Hence we are today discussing anti-discrimination legislation. The Administration may have completely forgotten this. During the four years following the enactment of the Bill of Rights, the Administration seemed to have done nothing. And yet they are telling us today that we have not prepared ourselves well on a number of matters and that we do not know how to go about it. I am very saddened by this. The Administration is so forgetful. They have forgotten the way a civilized society should conduct itself. I think it would be best if we could remind the Administration of it. Let me read out a passage from the Attorney General's speech on decriminalization of homosexuality. He said: "Indeed for many the degree of tolerance of minorities is the measure of a civilized quality of society. While the International Covenant on Civil and Political Rights makes no specific reference to homosexuality, our present law would, we believe, be open to challenge under the Bill of Rights endorsed by this Council in its debate two weeks ago." This is what a civilized society should consider. The Administration is always forgetful. Many of my colleagues had asked me where these laws could be found. Members may probably have forgotten that I presented a paper to the Bills Committee on 16 September 1994 which stated that Australia, Canada, New Zealand and the United States had laws against age discrimination.

During the initial discussion of this Bill, the Administration for a while was willing to legislate against discrimination on grounds of age, sexuality or family responsibility. But later they changed their mind and indicated that they would carry out public consultation in respect of this Bill. After some time, the Administration backpedalled and dropped public consultation in favour of an

internal review. Members will recall the outcome of an internal review carried out in 1992 in connection with the Sex Discrimination Bill. The conclusion was that nothing needed to be done. A moment ago, I heard Mr Michael SUEN say that another review would be conducted next year and a report would be made to the Legislative Council next year. Of course, in the absence of a commitment to legislate, we have no means of knowing what the outcome of the review will be.

I would like to say this to Honourable Members. Laid before you are three whole and complete Bills. You may vote on each one of them. You may also state your views on each Bill and cast your vote as to which part or parts of the Bill to retain. The choice is all yours. But I hope Members will support the Second Reading of the Bills. I also hope Members will consider the plight of those who are being discriminated against and support the proposal to accord them the rights they need. If the Bills pass their Second Reading, I will explain the Bills to Members point by point. I hope Members will state their stance with regard to each aspect or area of the Bills. Thank you.

*Question on the Second Reading of the Bill put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division.

MS ANNA WU: I would just remind Members that this is on the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and not all three.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs

Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr Marvin CHEUNG abstained.

THE PRESIDENT announced that there were 24 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negated.

PRESIDENT: As the motion for the Second Reading of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill has been negated, no further proceedings shall be taken on the Bill. We will now resume the Second Reading debate of the Equal Opportunities (Race) Bill.

### **Second Reading of Bill**

### **EQUAL OPPORTUNITIES (RACE) BILL**

### **Resumption of debate on Second Reading which was moved on 5 July 1995**

*Question on Second Reading proposed.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, Hong Kong is an open, advanced and dynamic society where people of different races, colours and ethnic origins can get along and live peacefully together. This is a quality of which our society should be proud of and which we should treasure and maintain.

We must point out that the existing law of Hong Kong already adequately provides for effective punishment in respect of any acts of violence arising from racial disputes and people who incite others to commit such acts shall be subject to the due process of law. The criminal law of Hong Kong prohibits acts of violence in any form and applies criminal sanctions to any person who incites others to commit such acts of violence.

We firmly believe that the best and most effective way to eliminate bias and discrimination is to educate our young people in an appropriate manner so that they will know how to deal with others and what the correct attitude should be. To give effect to this conviction, we have, through the regular school curricula and extra-curricular activities, promoted education relating to human rights and anti-discrimination. Apart from teaching students the concept of basic human rights, we are helping them understand the cultures, characteristics and successes of different ethnic communities. Moreover, the Civic Education Committee will take equal opportunities as its promotion theme this year, which covers equal opportunities for ethnic minorities. The Administration is ready to adopt positive measures to cater to the special needs of those in need of help. For instance, the Administration is concerned about whether there are adequate recreational facilities to meet the demand of overseas domestic helpers. The Administration is looking for suitable venues where facilities could be provided for this group of people in our community who have special needs.

From the aforesaid measures, it can be perceived that the Hong Kong Government is doing its best to promote racial equality. This is beyond question. However, as I pointed out clearly just now, we think it would be wrong to legislate without first finding out where the crux of the problem lies. Hong Kong is not a society troubled by racial problems. Before legislation is enacted, the Administration must have adequate time to carry out a study of this question. The Administration must also let the people of Hong Kong, after understanding the situation, make their own judgment as to what would be the most desirable way to deal with the question.

Mr President, in terms of principle, this Bill to ensure equal opportunities is commendable and we very much support it. But, regrettably, based on the aforesaid grounds, the Administration cannot commend this Bill to Members and will vote against it.

MR ALBERT CHAN (in Cantonese): Mr President, hearing the Secretary for Home Affairs speak, I was somewhat seized with an impulse to behave the way the Honourable LEE Wing-tat had done in launching into a tirade during former Foreign Secretary Sir Geoffrey HOWE's visit several years ago. However, having regard to the fact that this is the last sitting of the Legislative Council and out of respect for you, Mr President, I would not behave in the way which Mr LEE had done to Sir Geoffrey HOWE. I hope this Council's voting result just now will be placed on record. I feel this is a shame on a civilized society and on Hong Kong. I hope such conduct and behaviour will not recur during the debates on the remaining Bills.

PRESIDENT: I would remind Members that Standing Orders are Standing Orders, it is not a question of respect for the Chair, but respect for Standing Orders.

MR WONG WAI-YIN (in Cantonese): Mr President, during the debate on the Honourable Ms Anna WU's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, I made the remark towards the end of my speech that it would be a sad day for this Council if we voted down these Equal Opportunities Bills today. I feel sad not because I had spent a lot of time in the past year attending to the work of the Bills Committee nor because I had been under an illusion during the past couple of days that I could sway the decision of Members through lobbying. I only wanted to request Members to support the motion for the Second Reading. I dared not expect them to support the Bills during the Committee stage or the Third Reading stage. I only requested Members to support the Second Reading so that we could more exhaustively discuss and debate the Bills during the Committee stage. As a matter of fact, the Administration as well as a number of Members in this Council argued a moment ago that we had had insufficient time to understand the Bills presented by Ms WU. That being the case, why do we not give the Bills a chance so that we can fully discuss and debate them during the Committee stage but instead just make short shrift of them by voting against them outright?

Mr President, during today's debate on the Disability Discrimination Bill, I said something for which I was later taken to task by my brethren in the Democratic Party. They said my speech had made mock of some Members in this Council. They were afraid those Members might be offended and would not support the Bill. But I discovered that no matter how ready we had been to bite the bullet, no matter how much we had bent over backwards to accommodate others, no matter how hard we had lobbied and no matter how persuasive we had been in explaining our reasons, our efforts nevertheless turned out to be futile and to no avail.

Many of my colleagues spoke on the first Equal Opportunities Bill which was later voted down. Although I kept putting up my hand, I was not given the chance to speak. It is because many Members are senior to me. When the present Equal Opportunities (Race) Bill came up for debate, the President asked if any Member wished to speak. No Member put up his hand to indicate a wish to speak. I believe some Members thought it would be pointless to speak. But, Mr President, "tongue-in-cheek" remarks are easy to make. A moment ago, Mr Michael SUEN, representing the Administration, spoke on the Equal Opportunities (Race) Bill and he emphasized on behalf of the Administration that he supported equal opportunities but, unfortunately, he could not cast a supporting vote. What sort of attitude was this? Mr President, Members have argued that Hong Kong is a prosperous and developed society. But I have particularly emphasized that in this prosperous and developed society certain forms of discrimination have long been existing. It is not that we have made no effort to eliminate such discrimination. In fact, with regard to the first Equal



Opportunities Bill, many Members have contended that in certain situations education may not be a viable means and that we need legislation through which to rigorously regulate or to deter. And legislation will help strengthen our education work in this respect. We must not close our eyes and say that, in the overall social context of Hong Kong, this is a minor problem. I hope we will not deceive ourselves.

Mr President, finally, I have to ask again whether Members, in casting their votes, really have a clear knowledge of what the Bill is all about. Did they ever take part in the work of the Bills Committee? Or, if they had not taken part, did they read the minutes of meeting and relevant papers? If they say to themselves that they have not done sufficient work in this regard, or that today they just press the “No” button outright, or that they have yielded to the Administration’s coercive lobbying or cajoling, or that they cast their vote according to the written voting instructions given to them by the Administration, then I shall be even sadder.

DR YEUNG SUM (in Cantonese): Thank you, Mr President. As a matter of fact, I am absolutely unruffled. It is because I already knew well in advance that this would be the result. Having scrutinized this Bill for more than one year, it would indeed be surprising if we did not have an inkling of what the final result would be. However, I would like to remind the Administration, the Chief Secretary and the Secretary for Home Affairs of the promise they have made and the timetable they have laid down.

We have said a lot which seems to suggest that we adore the Honourable Ms Anna WU. But I just want to say this. A Member of this Council has spent an enormous amount of time drafting a Bill which bears on a very important aspect of social policy and yet the Administration has failed to support it. I hope the Administration will learn a lesson so that, unlike what they are doing this time, they will let Members have access to more resources or hold discussions with Members whenever Members are slogging away drafting legislation of the present sort which affect the general public.

Going through the Order Paper, I can see that the Administration is neither offering any comment nor proposing any amendment. This has left Members with no choice but to either support or oppose the Bill. I hope this will not happen again. If any Private Member’s Bill which will have a significant impact on society is introduced in the future, I hope the Administration will handle it in all seriousness. I hope under the leadership of the Chief Secretary the Administration will buckle down to a study as to how the promise made by the Administration today can be fulfilled. I hope such a promise is not a ploy to stall for time or to induce Members to support the Administration. If the Administration genuinely wants to fulfill this promise, then Ms Anna WU’s effort has not been in vain, for the time being. Thank you, Mr President.

DR LEONG CHE-HUNG: Mr President, as the Chairman of the Bills Committee I am saddened by the result. Saddened by the result not because I was hopeful that we would win the vote tonight. I accept the result as voting is what democracy is all about. I am saddened because the whole Bill was killed at the resumption of the Second Rents debate. If Members would like to kill it, if the Government kills it, for heavens sake wait until the Committee stage before we kill it.

I realize that during the Bills Committee meeting a lot of members could not, or were not willing to attend the meeting. The Administration has requested that we should analyze clause by clause of each Bill if there should be a chance of passing Second Reading.

At least use the Committee stage when we go through clause by clause as a means to understand what the whole Bill is all about, understand what the feeling of equal opportunity is all about.

As I mentioned just now during the Second Reading debate of the Bill I was only appealing to Members to support at least the Second Reading of the Bills as this, Mr President, must be the first step towards a complete anti-discrimination and a proper equal opportunity.

MR LEE CHEUK-YAN (in Cantonese): Mr President, 20 years ago Martin Luther KING, leader of the movement to champion for black people's civil rights, had this to say during a public assembly: "People's resentment against racial discrimination and other inequalities is like the hot, sultry summer which will not go away until a free, equal and vibrant autumn arrives. Today is precisely the sort of hot, sultry summer's day. I look forward to the advent of autumn which will bring the air of freedom and equality".

Mr President, with these remarks, I support the motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, fact is fact. If I like red wine, it would be pointless for me to say in the course of a debate that I do not like it. It is because fact is fact.

I respect the Honourable Ms Anna WU for her endeavours in this matter. But we have to admit that we are all making an effort to secure a bright future for Hong Kong. I also congratulate the policy secretaries on vigorously lobbying Members for their support during the past couple of days. Credit is due to them and we cannot lightly dismiss it. This is also a fact. I can say in all frankness that I was one of the lobbying targets. I can only say that things evolve in sync with history. It would be futile to go for an excessively bright

future because that would exist only in the realm of dreams. However, we can expect to have such a future in 15 or 20 years' time.

Mr President, with these remarks, I bear witness to fact.

MR JIMMY McGREGOR: Mr President, I was one of the Committee members who did in fact turn up at almost all the meetings and who have complained bitterly that many members of this 21-member Committee did not. I do feel that I have a few comments to make and I will not drivel on too long as many Members have in fact done tonight.

I want to say that I agree entirely with Dr LEONG Che-hung. This is not an issue that will go away. These three Bills will be struck down, I have no doubt tonight by a vote. But the issue itself will not go away. This is something which is of a gathering nature in Hong Kong. It is part of the human rights of people in Hong Kong. The fact that I voted against and will vote against the two Bills on the Government side is simply that I believe there is too much too quickly and that we cannot see the extent and what will happen if these Bills are brought in. There will be too much legislation, there will be too much argument in the courts and that is not the way that Hong Kong normally works.

I do believe also that in fact the level of discrimination in Hong Kong, insofar as I can see it and I realize that I am perhaps sometimes privileged not to see some of it, is not any worse certainly than many many other countries and it is very much better than some that I have been to. So I have argued against this legislation, at least the extent of this legislation from the beginning as I think Dr LEONG Che-hung will confirm. And at times I felt very isolated because I was the only representative of the business sector who was attending these meetings. I said repeatedly that members of the business sector who are now making a considerable fuss about this legislation should have gone along to the meetings in the first place and registered their doubts and listened to what was being said and they might perhaps know much more about it at this stage.

So what I really want to say is that none of us I am sure in this entire Council is against the principle of equal opportunity. And I think most of us will recognize that this is an issue which will continue to come back to the Government. The Government is not in fact rejecting, totally rejecting the concept. The Government has moved with two pieces of legislation and Ms Anna WU's pressure on the Government has brought that about, I do believe. But these pieces of legislation are now in effect and there will be others and so I would encourage all the supporters and the workers for Ms Anna Wu to continue with this work into the next Session and if it is successful then — good, if they are not successful then, then continue with it because this is not something which should be readily given up. It is something which I am sure the vast majority of the people in Hong Kong would like to see continue. Thank you.

MRS ELSIE TU: Mr President, some Members here genuinely believe that these Bills will solve all the inner qualities of our community. I respect their views. Others believe that education should come first and will be followed by legislation. They also have the right to their views. Those who claim the high ground and consider themselves superior are already practising discrimination.

None of us has the right to claim that we alone are right. To respect other's views is the essence of democracy. Let us respect each other's views and work together to lead our community to true equality of opportunity. Let us keep the Government to its promise. Thank you.

MR LEE WING-TAT (in Cantonese): Mr President, I have not spoken in today's debate. But I was grieved to hear the speech delivered by a Member after the motion on the previous Bill had been defeated. I found his speech couched in the most "cold-blooded" terms. I must say again I was disgusted with the Honourable CHIM Pui-chung's speech. Members can cherish different political views but sometimes a certain humane touch or concern must be manifested. Defeated motions should not be trampled upon.

However, I have this to say to the Honourable Ms Anna WU, "You should not expect too much of this evening's voting results. Neither should you expect too much of the Members present here this evening. Rather, you should pin your hopes on the new Members of the next-term Legislative Council. If they have a mandate from the people, they will know what Hong Kong society needs". This evening's defeat does not mean that work in this respect is going to stop. I believe work in this regard will resume next October. Thank you, Mr President.

MR ERIC LI (in Cantonese): Mr President, this evening a number of Members dwelt on the point of whether we had attended the Bills Committee meetings to discuss the present Bill. They seemed to hold that if we had been a bit more hardworking, we would have understood the Bill better and would certainly have supported it. As a matter of fact, I was not a member of the Bills Committee but I was a member of the Bills Committee to scrutinize the Disability Discrimination Bill. I feel that, even if no Member was absent from the Bills Committee meetings and all 50-plus Members of this Council fully understood this Bill, we, as responsible Members, would still need to assess how well Hong Kong people would be able to understand such a complicated Bill as the present one. It is not just a simple question of whether Members understood the Bill. Though the Legislative Council is an institution with a large elected element, I still feel that, as responsible Members, we should not carry out our work with no regard whatever to outside input.

I admit without reservation that, as far as I am concerned, it would be a very cruel thing to vote against the Honourable Ms Anna WU. This would be a hard decision to make. I shall be standing for election next September to seek another term with this Council. I hope I shall not behave like an irresponsible Member. I have made it clear to the Administration that I hope they will reintroduce the Bills to this Council by October 1996. I hope I shall have the chance to scrutinize this Bill when it is reintroduced to this Council. I did not join the present Bills Committee because there were many other Bills to be scrutinized. I had to make a choice. But I can promise Ms WU that if I am returned to this Council to serve another term I shall first of all join the Bills Committee to scrutinize this Bill and shall be willing to devote myself to the work related to this Bill.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, there are numerous stones in this world. Some stones are untouched by civilization; some stones bear chronicles of human civilization and of its evolution. What we are faced with now is the same piece of stone but two different views as to its use. The first view is to turn into an epitaph the Equal Opportunities Bills introduced by the Honourable Ms Anna WU today. Members have seen an epitaph before. Epitaphs invariably contain grand and imposing language to praise to recall and to eulogize. They invariably leave beautiful memories in people's minds. But people visiting the graves of the departed sometimes care little about what is written on the epitaph. They just take it as a rite or ritual. But sometimes stones bear chronicles of another kind, namely, an account of the evolution of civilization. They are milestones to mark the progress of *homo sapiens*. The value of milestones is made manifest whenever human civilization suffers a setback under certain circumstances. Because of the existence of milestones as a reminder of the progress last achieved, *homo sapiens* will continue to forge ahead. Today, we are talking about equality and human rights. But many would take them as the contents of an epitaph. It is because they hope that once this Bill is voted down it will be laid to rest in a grave where it will stay a beautiful memory forever. But I do not think it this way. I will take it as a milestone. The same piece of stone but there are different interpretations. Mankind forever moves forward along a path replete with valuable pointers of human civilization. As with a milestone which is surrounded by green grass and embedded in the earth where the dead are buried, later generations will respond to its beckoning and move on.

I firmly believe that the multitude of people who cherish equality and human rights convictions will not regard Ms Anna WU's Bills today as an epitaph. They will regard the Bills as a milestone of human civilization. Of course, the value of this milestone should not be over-exaggerated. It only represents the endeavours of some of the Members of a teeny weeny Legislative Council in Hong Kong. But I firmly believe that 10 to 20 years from now he who just randomly presses the "No" voting button today will appreciate the value of the language and wording as carved on this milestone. He will understand the value of the words on the milestone and the direction, the

countless endeavours and efforts the words represent. Such value will germinate within his very being, particularly when he discovers that he is old. His glorious days are gone following his loss of power and position. When he retires from the scene of power play, he will reaffirm the value of this milestone.

As a matter of fact, I just want to tell this truth in plain terms. But, as the piece of stone is carved with words and bears the marks of civilization and therefore has a two-fold value, I would rather look at Ms WU's Bills with a positive attitude. A moment ago, I wrote Ms WU a note to tell her we would continue our fight. Unfortunately, Ms WU will not be with this Council next term. Yet, wherever there is stone, the fire will not die out. With or without the Democratic Party, human civilization cannot be negated, can it? Human progress in the direction of equality cannot be held back, can it? Progress in the direction of human rights cannot be stopped, can it? They cannot. Our voices in the Legislative Council may die down in the days to come. But what mankind strives after includes equality, love and human rights. The spark generated by the stones will develop into a flash of light to light up human civilization and illuminate the path along which civilization is headed.

I thank Ms Anna WU. I would not easily fall for a Bill. But I know I have fallen in love with this Bill. I will support Ms WU. Even without my Party, there will be this light. The light will fill many people with strength to fight. Today is a milestone, not an epitaph.

MR JAMES TO (in Cantonese): Mr President, I will just make three points, First, I would like to point out that, in fact, the Government delivered a rather misleading message in international forums as regards the implementation of anti-discrimination legislation. Last November the Honourable Emily LAU and I sat in on the proceedings held before a United Nations panel (We did not attend the conference. Members please do not say that we attended it. We were not that grand. We only sat in on the proceedings). We also did some lobbying. Our mission then was related to a report submitted by the Government (of course, not by the Hong Kong Government but by the United Kingdom Government) in respect of some provisions in the *International Covenant on Economic, Social and Cultural Rights*. The provisions in question specify that the states parties shall enact domestic laws against discrimination. It was written in the United Kingdom Government report in black and white as follows: "Legislation has been introduced to prevent racial discrimination .....". In other words, the Government more or less passed itself off as the authority sponsoring Ms Anna WU's Bills and reported to the United Nations to this effect. The report went on to say that the Bills were being scrutinized. But, in fact, as Members know full well, the Government was then opposed to the Bills. Hence, other people who sat in on the proceedings and who did the lobbying passed some documents to members of the United Nations Human Rights Committee and other delegates to point out the misleading nature of the report compiled by the Hong Kong Government. This was a very serious matter

because the United Kingdom Government, through the Hong Kong Government, filed a report that misled the United Nations. This is the first point that I wish to make. This fact has been put on record and I shall follow up on it. In actuality, the Government is, in the final analysis, wholly against the Bills. Of course, the Government was free to write the report the way it did. It is because, in today's response, the Government has said it hopes to continue with the consultation exercise and the relevant legislation may be introduced. But, patently, the Government's report then was surely misleading.

The second point I would like to make is this. Some Members mentioned lobbying. There has been intense lobbying by the Government. Lobbying is fitting and proper which everyone is free to do. However, I would like to point out that this time it is not just simple lobbying. As was the case with the political reform package, the Government has been resorting to economic threats. Some Members privately told me — and I would not name them because that would embarrass them — that the Government had mobilized a number of its highest-ranking officials to contact the board chairmen and chief executives of the companies these Members work with. Then these chairmen and chief executives would say to the Members concerned, "You know, about this Bill, the Government has said a great deal to me. I believe if it be at all possible you may as well go along with the Government". Of course, some can argue in all frankness that this was lobbying! But if the person concerned is an employee and the Government goes for his board chairman and chief executive, is this real lobbying, pure and simple? Is this lobbying based on justifiable grounds? Is it a plea to people to sympathize with the Government because it is a weak government? This could be said to be lobbying. When this is being done, Members can make their own judgment as to whether it is truly lobbying.

Thirdly, in my constituency which covers Tsim Sha Tsui, Yau Ma Tei, Mong Kok and Sham Shui Po, there are ethnic minorities and they are particularly numerous in Tsim Sha Tsui. Mr President, I held a special discussion session with them in respect of the Equal Opportunities (Race) Bill. The Secretary for Home Affairs argued a while ago that, in actuality, discrimination does not quite exist in our society. But, from our contacts with the leaders or representatives of these ethnic minorities, we know at least that people from these ethnic communities in Tsim Sha Tsui feel keenly the brunt of discrimination. Some people may have discussed the question with the trade associations or leaders of these ethnic minorities. From purely a business angle, these people may not have noticed that discrimination exists. But, in actual fact, I have to reflect the views of my constituents. I hope this will be put on record. My constituents very much hope that Members will support this Equal Opportunities (Race) Bill. It is because they are indeed faced with deep-rooted discrimination. They hope I will reflect this to Members of this Council.

DR HUANG CHEN-YA (in Cantonese): Mr President, I believe the Honourable Ms Anna WU and many of our friends outside this Building will be disappointed this evening. So, I would like to say this to them, which is a paraphrase from a poem by Beidao : When a councillor retires, 10 will rise to take his place; every torn page of a Bill will transform into a new motion.

Though the current Legislative Council Session will perhaps end in shame, shame will make us more resolute.

PRESIDENT: Dr HUANG, please do not use that sort of language. I would hate to rule you out of order this late in the term.

DR HUANG CHEN-YA: I will not use those words.

DR HUANG CHEN-YA (in Cantonese): Anyway, what has happened this evening will make us more resolute. We will come back to have another go until equal opportunities are given protection in Hong Kong.

MISS CHRISTINE LOH (in Cantonese): Mr President, I, too, am most disappointed. The first Bill was already voted on. I believe the results of the present and the next round of voting will be the same and the Bills will not proceed to Third Reading. Members who did not support the Third Reading a moment ago have already given their views. They said the pace was too fast or we should not have recourse to legislation as a means to address the social problem of discrimination. But after the first Bill was voted down, many of the Members who had earlier expressed support rose to say they felt it a pity that the Bill foundered. They said such legislation might be reintroduced to this Council in the next Legislative Year and expressed the hope that it might be reintroduced as early as next October.

Perhaps, let us talk about history. A few years ago, when it was first proposed to give 18-year-olds the vote, there was opposition from some quarters. But after a short period of time, when the relevant legislation was introduced to this Council it was passed. Therefore, in the next Legislative Year, which will start in just a few weeks' time, if an attempt is really made to reintroduce the Bills the new term Legislative Council or the Administration may find it rather embarrassing to have the same Bills, which have been debated once already, reintroduced. The Administration, from their own perspective, may feel that in shooting down Private Members' Bills this time their authority has been made manifest. It would seem, however, that theirs is a Pyrrhic victory. Next time, they may perhaps give us the chance to hold a genuine dialogue with them when such Bills are laid before this Council.



A number of Members have observed that, if they are returned to this Council to serve another term, they will continue to discuss and propose legislation against discrimination. I hope that, as was the case with the proposal to give 18-year-olds the vote, this Council and the Administration will very soon come round to a fresh view as regards anti-discrimination bills and support them. It is because I believe members of the public feel that this can be done. But, today, we have missed a fine opportunity.

MS ANNA WU: Mr President, this Bill makes it unlawful to discriminate racially against a person in relation to work, the provision of goods or services, accommodation, transport and most other important areas of social activity. Contemporary international law regards race discrimination as so inherently degrading to human dignity that any state that practices it as a matter of policy violates international law whether or not it has ever willingly accepted any obligations not to discriminate

The Hong Kong Government has always disavowed race discrimination although there was a time when it cheerfully disregarded pervasive discrimination against the territory's Chinese population. That time has passed but since then Hong Kong has also taken on stronger, positive obligations to combat discrimination.

The International Covenant on Civil and Political Rights' provisions prohibiting race discrimination have applied to Hong Kong since 1976 and were enacted domestically in the Bill of Rights Ordinance in 1991. These provisions clearly state that the law shall prohibit any discrimination and race is first on the list of forbidden types of discrimination that follows.

Well before 1976 Hong Kong was already obligated to combat race discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination, one of the oldest and most widely accepted international human rights treaties. The convention was ratified by the United Kingdom and extended to Hong Kong in 1969 and was ratified by China as well in 1981.

Internationally legislation against race discrimination is the normal measure taken to fulfil these obligations. Every Commonwealth country with which Hong Kong regularly compares itself has legislated against race discrimination, in most cases, decades ago.

For more than 25 years however the Hong Kong Government has regularly excused its unwillingness to legislate by proclaiming itself satisfied that racial discrimination is not a problem here.

There are many in the community who would disagree, having experienced the humiliation of racial discrimination first hand. All of us I think know that racial stereotypes are pervasive, this Bill is long overdue and I regret that the Government has not been willing to take it on as it did the sex discrimination and disability discrimination portions of my equal opportunity proposals. This Bill makes race discrimination unlawful but different treatment that can be sensibly and objectively justified is not discrimination. This is a fundamental point and I hope it is clear to Members and I hope it is particularly clear to the Government because the Government seems to have confused itself over this point time and time again. It is a point that the Administration persistently and I suspect wilfully misunderstands about my Bills and it is a basis for many of the misleading objections they have raised. The Bill is concerned with equal opportunity not with equal outcomes. It prohibits discrimination now but does not require affirmative action or preferential treatment for victims of past discrimination. Such actions are expressly permitted by the Bills but are not in any way required.

The Government has expressed concern over localization. Localization schemes in fact may be regarded as positive measures taken to undo systemic imbalances in employment. Clause 37 of the Bill expressly authorizes measures intended to achieve equality and this is a flexibility which the Bill of Rights does not have. The Bill will have no effect on immigration policy even though matters of race and nationality are necessarily prominent in that area.

Clause 9 of the Bill reproduces and applies to this Bill all of the exceptions made to the Bill of Rights Ordinance including the exception for immigration legislation and acts and policies related to such legislation.

The Administration has instigated worry about the impact of the Bill on employers and others who have a genuine need for linguistic and cultural skills that tend to be distributed along racial, ethnic or national lines. For example, would the Bill make it illegal for business to seek receptionist who speaks Cantonese or for a Thai restaurant to look for an authentically skilled cook or for an English language school to hire only teachers with native fluency? Unequivocally the Bill would not have these consequences nor have such problems arisen about under race discrimination legislation elsewhere.

The Bill demands that every employer asks directly for the skills they need rather than using racial, ethnic or national identity as a crude proxy for those skills. This requirement is no more than ordinary good practice. It can pay to remember that some of the world's best French cooks are not French. The Bill also recognizes of course that there are some types of work such as acting where race itself may be a genuine occupational requirement.

The Administration has also expressed concern that certain benefits it accords to overseas civil servants might be subject to challenge under this law. As I have stressed however, the Bill does not regard as discrimination any measure that reasonably reflects real differences in circumstances.

The Administration in any case has little room to complain because anything it does that will be unlawful under this Bill is already unlawful under the Bill of Rights Ordinance. Nonetheless the Bill goes to great lengths to ensure the Administration an extraordinary degree of flexibility in implementation, whether in regard to itself or to the private sector. The Administration may freely bring different parts or provisions of the Bill into operation in stages. A new clause proposed to the Bill authorizes the Administration to provide transitional exceptions as needed for businesses of different sizes or types. An additional new clause would enable the Administration to draft any temporary exceptions needed and to take applications from the public for ad hoc temporary exceptions.

This Bill is a thorough piece of legislation and a workable one and I urge Members to consider it very seriously. Racial discrimination is an ugly and deeply hurtful thing and it is time there were legal sanctions against it in this community. Thank you, Mr President.

*Question on the Second Reading of the Bill put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG

Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE PRESIDENT announced that there were 24 votes in favour of the motion and 31 votes against it. He therefore declares that the motion was negated.

PRESIDENT: As the motion for the Second Reading of the Equal Opportunities (Race) Bill has been negated, no further proceedings shall be taken on the Bill. We will now resume the Second Reading debate of the Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill.

### **Second Reading of Bill**

## **EQUAL OPPORTUNITIES (RELIGIOUS OR POLITICAL CONVICTION, TRADE UNION ACTIVITIES AND SPENT CONVICTION) BILL**

### **Resumption of debate on Second Reading which was moved on 5 July 1995**

*Question on Second Reading proposed.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I would like to stress again that, in terms of religious or political conviction, trade union activities and spent conviction, the Administration shares the Honourable Ms Anna WU's view that we need to promote equal opportunities. But the way she proposes to do it is modelled on legislation from another jurisdiction without careful consideration of what impact this will have on Hong Kong. This is what the Administration cannot accept. In Hong Kong one is absolutely free to join whatever religion one chooses unless the activities of the religion concerned are found to be detrimental to Hong Kong's security interests. We have absolute freedom to hold or express different political views. The Administration recognizes the importance to rehabilitate offenders and is happy to know that such work receives public support. Members of the public now accept more readily rehabilitated offenders than they used to. Through the Rehabilitation of Offenders Ordinance the Administration has implemented certain measures to help this small group of people to reintegrate into society. The result has been quite good. The Administration will continue to adopt other measures to further encourage members of the public to accept discharged prisoners.

In terms of anti-discrimination and protection of trade unions, the Administration, in reviewing labour relations, has observed that there is a need to enhance protection for employees so that they will not be discriminated against for taking part in trade union activities. There is also the need to help the employee overcome the technical difficulty in proving in court that the employer deliberately discriminates against him. Therefore, we have, through exhaustive consultation with the Labour Advisory Board, proposed to amend the Employment Ordinance to the effect that an employee who has been dismissed because of discrimination against him for taking part in trade union activities shall have the right, within six months after dismissal, to file a claim with the Labour Tribunal and that the onus shall be on the employer to prove that the dismissal was not because of discrimination. We hope that the proposed amendments will be tabled to this Council for scrutiny during the next Legislative Year.

When I spoke earlier, I described the items of practical work being done by the Administration in respect of the various areas covered by the Bills. Such work proves that the Administration absolutely supports equal opportunities. What we are opposed to is comprehensive legislation enacted in a hasty manner without adequate consultation and preparation beforehand which will leave the general public at a loss as to what course to follow. Some might argue that legislation could at least lay down certain criteria as to what would constitute acceptable behaviour and therefore such legislation would have an education value. I would not take issue with this argument. But I must point out that a responsible government must study clearly whether any legislative proposal will cause too great a burden to society. I believe Members all support the principle of equal opportunities. However, the public will feel uneasy if the present Bill is passed hastily without ascertaining what overall impact the Bill will have.

I would like to urge Members again to support the Administration's gradual, progressive and well-thought-out legislative approach against discrimination and to vote against this Bill.

MRS ELSIE TU: Mr President, I think the history books would show in Hong Kong that I was the one responsible for getting the rehabilitation of minor offenders into the Ordinance. You can check that up. Anyone can check that up through the Hong Kong Branch of Justice that I supplied all the information leading to that Bill.

It was inadequate and I asked for a review — this is included in the Bill of course. I asked for a review of this Bill five years ago and I have been promised over and over and over that it would be revised. The latest promise was that it would be revised by the end of this Session. It has not been done. I would like to ask the Government in that case if we are not going to pass these Bills and presumably there is too much to pass at one time, I would like a promise that this will definitely be dealt with because the review is very much overdue and a

rehabilitation of minor offenders is absolutely inadequate to deal with minor offenders. Thank you, Mr President.

MR MARTIN LEE: Mr President, the Secretary keeps on stressing the importance of education and he actually said it is educating the next generation. But there is no doubt at all in our minds that it is the senior civil servants who require the education and they require it now.

The last three speeches made by the Secretary could have been written in 30 minutes by looking only at the short titles of these three Bills because there is absolutely no substance in it. Why then waste Members' time if you never had the intention to look at these Bills on their merits? If you only wanted to kill them — why wait? I do agree with Dr the Honourable LEONG Che-hung when he said that these Bills should only be killed after the Committee stage. I do not agree because if you do not want them you should have killed them earlier. You should have killed them when Ms Anna WU presented them at the Second Reading and do not allow the Bills to be adjourned into Committee stage — take a vote then. Do your lobbying earlier. You then have spared Honourable Members a lot of their time and trouble and you, yourselves, your time and trouble and the public's money.

It is a very very cruel thing the Government did in relation to these three Bills. Very cruel thing to be done to Dr LEONG Che-hung, the Chairman, to Ms Anna WU who presented these Bills and all the Honourable Members who participated, who actually participated in the Bills Committees including, of course, my friend, Mr Jimmy MCGREGOR.

A responsible government, an accountable government would have had the courage to state its position right at the beginning and not lead Honourable Members, particularly Anna, up the garden path. So I feel very angry that this was the way the Government decided to play along with these Bills. There was no substance in the speeches and just allow them to drag on and on and on and the Bills are not considered on their merits, by hard lobbying. I support the Bill.

MR SIMON IP: Mr President, I support Ms WU's Bills. Like any genius Ms WU is ahead of her time.

Leonardo da Vinci who tried to build a flying machine 500 years ago was considered a lunatic.

Michelangelo who created objects of unquestioned beauty, in 20th century Hong Kong is considered a pornographer.

Galileo who 500 years ago said the earth revolved around the sun was banished from the Church and it was not until a few years ago he was absolved by the Roman Catholics.

So Ms WU's time will come and it will not be too long and I will be there with her. Thank you.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I want to make a last-ditch effort to save this Bill because it relates to religious and political conviction. I am not a Christian, really I am not. But I attended Christian schools from kindergarten right through to primary and secondary schooling. Therefore I read quite a lot from the *Bible*. Many of the stories told in the *Bible* have had an effect on my way of life and my personal choices.

I would like to tell a few stories from the Bible. The first is the story of Sodom and Gomorrah. According to the Bible, God considered the dwellers of these two cities adulterous and sinful. God wanted to rain fire on these two cities and burn them. But there was an upright man who asked God if He would spare either city should 10 upright persons be found. God said if 10 upright people were found he would spare the city. The upright man again asked God if He would spare the city should five upright persons be found. God said he would spare it. I do not know what criteria God adopted. But eventually He burnt the cities. Of course, those who were untainted with sin could leave the cities. Anyway, in the event, the cities were burnt. The same analogy can be applied to Ms Anna WU's present Bill. I do not know how Members would view the other parts of this Bill. But, at least, with regard to the part of the Bill on religious equality, could Members take it as an upright person and spare it so that it will pass its Second Reading? Will Members do so?

In terms of religion and in the *Bible*, thoughts of equality abound. Though I am not Christian, I can vividly recall many biblical stories about Jesus Christ. The story that touched me most is about Jesus healing the lepers. Nowadays, leprosy is no problem and medical science can fully cure it. But in those days it was a contagious disease leading to ostracism and death. Jesus Christ did not give the lepers a wide berth but healed them. This story is replete with thoughts of equality. There is no ostracism, no giving of a wide berth.

During the past couple of years, I experienced enormous work pressure. I read many Buddhist books. Buddhist literature says all living creatures are equal. There should be no barrier between men to stop mutual communication, mutual expression of concern and love. This is the key spirit of Buddhism. Are there vegetarians among Members? Vegetarianism is another manifestation of the Buddhist doctrine of equality between living creatures. It does not mean only environmental protection or espousal of the green movement. But, anyway, this is of no moment. If they are Christians or Buddhists, Members

should let this Bill pass its Second Reading because it propagates the thought of equality which is consistent with Members' religious conviction.

The third biblical story which touched me deeply is the story of David and Goliath. As Members are aware, Goliath was a giant of a man and invincible while David was a boy. David had to summon up his courage, strength and conviction to knock out Goliath. Is the role played by Members in the present case that of Goliath or David? According to the Bible, in the event, people spat on Goliath and forever remembered David. It is because in the story David played the role of the weak challenging brute power. But in present-day society we should not let the weak challenge brute power. We should enact laws. Under the present laws, there should be no David pitted against Goliath. Instead, David and Goliath are equals sharing this earth, under the same sky and on the same piece of land.

I am not Christian. But these biblical stories have had a profound effect on me. Members will later press the voting buttons. Those who are Christians and who cherish thoughts of equality, what button would they press? Members should discard their partisan thinking. It is because this is a voting exercise in respect of personal conviction. Members should vote in favour of the motion for the Second Reading of the Bill. I am making a last-ditch effort. I do not know whether my speech can cause some ripples in the otherwise calm pool of Members' conviction in terms of religion and equality. But I firmly believe that many of the Members are Christians. Influenced as they have been by religion for tens of years, will they be even more apathetic than a non-Christian? I hope Members will do this and cast a "Yes" vote so that at least this part of the Bill can pass the Second Reading.

Thank you, Mr President.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

DR LEONG CHE-HUNG: Madam Deputy, I think up to this stage we should actually know what the results are going to be like, although of course as a permanent optimist we should still wait until what is going to be shown in the score board.

But let us do not forget the people who has been working throughout all these to bring us up to today. We have all been giving our praise to Anna. I think she deserves all that as a founder to a certain extent of equal opportunity and anti-discrimination.

A month ago on the Sex Discrimination Bill, I put on record my praise to Miss Susie HO for her co-operation on bringing the Sex Discrimination Bill to fruition.



This morning I did the same thing to Miss SHEPHERD in the Health and Welfare Branch on the same score. I think we should not forget as we move to the end or rather the beginning of an era in anti-discrimination and equal opportunity that there are two groups of people that we have to thank. Other than Anna herself, there is a very industrious team who has been helping her to push this along, getting all the results, negotiation with the Government, negotiation with Members. I think they deserve our very very strong praise.

But also do not forget that the number of deputations, the number of letters that we have received from the public who push us along, who give us all the details of anti-discrimination and equal opportunity and need to push them along. I am sure their efforts will not be wasted but we will carry on into the next Session. So I would like to put on record my thanks as the Chairman of the Bills Committee to all these people concerned. Thank you.

MR JIMMY MCGREGOR: Just to be very brief. Incidentally, I got from the Interpreter when Mr CHEUNG Man-kwong was explaining — he said that Jesus cured a leper, I thought he said that Jesus killed a leopard. I thought he was a very powerful person and I apologize probably because I am a bit sleepy.

I wanted very much to thank Dr LEONG Che-hung and I am sure others will do so before the night is out for the very patient and very skilful way that he took this Committee through very very many meetings, most of which I think I attended and for his kindness towards the people who came to see us for his willingness to listen very carefully to the points they made and to encourage discussion, to encourage us to understand what was happening. So I just wanted to say that although I will again vote against this third Bill, I wanted to thank Dr LEONG Che-hung and members of the Committee who did attend so often, the helpers once again for Ms Anna WU and Ms Anna WU herself. Thank you.

THE PRESIDENT resumed the Chair.

MR FREDERICK FUNG (in Cantonese): Mr President, it is no easy task to build an equitable society. Only after a long-drawn-out social movement or campaign can an equitable society come about. At the same time, there are numerous conditions that go into the making of an equitable society. These include the education standard of its citizens, its civilization and state of modernization. I feel that Hong Kong possesses all these conditions. Indeed, we are adequately equipped to enable, through legislation, everyone in Hong Kong to enjoy equal opportunities within a short time. Perhaps, at the present moment, all the necessary sparks that would kick-start society's drive towards social equality have not yet been lit. And thus social equality is not immediately attainable. But I feel that, to enable Hong Kong society to achieve this, we must have more social movements or campaigns to put Hong Kong on the road towards social equality.

Normally speaking, social movements are built up bit by bit and when they have gathered sufficient strength they will take a leap forward. Perhaps, the time for this has not yet come. Social movements are usually built up bit by bit. But I am positive that the three Bills presented by the Honourable Ms Anna WU are not just component bits that make up a social movement; they constitute a force to propel the social equality movement into taking a quantum leap. I feel that this endeavour must continue. Despite the Honourable CHEUNG Man-kwong's intense lobbying, I believe it would not be possible to convince those who have already reached a decision. Though we cannot convince those Members, Hong Kong will surely have a good foundation to build itself on if this movement can be sustained so that very soon we shall see a society where equal opportunities will be available. Thank you, Mr President.

DR YEUNG SUM (in Cantonese): Mr President, as the proceedings in relation to this Bill are coming to a close, I shall say just a few brief words. I had thought the speech delivered by the Honourable CHEUNG Man-kwong was written by the Rev the Honourable FUNG Chi-wood. In fact, of course, that was not so. It was written by Mr CHEUNG himself. It might be that Mr CHEUNG got a lot of biblical inspiration from the pastor seated next to him.

A while ago I saw the Honourable Simon IP swaying unsteadily while delivering his speech. I then looked at the Honourable WONG Wai-yin to see how he would interpret such body language. Having concluded his speech, Mr IP cast a look in Mr WONG's direction. Then the three of us smiled. It is because we all feel the same way : the three of us support the Honourable Ms Anna WU.

Finally, I have to thank Ms Anna WU for writing a chapter on equal opportunities in the annals of Hong Kong. We will make a joint effort. If the Democratic Party is returned to this Council next term, we will take up where Ms WU has left off. Thank you, Mr President.

MR WONG WAI-YIN (in Cantonese): Mr President, there were originally three Bills laid before us. Now two of them can be put aside.

Mr President, having heard the speeches on the Equal Opportunities (Race) Bill delivered by some of my colleagues, particularly some independent Members or Members from the Breakfast Party, I was overcome not only with sadness but grief as well. I would have wept if I had been alone and not in the company of so many people. The Honourable Eric LI's speech particularly galled me. He kept encouraging the Honourable Ms Anna WU to keep up her efforts. He said he supported her very much. He promised that if he was returned to this Council to serve another term he would certainly join such a Bills Committee. I failed to understand what Mr LI was talking about. As a matter of fact, the Bill has been tabled to this Council for more than one year.

If he had wanted to know more about the Bill I believe Ms WU would have been more than happy to take time out to discuss it with him.

Mr President, only a handful of Members spoke in the debate on these three Equal Opportunities Bills (EOBs). The Honourable Mrs Miriam LAU spoke on behalf of the Liberal Party and the Honourable Mrs Selina CHOW spoke briefly by way of response. As I observed at the start of the debate, the only explanation I had heard from the Liberal Party was that this Bill was too hasty. They had also questioned if legislation was the best means to deal with discrimination. As I remarked a while ago, if legislation was not the best means, why had Members supported the Sex Discrimination Bill and the Disability Discrimination Bill? Why had they not left the matter of discrimination to be resolved through education? Why does the Liberal Party have double standards? This is the third EOB that we are dealing with. In this last chance, I hope Members who will vote against the Bill will rise to explain their reason for doing so even if the reason they are going to give will be as brief as "I support the Administration's arguments or Mr So-and-So's arguments". Will they say this?

Yesterday, Dr the Honourable HUANG Chen-ya spoke on the Personal Data (Privacy) Bill. He kept asking Members from the Liberal Party to state their reasons for objection. But none gave a reason. They just cast a "No" vote. Parliament is a forum for debate. We very much hope that through debates and discussions Members can exchange their views and ideas. Therefore, I have all along respected the Honourable Jimmy MCGREGOR. During the scrutiny of the Bills he played the role of the detractor. He gave plenty of reasons to argue against the Bills. He presented different views for Members to discuss. I fail to understand why Members from the Liberal Party who had joined the Bills Committee did not show up too often at the Committee meetings and even absented themselves altogether from the meetings during the later scrutiny stage of the Bills.

Earlier in this Council, Mrs Miriam LAU manifested her pique by alleging, in a manner which showed that justice was on her side, that during the discussion on extending the jurisdiction of the Committee on Members' Interests to cover Members' conduct, Members had voiced no objection and it was not until the matter came before the full Council that objection was raised. She said she had the feeling of being tricked. By the same token, the EOB had been scrutinized by this Council for more than one year. During the past year, why did the 15 Members from the Liberal Party not present their own views and give their reasons for opposing the Bill? During the meeting of the full Council today, Liberal Party Members just voiced their objection but failed to give sufficient reasons for doing so. If they were indeed of the view that the EOB was unnecessary, incapable of enforcement or undesirable on other grounds, why did they not say it earlier? Even if they had not said this earlier, they should later have done so when Ms Anna WU split the EOB into three Bills and requested the House Committee to support her in having the three Bills re-gazetted. We agreed that there was no need to set up another Bills Committee.

Why did the Liberal Party Members agree during that House Committee meeting? Why did they not say to Ms WU, "Please do not trouble yourself with all these. There is no need to split the Bill because we will oppose it anyway. Please do not do this meaningless thing any longer". Why did they not persuade Ms WU in the House Committee to lay this Bill to rest? What purpose did the re-gazetting of the Bills serve? What good did it do by splitting the Bill into three? To what avail was the wording of the Bills rechecked?

Mr President, I believe the Chief Secretary and the Secretary for Home Affairs must be very pleased. I am not sure if they are pleased because of the victory they have scored for the executive-led government or because of something else. Anyway, I believe they are pleased because they will never have to face discrimination. Those who are being discriminated against are people from the lower strata of society whose capabilities are grossly inferior to those of the government officials seated here. If every citizen is as well endowed as government officials, they will not be subject to discrimination. It is because those being discriminated against are invariably people who are poorly endowed.

A while ago, a colleague of mine remarked that Members' time had been wasted. Even the Honourable Martin LEE commented that Members had wasted their time scrutinizing the Bills and so had government officials. I think there is more to it. The Legislative Council Secretariat staff's time had been wasted. The Secretariat staff had been very busy. They had written voluminous minutes of meetings and issued numerous documents and papers. But all their efforts had been in vain. Have we ever spared a thought on our staff? They had worked hard for us but ended up like this. How would we feel?

Mr President, as far as the present Bills are concerned, many people had said that they would have no high expectations of the Liberal party. All attention had been directed towards the Breakfast Party and independent Members. It was hoped that they would at least support the Second Reading of the three Bills and then Members would present their arguments in respect of individual clauses during the Committee stage so that a just and fair decision could be reached. Many Members had discussed the matter with the Breakfast Party Members. Today, I am happy to hear some Breakfast Party Members say that they supported Ms Anna WU's three Bills. One of them was the Honourable Simon IP. I am pleased with Mr IP's speech. Yesterday, I described his mannerisms and that was just a joke with no ulterior motive. I hope he will forgive me. Unfortunately, during the past few weeks, some Breakfast Party Members had been vacillating. Sometimes they said they would support the Bills and sometimes they said they would not. Now the position is 24 for and 31 against, a margin of seven votes. A change of stance by four Members would tip the scale. If the Honourable Vincent CHENG, the Honourable Marvin CHEUNG, Mr Eric LI and the Honourable Roger LUK could switch to support Ms Anna WU, the present Bill would pass its Second Reading. I sympathize with these Members. I believe they are being subject to far greater pressure than any other Member. I have heard from some of my

colleagues that, apart from the pressure these Members are under, their bosses are piling more pressure on them following consultation between the Administration and the bosses. These Members are in a dilemma.

Mr President, as the Honourable CHEUNG Man-kwong has remarked, the Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill is the last remaining Bill that has not yet been shot down and we will have to put in a last-ditch effort to save it. So, as a last-ditch attempt to save the Bill, I have described how I feel about the matter and I now turn to the arguments proper.

In particular, I would like to discuss the question of political conviction. Today, I am grateful to my two female colleagues for coming all the way here from Yuen Long after work to listen to the debate on the EOBs. I want to say that I had personal experience of discrimination on grounds of political conviction. After quitting, certain staff members of my office applied for jobs with other organizations. According to some friends of mine who worked with the organizations concerned, my ex-staff members satisfied every requirement but they had stated in their *curriculum vitae* that they had worked at the Honourable WONG Wai-yin's Office and so they were eventually rejected. Patently, this was an instance of political discrimination. Afterwards, I advised my staff never to say in their *curriculum vitae* that they had worked with me when they applied for other jobs. I would not want to be a stumbling block to them.

As regards trade union activities, Mr LEE Cheuk-yan may wish to speak on this subject if he still feels like speaking. As a matter of fact, the media have time and again reported that some trade unionists are being suppressed by the companies concerned for fighting for staff interests. I believe memory of the Cathay Pacific strike, the Wellcome Workers' Union incident and the dismissal of some workers by the Kowloon Motor Bus Company is still fresh on Members' mind. These cases have left a profound impression on my mind. Can we continue to shut our eyes and say the problem is not serious? Can we still insist that education is the way out? In these cases, those who discriminated against others on grounds of trade union activities were well-educated people.

Mr President, we have discussed the question of spent conviction in the Legislative Council Security Panel. When a person who has committed a minor offence applies for a Certificate of No Criminal Conviction, the Hong Kong Government endorses on the certificate to the effect that the person concerned has committed such an offence. We have inquired as to whether this is the practice in the United Kingdom. We have found that this is not and only Hong Kong adopts such a practice. Why is Hong Kong different? Does it signify some form of discrimination? In fact, what we are faced with is a practical question which need to be resolved immediately. We can at the same time launch an education drive which will in no way clash with the legislative effort. But legislation can surely reinforce work in this regard.

Mr President, the Liberal Party permitted its Members to vote freely on the Court of Final Appeal Bill and on the right of reinstatement in the Disability Discrimination Bill. I hope the Party will similarly allow its Members to vote freely on the present Bill.

Finally, I am grateful to Ms Anna WU for introducing the EOBs and to Dr the Honourable LEONG Che-hung for rolling up his sleeves to take up the chairmanship of the Bills Committee for more than one year which must have cost him a great deal of time, for otherwise he could have been spent such time on carrying out surgical operations. In fact, our endeavours seem to have been all in vain. But I believe the record of today's proceedings will go down in history as an everlasting chronicle. Thank you, Mr President.

MR ROGER LUK (in Cantonese): Mr President, I had not intended to speak. But as my name has been specifically mentioned by the Honourable WONG Wai-yin I believe I need to clarify for the purpose of the record. I believe I and the three Members he mentioned have and will cast our votes according to our conscience and our own decision.

In respect of the three Bills laid before us, I already stated my stance during the debate on the first Bill. The Mandatory Provident Fund (MPF) Bill was similar in one respect to the three Bills laid before us. When I spoke on the MPF Bill, I said the Administration's original conception had been a privatized version of the central provident fund. When the Bill was tabled to the Legislative Council to be voted on, the Bill had gone through a long-drawn-out bargaining process. The Administration had deferred to our requests and had made amendments to the Bill in areas where we had expressed our concern about. The Bill that finally reached us had returned to the basis of the 1992 model of the mandatory occupational retirement protection scheme for all employees.

The three Bills laid before us today are precisely the converse of the MPF Bill. In order to ensure that the Bills be passed during her tenure as Legislative Council Member, the Honourable Ms Anna WU bent over backwards to accommodate the Administration in almost everything that the Administration demanded. She went so far as to allow a number of exemption in the Bills. This, perhaps, was not what she had originally wanted. But the exemptions or exclusions allowed under the Bills have impaired the Bills to a certain extent. As the Honourable Frederick FUNG has observed, the Bills have become riddled with sores and boils and a lot of patching-up is evident.

When a chess game reaches its terminal stage, what choice should we make? Some want to play on and the outcome would depend on who would "checkmate" first. But I think that when a chess game reaches its terminal stage the players should start the game afresh. Why should one make compromises in respect of one's principles? Is it because one wants to have one's Bills passed? Is this a good thing? People in the public gallery have been watching how we

cast our votes. But if we vote in favour of a Bill that has been patched up and pieced together as a result of compromises, what good will it do?

Of course, every Member is under some pressure. But if a Member casts his vote according to other people's instructions because he has been under pressure to do so, then I think he is unfit to be seated here to vote. I believe none of the four Members mentioned by Mr WONG Wai-yin cast their votes otherwise than according to their conscience. Of course, every Member is subject to pressure of one sort or another. Each has his own feelings or sentiments. But one will be unfit to be an employer if one lets one's employee serve as a Member and yet refuses to let him vote independently.

Mr President, I so clarify. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr President, Secretary for Home Affairs Michael SUEN said just now that Hong Kong enjoys political and religious freedom as well as freedom to form trade unions and that Hong Kong people very much treasure such freedoms. But the freedoms we are enjoying now are very fragile because there is no protection. When some people are being discriminated against on grounds of political or religious conviction or trade union activities and society tolerates such discrimination, this will mean that society is stifling such freedoms and depriving us of them. Whenever we discuss this matter, I will invariably think of LAU Shan-ching who is suffering from discrimination and cannot find an employment. Who will view this matter from LAU's perspective? One would suffer intense pain if one was forced to give up one's religion because of discrimination. Of course, LAU has not given up. But many people are forced under pressure to give up their religion or conviction. This is what I mean by freedoms being stifled.

As a trade unionist, I of course am very keen to maintain the freedom to organize trade unions. According to newspaper reports, the Home Affairs Branch is opposed to this Bill on the most preposterous grounds. It alleges that if this Bill was passed members of trade unions would have to pay more insurance premium, the reason being that they would participate in assemblies and processions. The Secretary has had the temerity to give such a preposterous reason. I have not read that confidential paper and do not know if that paper mentions this point. If it does, I hope Members will keep a copy of it on my behalf so that it will serve as historical record. I really admire the Secretary for having thought out such a preposterous and far-fetched reason.

Moments ago, the Secretary for Home Affairs also said the Secretary for Education and Manpower would review next year ways and means to tackle the question of discrimination against trade unions. But I would like to tell Members that the Bill to be tabled by the Administration will be very different from the Honourable Ms Anna WU's Bill in terms of the right of reinstatement. I must reiterate that the right of reinstatement will be very important to a trade union. If the trade unionist is not given the right to be reinstated to his job, the

employer will be able to dismiss one to scare another and thus to cause a trade union organization to crumble. It is because, without trade union leaders, the organization will often become weak. Therefore, the present Bill differs vastly in substance from the Bill to be tabled by the Administration. Hence I support the present Bill. I hope Members will together give it support. Thank you, Mr President.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I rang up home just now and my wife told me I was the second one to have got drunk, the first one being the Honourable Andrew WONG. She told me not to speak any more. Today, I very much appreciate the Honourable Emily LAU who has not yet uttered a word up to now.

I have heard a number of Members speak. I too must speak. The Honourable LEE Cheuk-yan said people had the right to strike and other rights. But this would be an infringement on other people's rights. You can do whatever you please but you should never make other people do what they had been unwilling to do in the first place but which they eventually did because you were bent on having your way. Let me say on behalf of the Government that you, Mr LEE, are too overbearing and the fact that you represent the labour sector does not mean you are calling the shots, does it?

PRESIDENT: Mr CHIM Pui-chung, please address your remarks to the Chair.

MR CHIM PUI-CHUNG (in Cantonese): I admit. A moment ago the Honourable CHEUNG Man-kwong said to me in private that we should not resort to a partisan style of argument but that we should address the question itself. What you want is to take what other people have lost. Why should one lose something in order to let you get it? You should look at yourself in the mirror. Not working and not making an effort but yet requiring others to give. I am talking to you, not to the President. But my remark is intended for other people as well. We have Members seated here who represent the business sector, the financial services sector and the real estate sector. For instance, the Honourable Ronald ARCULLI who sits in front of me dared not speak. If I do not speak up, who else in Hong Kong will speak up from now on? Even if I would not be coming back to this Council next September, I have to say this now. I am not in a fit of pique. I regularly patted you on your shoulder. But when we debate we must have regard to facts and we must not go too far.

I feel that Hong Kong is a place which is hard to come by. We are going after a target and are making a joint effort to strive for what we consider to be the ideal world so as to get what is due to us. The policy secretaries have been doing a hard job lobbying us. But this is for the good of Hong Kong people. Just by lobbying, would their salaries be raised by \$50,000? You represent the labour sector. I represent another sector. We have to fight for the well-being



of Hong Kong people. But we cannot bury our conscience. If other people are completely wrong and you are completely right, does it mean that everything is to be handed over to you for you to do it? Mr President, you will not be sitting here next term. But you will also hope that Members of this Council will, according to their conscience, work for the people of Hong Kong. If we give it to the public without their making an effort, to what avail are the numerous debates we have held here for the past years?

The Honourable Ms Anna WU will eventually be disappointed. But I have promised the two or three Members seated next to me that I will abstain. Even with me abstaining, they may not be able to win. It is because other Members will stick to their stance. A while ago, the voting result was 31 to 24. With me abstaining, the result in the next round of voting will be 30 to 24, just one vote fewer. Therefore, my conclusion is this: “Mr LEE Cheuk-yan, I am happy to have you as Member working with us. But please do not emphasize your representativeness too much. Do not say all others are drunk while you alone are sober. Are you really that smart?”

The Honourable LEE Wing-tat, in criticizing me, used the word “disgusting” for the second time. I feel I am grand. The Democratic Party is disgusted with me and herein lies my success. It is because I have the courage to stand up and be the mouthpiece of those Hong Kong people who have righteous views to express in defiance of the unjust and unreasonable arguments advanced by the Democratic Party under the leadership of Mr Martin LEE. If my constituents think I am wrong, they will be free not to vote for me. If they think I am right, they will vote for me on 17 September. In the next term Legislative Council, I shall continue to represent my constituents and be vociferous in expressing views of their own. I present my greetings and pay my respects to Members.

MR ANDREW WONG: Mr President, may I seek a ruling?

PRESIDENT: Is it a point of order, Mr WONG?

MR ANDREW WONG: Mr President, that was an election campaign message.

PRESIDENT: I think we had better move on.

MR ANDREW WONG: May I seek your ruling as to whether or not that was an election campaign message?

PRESIDENT: Mr WONG, I think you had better sit down.

MR RONALD ARCULLI: Mr President, I assure you and I assure Honourable Members that it was not the eloquence of the Honourable WONG Wai-yin that has brought me to my feet, but the humour of the Honourable CHIM Pui-chung who has brought tears to my wife's eyes up in the Gallery. I thought that in Hong Kong we all believe in freedom of speech which I suspect we do. But obviously when you exercise freedom of silence that is not appreciated and I would have thought that at this hour of the morning that that would be a big plus with all Members.

The real reason for me rising to my feet really is to say to Ms Anna WU that from my own personal point of view she and her team has brought a little knowledge to me, myself, in terms of anti-discrimination laws around the world. And I think when we talk about education process, Anna certainly started it a year and a day ago in this Chamber, and I think that learning process would probably accelerate a little faster than she and her team might expect.

So I think with that we do appreciate the work that she has done. We do appreciate the work that her team has done and we certainly appreciate the representations and the people who have actually come to this Council to put forward their views which I am quite sure will be very useful for us as a guidance when we have to consider this matter in the not too distant future. Thank you, Mr President.

MS ANNA WU: Thank you, Mr President. I am coming to the end and in fact my headache is about to disappear. Good morning. This Bill makes it unlawful to discriminate against someone on the ground of that person's religious or political beliefs, criminal conviction or trade union membership or activity. The Bill prohibits such discrimination in the same important areas of social activity that have been discussed several times already during this extraordinary long sitting, both in relation to my other Bills and the Government's Disability Discrimination Bill.

Both as a business centre and the living environment, Hong Kong benefits from its cosmopolitan and pluralistic character. The provisions against religious and political discrimination reinforce that character. I wish to stress that these provisions do not require either the public or the private sector to give any special recognition to French, political or religious beliefs.

This Bill requires only a degree of tolerance, not preferential treatment and in no way displays as any ordinary legal or ethical standards that apply evenly to all persons and groups.

As regards effect on employment, the Bill does not require employers to carry the burden of other people's religious beliefs. Sometimes with no fault on either side, a natural conflict may arise between a worker's religious beliefs and employer's requirements or preferences. For example, an item of religious clothing may be contrary to a company's dress code or work may be scheduled on important religious holiday.

As the Bills Committee discussed in some detail, the Bill in such situations requires both sides to display a reasonable degree of flexibility to reach a workable compromise if one is possible. If a religious practice is simply not compatible with a genuine job requirement however, the Bill does not require employers to accommodate it. The spent conviction provisions of this Bill extend the protection in respect of spent convictions that is already provided by the Rehabilitation of Offenders Ordinance to which this Bill's provisions are subject.

The meaning of spent conviction has often been misunderstood. It does not mean any past conviction. A spent conviction is defined precisely and narrowly both in the Ordinance and in this Bill. It means a conviction carrying a sentence of no more than \$5,000 and which took place at least three years ago. If a person was sentenced to imprisonment however briefly, his conviction can never be spent. In other words, only quite minor offences are covered. Moreover if a person whose conviction is spent ever commits a second offence he is no longer protected. It is lawful under this Bill as under the Ordinance to take account of any criminal record that is not a spent conviction as defined. Under the Rehabilitation of Offenders Ordinance, it is already a criminal offence today to disclose or obtain dishonestly any information relating to spent conviction. The Ordinance also provides that a spent conviction is not a lawful ground to exclude or disadvantage a person in relation to work. The Bill extends the Ordinance by enabling a person discriminated against because of a spent conviction to seek a remedy through civil proceedings instead of using the more cumbersome and punitive sanctions provided by that Ordinance.

I do not see why the Government should in any way see anti-discrimination laws based on this ground as being so difficult to accept. The arguments that the Government have advanced are simply irrational and baffling.

Much criticism has been made of my laws being based on the Australian models. I must remind the Government that the Disability Discrimination Bill took the Australian model and structurally and in terms of standards, there is no difference between my models and the Disability Discrimination Bill.

When the Legislative Council voted to enact the Rehabilitation of Offenders Ordinance nine years ago, many Unofficial Members suggested that the Ordinance was too conservative and urged that eventually that be reviewed with an eye to expanding the type of offences capable of becoming spent, bringing the Ordinance closer to the more liberal rehabilitation laws in Canada and the United Kingdom. That has not been done and this Bill does not do so. The Bill merely provides a more effective remedy to secure a former offender's existing right to a second chance. I would echo Mrs Elsie TU's call that the Government should look into this area further.

The provisions concerning discrimination against union members also represent a major step forward in relation to remedies. Certain acts of serious anti-union discrimination are already criminal under the Employment Ordinance. This Bill offers a civil remedy for the same anti-union acts and extends this existing protection by more generally prohibiting arbitrary mistreatment of a person because he is or is not a member of a union.

I would like to emphasize again that the Bills that were discussed today are fine Bills, there is nothing wrong with those Bills. I want to ensure however that the Government has no excuse not to accept any of these Bills and hence my last amendments offered.

I want also to emphasize that I did not compromise any of my own principles by making those gestures. A responsible government should protect the community's victims; it should accept responsibilities and it should comply certainly with its own obligations. When has the Government offered any initiative to help victims of discrimination at any time?

I would like to read out an extract from an English newspaper referring to Mr SUEN, and this is what it says: "He made it clear however that the Government had no plans to consult the public or institute measures on discrimination on the grounds of race, religion, political beliefs, trade union membership and past criminal convictions. To be very frank who cares much about these areas. He said Wu did not ask the Government to tackle these areas and if she did the Government would also make commitment to act on those areas".

I must say to Mr SUEN that if you do not care I certainly do and Members in this Chamber do. There are lots of supporters out there who do care. If Mr SUEN is looking for a further request from me I would be happy to make it. I have asked Mr SUEN many times and I am asking Mr SUEN now what commitment can you offer in these areas.

Mr President, I have given the following point much consideration and I would like to refer to this before I conclude. We all realize that Hong Kong has an unusual system of government. It is incumbent upon all of us. It is especially incumbent upon high government officials to ensure that the system

works. We have what is known as an executive-led government. This however does not allow the Government to use that power to deprive victims of protection by default and inertia on its part. This does not permit the Government to kill a legitimate Legislative Council initiative by subverting open and orderly scrutiny of a Bill, absent in itself and by withholding all comments from this process the most essential part of the Legislative Council's work to legislate and to legislate publicly. This does not permit the Government exploiting its position by calling upon policy secretaries or other senior officials or others whose decisions have a direct impact on individual Legislative Councillor's professional life to seek to influence political decisions of those Councillors.

I hope it will not take 500 years later to realize equal opportunities in Mr Simon IP's time span. I have promised support in and outside this Chamber but I would press on until literally the last moment. I am grateful to the supporters in and out of this Chamber from the bottom of my heart and I will thank them personally in turn. I need to register my gratitude to Dr LEONG Che-hung, my team members: Andrew, Carol, Eric, Adam, Nancy, Celie and Barbara. I will not refer to their surnames — it might get too long. I do not regard my work as wasted and I hope my supporters and my team members will think likewise. It has been a heck of a fight and it will continue. I wish the next Legislative Council Session best of luck. Hong Kong will certainly need that luck. Thank you, Mr President.

*Question on the Second Reading of the Bill put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yen voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the motion.

Mr Vincent CHENG and Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 26 votes in favour of the motion and 28 votes against it. He therefore declared that the motion was negatived.

PRESIDENT: As the motion for the Second Reading of the Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill has been negatived, no further proceedings shall be taken on the Bill. The last item of business for this sitting and for this term is valedictory speeches.

#### VALEDICTORY

MRS ELSIE TU: Mr President, every Member must be conscious of the fact that this will be the last time this Council will meet with its present composition and membership. There will be big changes in October.

Your chair, Mr President, will be occupied by an elected Member, and I know that many other Members besides myself are at a loss to know who can fill that seat as well as you have done.

You, Mr President, are appointed to the Council by the Government, but you have been freely elected to the President's chair by a Council that is predominantly elected. That is a clear indication of the confidence and respect in which you are held, as one who invariably makes decisions on procedures in strict accordance with Standing Orders. There may have been times when some Members have felt that you could have been tougher; there may have been times when some Members may have felt you have been too tough. But on no occasion have I heard anyone suggest that you were unfair. On the contrary you are considered to be scrupulously fair.

Mr President, you have faced some difficult situations, and I have seen your brows wrinkled as Standing Orders blipped through your brain until you found the right one, and invariably you have found it.

These past three years have been tough years, as we converted this Council from being part of the OMELCO to being an independent legislature with our own independent secretariat. Thanks to your guidance, based no doubt on your wide experience in the Civil Service, the Executive and Legislative Councils as well as your legal knowledge, we have overcome the problems we faced during the changeover to what we are today — a Legislative Council with our own staff — and, may I add, a very efficient and loyal secretariat.

Yours, Mr President, will be a very difficult act to follow. I am sure we would all be happy if you were to stand for election in some safe constituency so that you might continue your work, because none of the present Councillors, so far as I am aware, can think of anyone who could follow your act.

One other virtue I must mention, Mr President, is your patience. I watch Members coming and going from this Chamber during sittings, but no matter how dull the Bills may be, and no matter how long and repetitious the speeches we make, you still sit on patiently and manage to keep awake while some of our Members succumb to snatches of sleep.

I am sure that all my colleagues will wish you a very happy retirement from your duty as President, and that you will now be able to relax from your heavy responsibilities.

As Sir John SWAINE, may you and Lady SWAINE remain in good health to enjoy your retirement from this Council.

MR ALLEN LEE (in Cantonese): Mr President, after long-drawn-out debates lasting three days, it is in a light-hearted mood that I am now delivering my present speech.

Mr President, I have known you for 15 years and I find that you have sacrificed a lot of your time for the Legislative Council. You are a renowned Queen's Counsel in Hong Kong. Yet you agreed four years ago to become the Deputy President of this Council. Then in 1993 you were elected by Members to become the President of this Council. I feel the biggest sacrifice you have made is not simply that you have deigned to preside over this Council but that you, as chairman of the Royal Hong Kong Jockey Club, have to give up going to the races on Wednesdays and to sit here listening to our lengthy debates. You love horses and yet you are willing, for the good of Hong Kong, to make the big sacrifice of staying away from your horses on the sitting days of this Council.

I believe all in this Council would agree that you are a just, impartial and open-minded President. I concur with the Chairman of the House Committee who has said we all wish to have you as President of the next-term Legislative Council. But you would have to contest the election. If you should stand for election, whether it be direct election, functional constituency election or Election Committee election, we in the Liberal Party would be the first to support you, even to the extent of not contesting the elections ourselves. There are some Liberal Party safe seats and if you should stand we would certainly support you because we wish to have you as President for another term. Yet I know you are retiring. Not only will your retirement be a loss to this Council, it will be a loss to Hong Kong as well. We will miss you. During the past several years, some sittings presided by you were lengthy sittings. For instance, the current sitting lasts three days. Yet you have, from beginning to end, presided over sittings in a just and impartial manner.

On the eve of your retirement, I, on behalf of the Liberal Party, wish you good health and a happy life. I have to congratulate Lady Swaine because you will not be having backaches from long hours of sitting after quitting the presidency. I hope you will remember, during your retired years, that you were the first President of the Legislative Council not appointed by the Governor. Thank you.

MR MARTIN LEE: Mr President, it is the best of times, it is the worst of times. It is the age of wisdom, it is the age of foolishness. It is the season of light, it is the season of darkness. It is the spring of hope, it is the winter of despair. We have everything before us, we have nothing before us. This of course is an abridged version of the beginning paragraph of a Tale of Two Cities by Charles DICKENS. Put in the present tense to reflect Beijing and Hong Kong. I will add three lines of my own. It is the time to stand firm, it is the time to make turns. It is the time for courage, it is the time for cowardness. It is a time to stand down, it is the time to continue.

Mr President, during our term of office, two dear colleagues passed away and two others were sent into prison. One colleague resigned. Now we are finally at the very end of our term of office — 37 of us will be standing for re-elections on 17 September 1995 while the other 23 will retire from this Council including the three Government Members and you, Mr President.

It is not possible to look back these four years without some nostalgia. For most of us there were moments of frustration but not despair — anger but not hatred. We argue vigorously with our political opponents but we did not treat them as enemies. So we know only too well the difference of views and the ability to express them in a legislature are the hallmarks of a free society.



And now that Honourable Members have acquired the skill to make speeches while under the influence of alcohol we know we have become a mature legislature. I think I can speak for all of us who should be fortunate enough to be returned to this Council in October that we shall miss our dear colleagues who will retire from this Council.

I shall particularly miss my neighbour for 10 long years, the Honourable Mr HUI Yin-fat who unfortunately is not here this morning. He has been my contemporary in the University of Hong Kong 38 years ago. I miss him dearly for if I shall ever doze off again during the next term, I will not have the reassuring thought that I can do this in the good company of my honourable colleague.

We shall miss another colleague of 10 years' standing, the Honourable PANG Chun-hoi, who has consistently refused to follow Standing Orders which only permit English and Cantonese to be used in this Council because he speaks neither. The Honourable SZETO Wah will no longer be able to check whether he has pressed the right button by looking at Mr PANG's button, that is, by voting the other way.

We shall miss our tallest colleague in this Council whom I call Martin junior. Though Mr BARROW and I do not see eye to eye on most controversial issues in recent years, we did agree 100% on two very sensitive issues, the abolition of the death penalty and Vietnamese boat people. Those who know his family history would have little wonder for his stance on these matters because as early as 1821, Mr BARROW's great great grandfather, Sir Thomas F BUXTON, a staunch quaker, already argued passionately in the House of Commons in the British Parliament for the abolition of the death penalty which was then carried out on young children for what we would now consider to be very petty offences. But whereas his eminent ancestor failed to win the fight in his time, Mr BARROW succeeded in our legislature in the Summer of 1991.

We shall miss our colleague Mr LAU Wah-sum who has always been polite and gentle, and unlike so many of us who could always keep his cool. Now I come to you, Jimmy McGREGOR. We have fought hard together on the same side quite sometime ago now but we have fought each other vigorously on other issues more recently, just last night and this morning but will always be friends. In your happy retirement from politics, Jimmy do listen more to Mrs McGREGOR, for her views seldom differ from mine, from the Court of Final Appeal to equal opportunities for all. As to you, the Honourable Peter WONG, a friend of the earth, it is a pity that you never joined my party. I promise you that my party will seriously consider your suggestion made to us recently that we will not buy Christmas cards in order to save some trees. But you must promise us that you will take care and that you will not break another arm again.

Our colleague, the Honourable Vincent CHENG, will be missed but our loss will be the Hong Kong Bank's gain. We all look forward to the day when he will become the Chief Executive Officer of the Bank by which time, if Members' emoluments are not increased, there will be plenty of applications for loans.

Now I come to a big colleague who aspires to be smaller — the Honourable Moses CHENG. We shall miss his calls for points of order often well taken and his professional approach to his Legislative Council work.

The Honourable Marvin CHEUNG is certainly one of the most dedicated and hardworking Members of this Council. He never seeks limelight, limelight recently found him. But he has contributed much to this Council particularly on Bills Committees where his professional knowledge and experience prove to be helpful to most Members. We hope he will continue to give us his well-balanced opinions in his professional capacity.

A colleague from my party, Rev FUNG Chi-wood is most concerned with the Daya Bay Nuclear Plant and the environment. In his retirement from politics, he will have more time with his creator and his dear wife — in that order of course. We hope he will remember all of us in his prayers now that he has more time to pray.

The Honourable Timothy HA is also my contemporary in the University of Hong Kong. Yes, he is that old. He is one of the most non-confrontational Members I have ever known. I do not remember Timothy speaking against my party like Mr CHIM Pui chung does every time. On many occasions, he simply votes against us.

The Honourable Simon IP is my successor in the legal function constituency. He did not know what I was getting him into when I urged him to run for my seat in 1991. In those days, the Bar and the Law Society were one. But now they are almost always split. I never knew what a jovial fellow Simon was or could be until last night when he had our evening snack over a few bottles of red wine provided by Martin BARROW while I regret to say, Mr President, the Council was still in session. And I understand he did also very well this evening. His last short speech delivered this morning was a gem which could only be made under the influence of a small measure of good quality red wine.

Dr the Honourable Conrad LAM was not only my contemporary in the University of Hong Kong but we actually stayed in the same hostel, Ritchie Hall. He is very popular with his constituents, many of whom of course are his patients. Conrad always speaks in a way that all his constituents could understand, so even Honourable Members understand. And there is a gentle sense of humour whenever he speaks. He is the best example, Anna, of a real believer in giving equal opportunity to the two sexes, for having first begotten

three sons he did amends by following through with three daughters. Keep going, Conrad. We need more little democrats.

I shall miss the Honourable MAN Sai-cheong who was my running mate in the September 1991 elections to this Council. Sai-cheong has always been soft-spoken but dedicated and I am sure that his colleagues whether in the District Board, the Urban Council or this Council will miss him.

The Honourable Steven POON contributed much to this Council from his great experience on top management. I must confess that I was surprised by his recent decision of not running for elections this September. It seems that even Mrs Miriam LAU was surprised. Well, Steven, enjoy your golf.

The Honourable TIK Chi-yuen is the most gentle and approachable member of my party. The rest are nasty fellows. And yet he is firm on principles. We wish him happiness with his young family and particularly his newly begotten baby boy.

The Honourable Roger LUK is a poet, frustrated by a banking career. This line comes from Christine. He has contributed much especially in Finance Committee meetings where his banking experience and clear and balanced mind helped Members to focus their attention on the real issues in hand. He must be the most sought after bachelor now in this Council after Dr YEUNG Sum's happy marriage.

The Honourable Anna WU is one of our most articulate Members whose analytical mind and professional approach to issues has won her many admirers. Her total dedication to the eradication of discriminatory practices in Hong Kong will long be remembered in this Council. It pains my heart, Anna, that you have decided to leave us. I would have gladly offered my seat to you if my party would only permit me to do so. And of course my seat is safer than the Liberal Party's seats. But Frank and young Jonathan will benefit by our loss.

The Honourable Alfred TSO is relatively junior in this Council but is already a seasoned politician when he joined us. It is a pity that he has decided not to seek re-election in September. I only hope that he will make a comeback before too long.

I have not forgotten you, Financial Secretary. You must know how very popular you are with honourable colleagues. If there was any doubt about it, it was surely dispelled during the end of term dinner last night. You are so popular with Members of this Council because you were the first Financial Secretary to consult Members before formulating your budgets. You know that you are spending the public's money and therefore you consult the people's elective representatives before you decide how to spend and how much to spend on them. You have in short introduced democracy into the colonial Government by adopting a new philosophy of executive-led Government with Hamish characteristics.

Last but certainly not least, I come to you, Mr President. The obvious thing that is on every Member's mind is what will we do without you. You have guided this Legislative Council through the most important years after the introduction of direct election into this Council four years ago with many troublesome Members — Jimmy TO has been one of them. Oh, of course I cannot forget CHIM Pui-chung can I — you have always kept debates going with the minimum of interventions like a first rate referee in a soccer match. Members will all agree with me that you have been fair to those who belong to political parties as well as to the independent Members. I now crave your leave, Mr President, to say something entirely irrelevant which took place some years ago. Those were the days when the President would invite his lawyer friends to play five card stud poker at his home and of course his dear wife, being a very understanding lady, would retire to bed earlier. On one occasion, one of the lawyers had an ace full house and our President had four sixes. He rushed into the room, woke his wife up and say "Dear Gran, I must tell you this. Mr So and So had ace full house and I had four sixes." And Gran said, "But my dear, who won?"

To all our dear friends who will be parting ways with us I say adieu. And in the next six weeks as you and your loved ones are basking in the sun or playing golf, think of us who shall be sweating from floor to floor as we make our home visits canvassing for our voters' support. And if by chance you happen to be answering the door, give us a glass of ice water. God bless you all.

MR MARTIN BARROW: Mr President, may I echo the words of the first four speakers this evening in thanking you for everything that you have done for us over the past four years. Apparently I have miscalculated, it was actually only three was it? So that is the time of day. Your firm, fair and patient leadership has been a significant factor in the successful enhancement of this Council's role over this great period of change.

I would also like to thank Mrs Elsie TU for the way in which she has chaired our House Committee and given us so much leadership in many ways over the past four years. And also the hard working staff of the Legislative Council Secretariat under Mr Ricky FUNG's leadership.

On the Civil Service, I sat opposite the Chief Secretary and her colleagues for the past five years — a period of great progress in the relationship between this Council and the Civil Service. Five or six years ago, the word "lobbying" was, I think, unheard of in government corridors. Nowadays it is impossible to walk out of this Chamber — you cannot even go to the men's room without being asked where you are going. It is rather like we had some bouncers here, you know, they are bouncing us in rather than bouncing us out. But I do not resent that, that is reality and I think it was perfectly reasonable and I think that great team around the back over the last few days have done a tremendous job.

But I would like to wish them all the best of luck for the future and also particularly to the retiring civil servants and of course Mr Hamish MacLEOD who has played such a vital role in guiding our economy over the last five years. He must be surprised to hear about the enjoyment of the red wine over the past two days, given that it was his personal initiative to raise the taxes on red wine so dramatically. But, nevertheless, we all seem to have enjoyed it, so maybe in retirement he can reflect on that a little bit.

Now what about my 56 — I do not know whether I have got the number right, Mr REA — is it 56, other colleagues in the Council? When I was first appointed here in 1988, the press very soon labelled myself, Ron ARCULLI and Paul CHENG as the ABC boys. I think, however, that was a bit of a misnomer — it seemed to imply that somehow we were karaoke experts or something of that sort. But I think if certain Members at the time will remember our efforts in that regard, they certainly would not attest to that being a correct description of our performances with the microphones.

Perhaps a serious note for a moment, Mr President, it has been a great honour to have served amongst such a splendid group of people. We may have got different views, as my senior over here Martin senior said a moment ago, he and I have differed on a great many issues but we have agreed on certain issues and I will miss him and miss many other colleagues here. And I wish him and everybody else here who is standing for election best of luck on 17 September.

I will also of course miss my friends in the breakfast group, but I am delighted that all the breakfast club, as Emily called us a moment ago, is going to stick together. I think only four or five, may be only four members will still be in the Council but we are still planning to have a monthly get together whether it is breakfast, lunch or dinner with or without red wine.

I would also like to thank Mr Peter WONG and colleagues in the Public Accounts Committee. It has been a busy four years under his leadership and I hope we all feel that a great deal of worthwhile work was achieved in that period. I am sure the friendship amongst colleagues will endure for many years to come. Although I will no longer be a Member of this Council, I hope that you will see me here from time to time perhaps up in the Gallery along with Mr LAU Chin-shek and others and keeping a watch over proceedings. He has been described as the Honourary Member representing the labour unions, perhaps I will be the Honourary Member in this building representing the business community.

I would also finally like to thank Members and the Government for all the support they have given for the tourism industry on which, I am afraid, I have spoken repeatedly but that is an enormous important industry to the economy. I hope again that I may be invited here from time to time to come and brief the Economic Services Panel on tourism's progress and key issues facing that industry.

I hope that I will be able to continue serving Hong Kong in any way that I can in the coming years. I look forward to a smooth transfer to Chinese sovereignty in 1997 and I am confident that Hong Kong will continue to be a desirable and prosperous home for the people of Hong Kong as well as an international business centre under Chinese sovereignty.

Mr President, I hope that you and my colleagues and at least some of our civil servant colleagues and friends will have a well-deserved holiday over the next few weeks. Thank you.

MR JIMMY MCGREGOR: Mr President, thank you for allowing me to make a final speech in this Council. I have thoroughly enjoyed my seven years as an elected Member on the Legislative Council. It has been a wonderful experience especially as it has followed some 35 years of service to Hong Kong in several different ways and different fields. I feel honoured and proud to have been given the opportunity to work with so many dedicated people on matters of great importance to Hong Kong and our incomparable people.

This has been a time of great change and transition in which the Legislative Council has had a pivotal role. I want to congratulate my fellow Councillors for their hard work and huge endeavour to make our system of government work better and work well. There could be no more honourable objective. I have enjoyed working with all of you.

I want to express my admiration for the tremendously hard working and dedicated staff of the Council Secretariat. They do extraordinarily well for this Council.

My thanks also to the many good friends and ex-colleagues of mine in the Government at all levels, and I will say from the Governor down, I have supported you all because you represent one of the finest Governments in the world. Hong Kong is very well served. My heartfelt thanks to the many many media representatives with whom I have worked not only during the last seven years but also the nearly 40 years before that. You have all been very kind to me through the years.

My sincere thanks to the membership of the Hong Kong General Chamber of Commerce who have supported me so very well through two contested elections and in many other ways.

The Hong Kong Democratic Foundation has a special place in my heart. Despite its small numbers, I have been strongly supported and assisted by the Foundation whose research papers are as good as any others that I have been given or seen.

Thank you, Patrick, George, Francis, Ian and all my other friends in the Foundation.

Mr President, I also want to thank you most sincerely for your courteous helpful, sensible and entirely agreeable management of this Council. You have been an outstanding President and Chairman.

Finally, I want to say that my heart is with Martin LEE and his democrats. They have done an outstanding job in providing Hong Kong people with a choice in politics and in opening wide discussion on our political opportunities and responsibilities. That can only be good for Hong Kong. I admire Martin LEE personally and his dedicated followers. My heart is with the democrats but my head sometimes tells me to vote with the Liberal Party, especially when economic and trade issues are under discussion.

I have always admired for a very long time now Elsie TU and I really will continue to do so. I have to say that there are also many young Elsie TU's in this Council, some of them very loud indeed and they will do very well for the Council during the next Session.

I have tried hard to work for Hong Kong and to be a good Councillor, but most of all in this Council I have just been me. Thank you all. I shall miss you all.

MR VINCENT CHENG: Mr President, although all of us feel relieved that this marathon sitting of three and a half days is finally coming to an end, our urge to leave this Chamber is clearly not there as we are all savouring our final moments as Members of this Council.

The last three years and eight months is certainly a period which none of us will ever forget. While we argue heatedly over the many issues that Hong Kong has to resolve, we have rarely resorted to personal abuses or using unparliamentary language to attack our colleagues.

On the rare occasions when our emotion temporarily led to a slip of tongue, we never really meant insult and any wound would quickly be healed in the Ante Chamber with a pat on the back or sharing a good TV programme together such as the World Cup soccer. But Ricky, I have to tell you that you have been cursed many times by Albert CHAN for not subscribing channel 23, the pay-movie channel. Despite the diversity of political and social values held firmly by Members, despite press reports of conflicts and accusations among Members, genuine friendship has sprung and flourished in this wonderful institution. I for one will remember fondly the joy, the sorrow, the laughter and angers that we all shared intimately in the last four years — sentiment which people outside this Chamber would never be able to feel fully.

Mr President, no doubt political commentators, the press and the public will give their assessment of how Members of this Council have performed to their expectations. If we were to vote for a single Member who has made a lasting impact in this Chamber, I am sure you, Mr President, would be our unanimous choice. Chairing meetings of this unruly lot is no mean task, no easy task, especially when they are under the influence of alcohol. This task not only requires a legendary kidney, it also requires cheeks chemically frozen before each sitting with dental anaesthetic. Since this is the last sitting, perhaps you should reveal to us your secret formula of keeping a straight face when Mr CHIM Pui-chung who could be so uproariously funny spoke.

Mr President, this institution owes you a tremendous vote of thanks for your efforts to define the role of an unofficial and elected Chairman. You chair our meetings with honourable impartiality, you listen to every word that is uttered in this Chamber with immense concentration while half of us fell asleep and the other half indulge in some sort of fantasies. You make rulings which will be the norm governing the behaviour of this Council. Mr President, we could not have asked for a better Chairman. The immense respect we have for you is a reflection of the integrity, intelligence and moral courage you have brought to this job. The knighthood is a fitting tribute to your dedication and service to Hong Kong. I am sure you can remember how we shared the joy when you were named in the Honours List.

Next, I would pay tribute to the three Official Members who, like appointed Members, are also part of the extinguishing species. I know how you all feel in these four years — you feel we have been too harsh to you. You feel you have been unfairly criticized, you feel that you have not been loved. These are all true but I am sure you would feel happier if you look at why we are doing this to you. This Council has extremely high expectations of civil servants. Not only do we expect you to be able to walk on water, we also expect you to turn it into wine. I know why it is a particularly touchy subject to Hamish. I will therefore not pursue this subject further but I would like to wish Hamish all the best in the years to come when you wrap yourself in a blanket in Scotland wondering what to do at eight o'clock in the evening — you will remember us fondly with great affection, especially the song that we sang you up in the dining room last night while people were still arguing over which way they should vote.

To the Chief Secretary, I would like to say on behalf of the breakfast group that Hong Kong is fortunate to have such a fine Civil Service under your leadership, free of corruption, eager to perform and I would say too eager in the last few days. We have nothing but the highest regards for these fine men and women and I sincerely hope that the next legislature will continue to treat them kindly and accord them with the dignity and respect that they plainly deserve.



Mr President, I cannot finish this speech without remembering the two colleagues who have permanently left us, Mr Stephen CHEONG and Mr Stephen NG. Although they are frequently remembered by many as representatives of the two ends of the Hong Kong political spectrum, I remember them more on what is common between them, their love of Hong Kong and their dedication to public service.

Lastly, Mr President, I think I will never forget our latest invention in this Council which is official voting instructions. It worked quite well for me until some private non-official Members also sent them theirs, that was quite confusing. And may be in the next Session, the Chief Secretary would kindly authenticate the true copy so that I will know what to do but unfortunately I will not be here.

Mr President, I will remember this Council dearly. I will remember every one of you dearly and I wish you all well. Thank you.

REV FUNG CHI-WOOD (in Cantonese): Mr President, four years have passed in the twinkle of an eye. Looking back on the past four years, it seemed a rather long period but intensely full of happenings. During these four years, I have learnt a lot. Like other Members, I very much treasure the time we spent together in carrying out the work of this Council. I recall when I first joined this Council I was hoping that, in carrying out the work of this Council, I could promote democracy, protect human rights and improve the people's livelihood. In relation to livelihood issues, the current term Legislative Council has effected patent improvements. But, in terms of democracy and human rights, progress has been relatively slow. I hope there will be improvement in the next term.

Let me say what I expect of the next term Legislative Council. I hope that, in the course of debates, Members will address their arguments with reference to the subject in question, not with reference to a specific person. I also hope that Members will respect the rules of the game and abide by certain gentlemen's agreements. I further hope that the Government will give greater logistical support to Members, particularly in terms of resources. It is because Members incur huge expenses in maintaining their own offices. I hope the Government will substantively increase the resources allocated to Members so that their work will be more effective.

Mr President, Honourable Members, I shall leave this Council and cease to be a Member. I shall miss my days with this Council. Yet I still cherish high expectations of this Council. I hope Members will continue to uphold justice, protect human rights and promote equal opportunities for the benefit of Hong Kong people. I believe Members will not let Hong Kong people down.

Earlier, some newspapers sent along questionnaires to inquire of the work performance of Members. I feel that each Member of this Council has his or her own particular contribution to make. Each has his or her own special expertise. Each is worthy of respect by Hong Kong people. Even though we do not share the same views, or the same political convictions, our common goal is to serve Hong Kong. I hope Members, irrespective of whether they are returning to this Council to serve another term or taking up other social positions, will continue to work for the well-being of Hong Kong people.

Mr President, Honourable Members, government officials and staff of the Legislative Council Secretariat, good-bye and God bless you.

MR FREDERICK FUNG (in Cantonese): Mr President, I have been with this Council for more than three years. First, I must thank the staff of the Legislative Council Secretariat for the support they have given Members. I also thank you, Mr President, and the Secretary General for the meticulous arrangements made both inside and outside this Council so as to enable proceedings to run smoothly. During the past three-odd years, I have learnt from my colleagues here and government officials real-life politics for which I am grateful.

Mr President, today is the last sitting of the current term Legislative Council. During the past three-odd years, this Council has experienced a myriad of momentous events and changes. Not only have Members borne witness to history, they have been instrumental in shaping history. In fact, Hong Kong today is in the midst of an era for economic restructuring and power transfer. And of course all sorts of possibilities exist. But during the past three years, the row between China and Britain, particularly Governor PATTEN's political reform package, has caused a change to the social atmosphere. Some individuals and political groups supported China while others supported the Governor and Britain. Those who repeatedly sided with China would easily be regarded as pro-China or pro-communist; and those who repeatedly sided with Britain or the Governor would be regarded as pro-British. When the row became red-hot, the two camps took a hostile and confrontational stand against each other and no middle or neutral ground was possible. Therefore, in proceedings before this Council, if a Member supported China over one thing but opposed China over another, or if a Member supported Britain or the Governor over one thing but opposed Britain or the Governor over another, the Member would be misunderstood, criticized and considered by people to be ambivalent. Circumstances have forced us to take sides. For the past three-odd years, Hong Kong people have been sucked into the maelstrom which is the Sino-British row. My personal feeling is that the situation of Hong Kong people; particularly politicians, can be likened to what Charles DICKENS described in his *A Tale of Two Cities* which told of the social ethos in 19th century Europe. A moment ago the Honourable Martin LEE read out a passage

from *A Tale of Two Cities*. Let me also read out a passage from the Chinese translation of *A Tale of Two Cities*:

“It was the best of times, it was the worst of times; it was an age of wisdom, it was an age of foolishness; it was an age of faith, it was an age of skepticism; it was a season of light, it was a season of darkness; it was a spring of hope, it was a winter of despair; the future held everything for us, the future held nothing for us; we proceeded to heaven, we proceeded to hell.”

However, I and the Association for Democracy and People’s Livelihood are of the view that the Hong Kong we are now in is in the midst of economic restructuring and power transfer. It is full of possibilities. This is the essence of Hong Kong and the culture of Hong Kong people. But faced with the aforesaid economic and political changes, we must not force society to polarize but to make society embrace all, including manpower, financial power and wisdom. We must, at this juncture of momentous changes for Hong Kong, create a pluralistic society, a democratic society, a society which embraces all Hong Kong people and never leaves any Hong Kong person out in the cold.

After today, some Members of this Council will retire from the political arena and develop their own businesses. Some others will choose to contest the upcoming elections and seek another term. I have chosen the latter. Here I wish Members every success in whatever pursuit they have chosen to take up, whether it be business endeavour or retirement. To those Members who have chosen to stay in politics, I wish them every success in their career so that the path they follow will widen and become well trodden. I hope all of us will build for Hong Kong a democratic society under the principle of one country, two systems and Hong Kong people ruling Hong Kong.

MISS EMILY LAU (in Cantonese): Mr President, we have been seated in this Chamber for almost 18 hours. So, I shall be very kind. I shall only say a few words. I wish to take this opportunity to pay respects to several Members because they have impressed me enormously.

The first Member I wish to pay respects to is, of course, you, Mr President. Moments ago, a number of Members already sang praise to you and I shall not repeat after them. I believe as an independent Member you are fair and impartial. There have been comments that you sometimes side with the Administration. I feel that such comments are most unfair. Although I do not invariably agree with every ruling you made, I can tell you, Mr President, that during my four-year tenure with this Council I have found you to be very just and very impartial.

Mr President, another Member to whom I wish to pay respects is the Financial Secretary. During the Budget debate I already told the Financial Secretary that I admired him for setting the precedent of consulting Members. Such consultation is most welcome to Members of this Council. I hope this attitude of the Financial Secretary will be contagious so that other policy secretaries will cherish such attitude too. I believe under the leadership of the Chief Secretary this will become the predominant ethos of the Administration. I wish the Financial Secretary a happy retirement after he returns to Scotland where he can go over the videos he shot with us.

Mr President, another Member is the Honourable Jimmy McGREGOR. Mr McGREGOR gives me the impression of being a formidable warrior. He is like a warrior going into battle. He is formidable. At the same time, I respect his principles although we do not sometimes share the same views in quite a number of areas.

Still another Member is the Honourable Peter WONG. I served on several committees together with Mr WONG. Our political views differ in a number of respects. But he has impressed me enormously. He is hardworking and buckles down to his work in all seriousness, particularly in relation to environmental protection. I am disappointed that he is not seeking another term with this Council. I hope he will continue with his environmental protection work to serve the Hong Kong community.

Of course, I must mention our respect for the Honourable Ms Anna WU. I have praised her so many times in this Council, so I shall not say too much now. I just hope Ms WU will consider standing for election to rejoin this Council.

Finally, Mr President, another Member whom I wish to pay respects to is Dr the Honourable Conrad LAM who sits next to me. I believe Dr LAM is probably the only Member in this Council whose thinking and stance are more or less similar to mine. I very much respect Dr LAM. His stance is clear and he is frank and forthright. Members may find Dr LAM rather low-keyed these couple of years. But Members can see that his stance has not changed one bit. I am honoured to be seated next to Dr LAM. I shall miss him the next term.

Lastly, I have, of course, to pay respects to the Legislative Council Secretariat staff led by the Secretary General. They have worked very hard and given us logistical backup. Mr President, I wish you, Honourable Members, and government officials a happy summer. In particular, Mr President, I wish you good luck at the races. Thank you.

DR PHILIP WONG (in Cantonese): Mr President, four years passed quickly. I have never, during these four years, seen you, Mr President, in such a light-hearted mood as you are now in. Your mood has inspired the same measure of light-heartedness in all of us seated here. No matter what our political views are, if we are asked to assess your performance, we will give you 100 marks.

A few months from now, some Members will rejoin this Council while some others will be otherwise engaged to continue to serve Hong Kong. No matter whether we will be rejoining this Council or be otherwise engaged, if we come across each other in the street, I will, I promise, say that we are forever friends. Thank you.

DR YEUNG SUM (in Cantonese): Mr President, I believe Members all appreciate the Honourable Martin LEE's speech. He is probably in a light-hearted mood today. So his speech was warm and humorous.

Mr President, your impending retirement makes me feel that a president of your calibre is hard to come by these days. Since joining the Legislative Council, I have never thought that we could ever have a better, more professional, more just and more understanding President than you, Mr President. I believe you have set a good example. If the Legislative Council of Hong Kong can maintain such a standard of fairness and impartiality, it will be to the benefit of Hong Kong people. I hope after your retirement your life will take on a lustre of another sort.

Moreover, I would like to say that Financial Secretary Sir Hamish MacLEOD has set a good example in relation to the formulation of the Budget. I have to say "Thank you" to him. He displayed a pleasant attitude whenever Members from the Democratic party met him to discuss the Budget. I hope the good example he has set will be followed by the Financial Secretary-designate. Sir Hamish's open and liberal attitude took much of the gale force out of the political storm that raged round the Budget so that it passed with little hitch. That should go to his credit.

I would like to mention two good friends of mine. One was Stephen NG Ming-yum. Even today, four years after his death, I still miss him. He was my good friend. His death was a loss to Hong Kong. Another was Stephen CHEONG. I did not share his political views but I very much admired his debating talent. My impression of him is still fresh and strong on my mind.

Lastly, I would like to say that the Legislative Council has built up a culture of its own which is hard to come by. I hope, after 1997, this culture will survive irrespective of the developments Hong Kong will experience. Members do not share the same political views but we treat one another with courtesy. Though the Honourable CHIM Pui-chung's remarks may sometimes have gone too far, I still treat him as a friend. No matter what happens in the future and no matter how our political views differ, I hope we can maintain this culture. Thank you, Honourable Members.

MR ROGER LUK (in Cantonese): Mr President, as a junior Member, I am happy to be the last non-official Member to speak before this Council dissolves. I shall not repeat the praises, criticisms, sentiments and thanks other Members have expressed.

By an auspicious configuration of the stars, I have joined this Council to do what best I can to serve Hong Kong, the place where I was born and grew up. During the past three years, I have profoundly experienced the plight of the "one-minute" politician and the true meaning of "one-minute" politics. I believe the motto of every successful politician should be: To spend one minute on weaving the framework for a more ideal society; to spend one minute on supporting the implementation of policies conducive to the realization of the ideal; and to spend one minute on criticizing the implementation of policies which lays this ideal to rest.

During the past few years, Hong Kong's political arena saw momentous changes. Outside this Council, people were vying for a chance to join the power establishment. China and Britain were locked in a never-ending struggle. The political situation was dominated by dramatic and unpredictable changes. Within this Council, faces have come and gone, political parties took on one another and arguments flew amid frayed tempers. Fortunately, a positive side to all this is the maturing of the parliamentary system, the ripening of the meticulous style in which matters are being dealt with, the heightening of the public's political awareness and their enthusiastic participation in politics and related deliberations. On the other hand, the Government's work efficiency has been improved and its transparency enhanced. This Council's function as a mechanism to monitor the Government and as a check and balance is being developed and given full play.

Debates form a routine activity in one's parliamentary career. If we adopt an *in rem* rather than an *in personam* debating approach, the more we debate an issue the more the truth will emerge. But in the heat of debate, one may, out of quick tempers, say some outrageous things and hurt the feelings of one's colleagues. One should be on guard against this. As an old saying has it, "An argument couched in kind terms will be responded to by people from afar; a breach of this principle will engender suspicion which will alienate even close comrades".

In the Lo Han Hall of Lingyun Monastery at Leshan, there is a couplet which reads: “A laughing face to laugh at past and present events so that all worldly affairs are handled in laughter; a vast belly to accommodate heaven and earth so that there will be room for everybody”. I hope Members will still be courteous to one another during the cut and thrust of verbal exchanges. When we debated the Governor’s policy address in 1994, I pointed out that one of the important future missions of the legislature was to develop an internal mechanism for checks and balances. When the executive branch of the government is made up of civil servants and the legislature is constituted by elections, the former will have the responsibilities but no power while the latter will have the power but no responsibilities. The executive is subject to checks and balances exercised by the legislature. If the legislature does not have an internal mechanism for checks and balances, the executive will be under enormous political pressure which will be detrimental to future political development. This is one of the reasons why I cannot support the Honourable Miss Emily LAU’s proposal for 60 directly elected seats. As a matter of fact, the executive and the legislature should be partners complementing each other and working for the welfare and benefit of six million people. The executive and the legislature should not have separate loyalties and should not vie with each other for the leadership role. An executive-led government need to have an executive branch which possesses the ability and dynamism of leadership before it can lead.

Recently, some reporter friends asked me what advice I would offer the next-term Legislative Councillor. By way of answer, I would borrow a motto from a senior banker. “When you criticize, do not go all the way; when you argue, concede to reason”. In other words, never press one’s advantage too far and that will benefit oneself as well as others. At this moment of parting, I wish Members would take note and act on this motto. I hope we will be of service to Hong Kong in the days to come.

Finally, I pay respects to you, Mr President. Not only are you the most hardworking Member of this Council, you are a most upright, fair and impartial president.

CHIEF SECRETARY: Mr President, the Administration always likes to have the last word on any issue. On this occasion, I will gladly take second place, that is, second only to you, Mr President. This is the sitting chaired by you, Mr President, and attended by the Financial Secretary, Hamish MacLEOD.

I would like to express on behalf of the Administration our deepest gratitude to both of you for your remarkable contributions to this Council.

Mr President, you were appointed as Deputy President of this Council in October 1991 and elected as President in February 1993. Under your leadership, the independence of the Legislative Council has been firmly established. The independent Legislative Council Commission was set up. There has also been a significant reform of the Committee system which has enabled Members to scrutinize government proposals more efficiently.

A record number of Bills and subsidiary legislation have also been passed in this Council under your leadership. In this Session alone, we passed 125 Bills and a record number of questions and motion debates have been raised about government policies and proposals.

Most important of all, Mr President, you have ensured that the debates and discussions on important policy issues in this Council have taken place in an orderly and relatively civilized environment. You have enforced the Standing Orders of the Council firmly but fairly. Without your clear guidance and legendary patience and indulgence, not to mention your remarkable ability to sit in your chair for hour after hour, I doubt whether we could have managed to pass so many Bills, some of which were very controversial over the last three days.

As the first non-official President and the first elected President, you have set high standards which I hope will guide your successor in the years ahead. I am sure that if you were to put the statement to the vote you will get a resounding “Aye”. Yours will certainly be a hard act to follow.

In the Legislative Council we turn to you, Mr President, for guidance. When it comes to managing our finances, you could not find a safer pair of hands than Sir Hamish’s. His too will be a hard act to follow. With his experience, dedication and foresight, he has steered Hong Kong on a steady course of economic growth and consolidated our position as an international centre of trade and finance. In four successive budgets, he has reduced taxation, increased expenditure and increased our financial reserves. How many Finance Ministers in this world can say that. In doing so he has managed to strike a balance between encouraging free enterprise and maintaining competitiveness on the one hand and promoting fair treatment and assistance for those who need them on the other one, in other words what he called “consensus capitalism” in his budget speech in March this year.

Hamish has of course played a leading part in this Council and in the relationship between the Administration and the Members of this Council. Members may perhaps remember him best for the initiatives that he has taken to hold regular consultations with all Members on proposals for revenue and expenditure, for his clear and concise budget speeches that nevertheless contained more information than ever before, for his unflinching courtesy and unflappable demeanour, and of course for his passion for tennis.



Mr President, at the end of such a long sitting, I hope I will be forgiven if I do not list all the significant contributions which you and Hamish have made to this Council and Hong Kong. These are a matter of record. We are all sad to see you both leave this Council. We will certainly miss you and we wish you both and your long suffering but supportive wives, Gwen and Fiona, a happy retirement from your offices and all success in your future ventures.

Many other Members of this Council will also not be returning to this Chamber in October, in most cases by their own choice; one or two perhaps as a result of the voters' choice. To all those who have decided not to stand for election, I would like to express the Administration's appreciation and thanks for their hard work in this Council, and thus for the people of Hong Kong over the past four years. I am sure that they will all continue to serve the community in other ways.

Finally, Mr President, this is the last time that government officials will sit as Members of this Council. This brings to an end a particular chapter in our constitutional history. In October we will start a new chapter with a wholly elected Legislative Council. Over the past four years, we have had some vigorous debates in this Council, punctuated by passionate and at times colourful speeches. In many areas we have been able jointly to forge a consensus on the way forward. It is true that the Administration has not been able always to accept Member's views, but we have always shared the desire of non-official Members to do what we believe is best for the people of Hong Kong. This is so in the past. It is so now and it will be so in the future.

My colleagues and I will miss the cut and thrust of debates in this Council though I cannot say that we will miss the chime of the division bell. But of course you have not seen the last of us. My colleagues and I will continue to take a close interest in the proceedings of this Council and we hope to attend its sittings regularly in our new capacity as public officers. No doubt we will have to work even harder to persuade Members of the Council of the wisdom and appropriateness of the proposals that the Administration will put before this Council. But the last four years have given us plenty of practice and the last three days in particular have helped us sharpen our lobbying skills. We look forward to working with both old and new Members of this Council in preserving and strengthening the Hong Kong that we all love.

## **END OF SESSION**

PRESIDENT: It has been a rare, I think I could probably say, unique privilege to preside over the Legislative Council of Hong Kong these last four years. These have been truly momentous years with so much telescoped into that period. This Council has grown in maturity and stature during that time and each of you has made your contribution to that process. Now Hong Kong moves into the next stage of its political evolution. I wish all of you the best of fortune in the years ahead, whether within this Council or outside. I would like

in particular to thank Mrs Elsie TU, the President's Deputy, for her unfailing courtesy and consideration at all times. I would also wish to record my gratitude to all staff of the Legislative Council Secretariat for their invaluable contribution to the work of this Council. It must be a source of great satisfaction to the Secretary General and his team the fact that they will provide the continuity so necessary for the efficient functioning of the Hong Kong legislature in the years ahead.

This sitting is now concluded. (*Applause*)

*Adjourned accordingly at two minutes past Three o'clock on the morning of 29 July 1995.*

*Note:* The short titles of the Bills listed in the Hansard, with the exception of the Disability Discrimination Bill, Interpretation and General Clauses (Amendment) Bill 1995, Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995, Organized and Serious Crimes (Amendment) Bill 1995, Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill, Hong Kong Sheng Kung Hui Bill, Church Body of the Hong Kong Sheng Kung Hui Bill, Hong Kong Sheng Kung Hui Foundation Bill, Block Crown Lease (Cheung Chau) Bill, Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill and Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

