OFFICIAL RECORD OF PROCEEDINGS
立法局會議過程正式紀錄

Wednesday, 24 April 1996
一九九六年四月二十四日星期三

The Council met at half-past Two o'clock
下午二時三十分會議開始

MEMBERS PRESENT
出席議員：

THE PRESIDENT
THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.
主席黃宏發議員，O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.
李鵬飛議員，C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.
周梁淑怡議員，O.B.E., J.P.

THE HONOURABLE SZETO WAH
司徒華議員

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.
劉皇發議員，O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.
何承天議員，O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.
夏佳理議員，O.B.E., J.P.
THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

劉健儀議員，O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.
梁智鴻議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP
陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG
張文光議員

THE HONOURABLE CHIM PUI-CHUNG
詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE
馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA
何敏嘉議員

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.
黃震遐議員，M.B.E.

THE HONOURABLE EMILY LAU WAI-HING
劉慧卿議員

THE HONOURABLE LEE WING-TAT
李永達議員

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.
李家祥議員，J.P.

THE HONOURABLE FRED LI WAH-MING
李華明議員

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

唐英年議員，J.P.

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., J.P.
黃秉槐議員，M.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG
黃宜弘議員

THE HONOURABLE HOWARD YOUNG, J.P.
楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN
黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI
陸恭蕙議員

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.
田北俊議員，O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN
李卓人議員

THE HONOURABLE CHAN KAM-LAM
陳鑑林議員

THE HONOURABLE CHAN WING-CHAN
陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN
陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO
鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN

鄭明訓議員

THE HONOURABLE CHENG YIU-TONG
鄭耀棠議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG
張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG
張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P.
蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN
朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN
何俊仁議員

THE HONOURABLE IP KWOK-HIM
葉國謙議員

THE HONOURABLE LAU CHIN-SHEK
劉千石議員

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.
劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK
羅祥國議員

THE HONOURABLE LAW CHI-KWONG
羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG
梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE
廖成利議員

THE HONOURABLE LO SUK-CHING
羅叔清議員

THE HONOURABLE MOK YING-FAN
莫應帆議員

THE HONOURABLE MARGARET NG
吳靄儀議員

THE HONOURABLE NGAN KAM-CHUEN
顏錦全議員

THE HONOURABLE SIN CHUNG-KAI
單仲偕議員

THE HONOURABLE TSANG KIN-SHING
曾健成議員

DR THE HONOURABLE JOHN TSE WING-LING
謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E., I.S.O., J.P.
黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING
任善寧議員

MEMBERS ABSENT

缺席議員：

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
李柱銘議員，Q.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB), J.P.
李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
倪少傑議員，O.B.E., J.P.

THE HONOURABLE JAMES TO KUN-SUN
涂謹申議員

DR THE HONOURABLE YEUNG SUM
楊森議員

PUBLIC OFFICERS ATTENDING
出席公職人員：

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.
CHIEF SECRETARY
行政局議員布政司陳方安生女士，C.B.E., J.P.

MR GORDON SIU KWING-CHUE, J.P.
FINANCIAL SECRETARY
財政司蕭炯柱先生，J.P.

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.
ATTORNEY GENERAL
行政局議員律政司馬富善先生，C.M.G., J.P.

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

運輸司鮑文先生，I.S.O., J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE
生福利司霍羅兆貞女士，O.B.E., J.P.

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES
財經事務司許仕仁先生，J.P.

MR JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER
教育統籌司王永平先生，J.P.

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY
保安司黎慶寧先生，J.P.

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY
工商司俞宗怡女士，J.P.

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS
規劃環境地政司梁寶榮先生，J.P.

MR ALAN LAI NIN, J.P.
SECRETARY FOR THE TREASURY
庫務司黎年先生，J.P.

MR LEO KWAN WING-WAH, J.P.
SECRETARY FOR ECONOMIC SERVICES
經濟司關永華先生，J.P.

MRS STELLA HUNG KWOK WAI-CHING, J.P.
SECRETARY FOR HOME AFFAIRS

政務司孔郭惠清女士，J.P.

CLERKS IN ATTENDANCE
列席秘書：

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL
秘書長馮載祥先生

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL
副秘書長羅錦生先生

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL
助理秘書長吳文華女士

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL
助理秘書長陳欽茂先生

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Official Languages (Alteration of Text) (Supplementary Medical Professions Ordinance) Order 1996	154/96
Official Languages (Authentic Chinese Text) (Enforcement of Rights (Extension of Time) Ordinance) Order	(C) 29/96
Official Languages (Authentic Chinese Text) (Supplementary Medical Professions Ordinance) Order	(C) 30/96
Commissioner for Administrative Complaints Ordinance (Amendment of Schedule 1) Order 1996	155/96
Schedule of Routes (Citybus Limited) Order 1996	156/96
Medical Registration (Amendment) Ordinance 1995 (87 of 1995) (Commencement) Notice 1996	158/96
Official Languages (Authentic Chinese Text) (Port Control (Cargo Working Areas) Ordinance) Order	(C) 31/96
Official Languages (Authentic Chinese Text) (Protected Places (Safety) Ordinance) Order	(C) 32/96

Official Languages (Authentic Chinese Text) (Disposal of Uncollected Goods Ordinance) Order ..... (C) 33/96

Official Languages (Authentic Chinese Text) (Protection of Non-Government Certificates of Origin Ordinance) Order ..... (C) 34/96

Official Languages (Authentic Chinese Text) (Limitation Ordinance) Order ..... (C) 35/96

Stamp Duty (Jobbing Business) (Options Market Makers) Regulation 159/96

Residential Care Homes (Elderly Persons) (Amendment) Regulation 1996 ..... 160/96

Adoption (Amendment) Rules 1996 ..... 161/96

文件

下列文件乃根據《常規》第 14(2)條的規定而提交會議席上省覽：

項　目

附屬法例 *法律公告編號*

《1996 年法定語文(修改文本)(輔助醫療業條例)令》 154/96

《法定語文（中文真確本）（權利的強制執行(延展期限)條例）令》 ..... (C) 29/96

《法定語文（中文真確本）(輔助醫療業條例)令》 ..... (C) 30/96

《1996 年申訴專員條例（修訂附表 1）令》..... 155/96

《1996 年路線表（城巴有限公司）令》 156/96

《1995 年醫生註冊（修訂）條例（1995 年第 87 號）
1996 年（生效日期）公告》 158/96

《法定語文（中文真確本）
（港口管制（貨物裝卸區）條例）令》 ... (C) 31/96

《法定語文（中文真確本）
（受保護地方（保安）條例）令》 ..... (C) 32/96

《法定語文（中文真確本）
（無人收領貨品處置條例）令》 ..... (C) 33/96

《法定語文（中文真確本）（非政府簽發
產地來源證保障條例）令》 ..... (C) 34/96

《法定語文（中文真確本）（時效條例）令》... (C) 35/96

《印花稅（證券經銷業務）
（期權莊家）規例》 159/96

《1996 年安老院（修訂）規例》 160/96

《1996 年領養（修訂）規則》 161/96

Sessional Papers 1995-96

No. 74 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1995-96
Public Finance Ordinance : Section 8

No. 75 — Mass Transit Railway Corporation
Annual Report 1995

No. 76 — Kowloon-Canton Railway Corporation
Annual Report 1995

No. 77 — Report of the Broadcasting Authority
September 1994 - August 1995

No. 78 — Report of the Director of Audit on
the results of value for money audits
March 1996 - Director of Audit's Report No. 26

一九九五至九六年度會期內提交的文件

第 74 號 — 一九九五至九六年度第三季
獲批准對已核准的開支預算作出更改的報告
公共財政條例：第 8 條

第 75 號 — 地下鐵路公司
一九九五年報

第 76 號 — 九廣鐵路公司
一九九五年年報

第 77 號 — 廣播事務管理局報告書
一九九四年九月至一九九五年八月

第 78 號 — 核數署署長之衡工量值式核數結果報告書
一九九六年三月 — 核數署署長第二十六號報告書

ADDRESSES

Mass Transit Railway Corporation Annual Report 1995

FINANCIAL SECRETARY: Mr President, in accordance with section 16(4) of the Mass Transit Railway (MTR) Corporation Ordinance, I table the annual report and accounts of the Corporation for the year ended 31 December 1995.

In 1995, the MTR carried 813 million passengers, 1% more than 1994. Total revenue increased by 10% to $5,665 million, while total operating costs before depreciation increased by 13% to $2,521 million. Interest and finance charges were at $1,289 million, 2% higher than last year.

The Corporation has adopted a fare policy which offers a value-for-money service and generates sufficient funds to finance expenditure on upgrading and improving the existing system. Over the next five years, the Corporation will spend $8 billion on capital improvement projects.

The total debt outstanding at the end of 1995 was close to HK$15 billion. To finance the Airport Railway, the Corporation's borrowings are expected to increase in the next two years. The Corporation continues to enjoy respect in worldwide financial markets. Its debut, Yankee bond in the United States, was executed well and established another benchmark.

During the year, the Government injected equity totalling HK$11.7 billion for the construction of the Airport Railway. Progress on construction is satisfactory. I am pleased to note that the Corporation is confident of the Airport Railway being completed within estimate.

The Corporation's net profit for 1995 was $1,196 million compared with $1,038 million in 1994. The accumulated losses of $99 million at the end of 1995 will not be extinguished until 1996. The Corporation has not therefore declared a dividend for 1995.

Mr President, the Mass Transit Railway Corporation is obliged under the law to operate in accordance with prudent commercial principles and, accordingly, must ensure that taking one year with another, its revenue is at least sufficient to meet its expenditure and interest payments. It is through annual fare adjustments that the Corporation generates the necessary funds to implement comprehensive maintenance and service improvement programmes. It is in fact the ability to determine its own fares that has enabled the Corporation to enjoy high credit ratings and to raise funds in local and overseas markets successfully to finance new railway projects and build for the future. Since these arrangements have worked well from 1979, when MTR services came into operation, we should treasure them, and not tamper with them.

The Corporation's annual report provides ample evidence of the MTR's very successful performance. I congratulate the Chairman and the Corporation for their achievements in the past year.

PRESIDENT: Mr LEE Wing-tat, do you have a point of Order?

李永達議員：主席先生，在這個問題上，我想要求澄清。

PRESIDENT: Do you wish to seek elucidation? Yes, please, Mr LEE.

李永達議員：主席先生，文件第七段提到，根據法例，地下鐵路公司最少要有足夠收入，以維持其支出和利息支出。請問財政司，該公司九五年有純利12億元，這是否已經遠遠超過法例的規定？

財政司：主席先生，法例只是要求該公司根據審慎的商業原則運作，並無說明收益或盈利必須定在哪個層次或水平。

Kowloon-Canton Railway Corporation Annual Report 1995

FINANCIAL SECRETARY: Mr President, in accordance with section 14(5) of the Kowloon-Canton Railway Corporation (KCRC) Ordinance, I table the annual report and accounts of the Corporation for the year ended 31 December 1995.

In 1995, the KCRC carried over 1.1 million passengers each day, 5% more when compared with 1994. About two thirds of the passengers travelled on the heavy rail and the remaining one third on the light rail system.

The light rail system was extended to the centre of Tin Shui Wai new town in March 1995. The extension has provided an important transport service for the 85 000 residents of the new town.

Productivity improvements have made it possible for the Corporation to keep fares at an affordable level. Over the past five years, KCRC's fares have in fact declined 13% in real terms. In 1995, the KCR and LRT met or exceeded almost all their performance pledge targets, and successfully obtained ISO certification across an extensive range of functions.

The Corporation continued to develop and expand the container freight services launched in 1994. These services link the industrial centres of China with the port of Hong Kong.

The Corporation also aimed at strengthening and improving the quality of cross-border services. At a cost of $309 million, electric locomotives and rolling stock have been ordered for a new double-deck through train service between Hong Kong and Guangzhou.

In response to the Government's invitation, the Corporation has submitted proposals to the Government for the design, construction and operation of a new railway in the northwest New Territories. This will provide domestic and international passenger services and also carry freight from China to the container ports. The system will link up with the existing heavy rail and light rail systems, as well as the Mass Transit Railway and Airport Railway to enhance the existing rail network.

The Corporation maintained a satisfactory financial position in 1995. Total revenue rose to $2,973 million, representing an increase of 11% over 1994. Net profit for the year after tax was $901 million. Taking into account the Corporation's cash flow requirements and investment needs in the year ahead, the Government has not asked for any dividends.

The Corporation will invest $5.7 billion over the next five years in service improvements, including major projects such as automatic train protection, renovation of Hung Hom Station, and noise barriers.

Mr President, under its remit, the KCRC is obliged to conduct its business in accordance with prudent commercial principles. What I have said just a few moments ago about the MTRC equally applies to the KCRC. We must

maintain the existing arrangements to enable the KCRC to benefit from capital markets, particularly for the Western Corridor Railway project which is in the pipeline.

The Corporation has continued to operate very successfully over the past year. I congratulate the Chairman, its Managing Board as well as the management and staff of the Corporation for their achievements during the past year.

ORAL ANSWERS TO QUESTIONS

Shortage of Occupational Therapists and Physiotherapists

1. **羅致光議員問**：*主席先生，鑑於非政府康復服務機構的職業治療師及物理治療師人手短缺，政府可否告知本局：*

(a) *截至一九九五年十二月三十一日，醫院管理局（"醫管局"）轄下醫院及社會福利署的職業治療師及物理治療師職系的各級編制、在職人數及空缺數目；*

(b) *截至一九九五年十二月三十一日，非政府康復服務機構，包括早期教育及訓練中心、特殊幼兒中心及特殊學校的職業治療師及物理治療師職系的各級編制、在職人數及空缺數目；*

(c) *政府有否考慮向非政府康復服務機構的職業治療師及物理治療師發放辛勞津貼，加強此等機構提供的薪酬福利的吸引力，以紓緩人手短缺的情✔？*

SECRETARY FOR HEALTH AND WELFARE: Mr President, in view of the detailed figures being asked for, I thought it would be easier for Members to refer to the tables in the written Annex to this answer which is laid before them today. The tables show the establishment, strength and vacancy of occupational therapists and physiotherapists in various sectors.

Moving now to the last part of the question, as Members may be aware, my Branch has set up a working group to address the shortage of clinical psychologists, physiotherapists and occupational therapists. The working group comprises representatives from both the government and non-governmental sectors and representatives of the relevant professional bodies in Hong Kong. The working group has completed its study of the situation regarding clinical psychologists and is now nearing completion of its study of physiotherapists.

It has become clear that we must increase the supply of these professions and take steps to facilitate their retention in the non-governmental sector. The package of proposals under consideration for physiotherapists includes the expansion of student places, a more balanced exposure between the health and welfare sectors for physiotherapy students in clinical placements, the creation of senior physiotherapist posts in non-governmental organizations, revised manning ratios, more flexible transfer arrangements for staff between the various sectors and the provision of scholarships for further training. Also under consideration is the feasibility and likely effectiveness of creating an allowance, such as an Extraneous Duties Allowance, for physiotherapists working in non-governmental organizations.

The working group is now examining all of these proposals and will soon finalize its recommendations on physiotherapists. We have begun the necessary detailed background research on occupational therapists and the working group will commence its study of this profession once the study on physiotherapists is completed. The measures needed to address problems faced by occupational therapists are likely to be similar to those we have so far drawn up for physiotherapists.

Annex

Manpower of Occupational Therapists as at 31 December 1995

Department/ Sector	*Establishment*			*Strength*			*No. of Vacancy*		
	SOT	*OTI*	*OTII*	*SOT*	*OTI*	*OTII*	*SOT*	*OTI*	*OTII*
Hospital Authority	34	137	203	33	128	180	1	9	23
Social Welfare Department (Rehab Service)	1	6	0	1	6	0	0	0	0
*Subvented NGOs (Rehab Service) #as at 30.9.1995	1	64.5	23.5	1	58.25	8	0	6.25	15.5
Total	36	207.5	226.5	35	192.25	188	1	15.25	38.5

Manpower of Physiotherapists as at 31 December 1995

Department/ Sector	*Establishment*			*Strength*			*No. of Vacancy*		
	SPT	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*
Hospital Authority	57	246	301	55	236	287	2	10	14
Social Welfare Department (Rehab Service)	0	2	0	0	2	0	0	0	0
*Subvented NGOs (Rehab Service) #as at 30.9.1995	1	60.5	23.5	0	40	1.4	1	20.5	22.1
Total	58	308.5	324.5	55	278	288.4	3	30.5	36.1

* including special schools subvented by the Education Department and rehabilitation non-governmental organizations subvented by the Social Welfare Department.

\# The Social Welfare Department can only update the strength of non-governmental organizations once every six months based on the returns submitted by individual agencies. The latest figures available are those at 30 September 1995.

Note: The decimal points in the tables reflect the fractions of posts to which the non-governmental organizations are entitled based on approved manning ratios. If an agency is not entitled to a full post, it may combine the fractions of a post for different units in that agency into a full post, or top up their subvention in order to fill a post with someone full-time or employ part-time staff.

Occupational Therapists

SOT	Senior Occupational Therapist
OTI	Occupational Therapist I
OTII	Occupational Therapist II

Physiotherapists

SPT	Senior Physiotherapist
PTI	Physiotherapist I
PTII	Physiotherapist II

羅致光議員問：*主席先生，我非常高興聽到　生福利司說會考慮額外津貼這問題。不過，根據政府提供的數字，非政府機構的二級物理治療師的空缺比率是94%，我相信這可以列入世界健力士大全，而醫管局的空缺比率則為4%。在解決這問題方面，政府有否考慮要求醫管局現時凍結聘用人手，而讓非政府機構優先聘用人手？*

SECRETARY FOR HEALTH AND WELFARE: I think we should all recognize that both physiotherapists and occupational therapists are required in both the medical and the welfare sectors. To arbitrarily freeze or restrict the employment of such grades in one sector might not be in the best interests of people seeking treatment. However, recognizing the overall shortage of manpower in these two professions, we have a continuing liaison between the Hospital Authority, the Health and Welfare Branch and the welfare sector, in how to best make use of the pool of resources available in Hong Kong. There are opportunities for things such as sharing of resources, sharing of care and for the two sectors to make the best use of these very valuable professionals. I

recognize that we have a shortfall in these numbers, and in the long term, the only way to increase these shortfalls is by increasing our places at the tertiary institutions.

何敏嘉議員問：*主席先生，從這些數字來看，醫管局的短缺數字似乎不太高，但編制與空缺往往有一個微妙的關係。政府可否告知我們，醫管局有否因招聘出現困難而刪除部分編制，或在開展新服務時，不設立一些編制，令空缺情❤看來沒有那麼嚴重？又政府是否有機制，可以監察到上述情❤？醫管局現時應有的人手是多少呢？主席先生，政府的答覆用了"編制"（establishment）一詞，但據我了解，醫管局是沒有編制的，請問這些數字是如何得來的？*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the numbers required by the Hospital Authority in respect of these professions must be decided by the Hospital Authority itself. It is certainly not for me to decide how many of each grade they should require. According to the numbers given, this is the best available information provided by the Hospital Authority in preparation for the reply to the question by the Honourable Member.

MR MICHAEL HO: *Mr President.*

PRESIDENT: Mr HO, are you claiming that your question has not been answered?

何敏嘉議員問：*是的，主席先生。我的質詢是，政府是否有一些機制，可以監察得到我剛才所說的醫管局可以刪除編制的問題。此外，據我了解，醫管局是沒有編制的，政府可否解釋這些數字是如何得來的？*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Government does not closely monitor the exact requirements of different grades of professions required by the Hospital Authority.

As far as the second part of the question is concerned, this is the best available information provided by the Hospital Authority. But if the Member wishes me to explore this further, I can certainly ask for more information from the Hospital Authority and provide him with a written reply. (Annex I)

PRESIDENT: To clarify whether or not there is the concept of establishment in the Hospital Authority?

SECRETARY FOR HEALTH AND WELFARE: Mr President, I will certainly refer that to the Hospital Authority and reply to the Member in writing.

謝永齡議員問：*主席先生，這些員工不在非政府機構工作而轉去醫管局，主要是因為醫管局條件好、福利好。請問政府會否考慮增加員工的福利，特別是那些在非政府機構工作的員工，使他們留下來，而不會轉去醫管局工作？*

SECRETARY FOR HELATH AND WELFARE: Mr President, there are a number of factors which affect a person's desire to work in one or the other sector, whether it is the medical sector or the welfare sector. First of all, there is a serious overall shortfall of manpower. Secondly, in the hospital setting there is a greater pool of expertise and more supervisory posts. And thirdly, a number of professionals desire to work in the hospital setting rather than in the welfare setting. But having said that, we are looking at the possibility of making work in the welfare sector far more attractive by a number of means and, that is, through the addition of supervisory posts or through the paying of additional allowances such as Extraneous Duties Allowance, in recognition of the additional responsibilities of the people in this sector.

李華明議員問：*主席先生，我相信　生福利司也同意，從她提供的數字可以看到，相對於醫管局來說，非政府機構的職業治療師及物理治療師空缺是嚴重得多。這情*❤*會影響那些受助者，如果他們每天不能接受這些服務的話，就會影響他們身體的發展。在這樣緊急的情*❤*下，　生福利司提供的都是一*

些較為長遠的方法，我想問政府有否短期方法，盡快解決復康機構聘請不到人手的問題；政府怎樣利用醫管局的資源去幫助他們呢？

SECRETARY FOR HEALTH AND WELFARE: Mr President, there is no immediate action that we can take to alleviate the shortage in the short term. However, what is happening is that the Government, together with NGO's are looking abroad for recruitment of the necessary professionals and we are about to start the recruitment of clinical psychologists overseas. Now if this proves to be successful and if the working party considers this also to be relevant in respect of the other two professions, such as physiotherapists and occupational therapists, we will consider launching another overseas recruitment exercise for these two professions.

As far as the shortage in the welfare sector is concerned, I have already mentioned before that there is perhaps greater scope for sharing of resources between the Hospital Authority and the welfare sector and for better collaboration in the delivery of services in the welfare sector.

Regulation of Chinese Herbal Medicine

2. **何敏嘉議員問**：*主席先生，近日有市民因誤服中藥"鬼臼"中毒，須入院治理，而監管中草藥的法例草擬工作肯定不會於短期內完成。有見及此，政府可否告知本局：*

(a) 過去三年，共有多少市民因誤服含毒性中藥引致中毒而須入院治理；

(b) 在(a)項所述個案中的死亡數字為何；及

(c) 在法例制定前，政府會否考慮要求藥商為毒性中藥加上標籤，以及會否採取其他行政措施，防止市民誤服毒性中藥而中毒？

生福利司答：主席先生，

(a) 自從一九九三至九五年期間，有兩名市民因誤服中藥而中毒，須要入院治療。本年二月至三月，共有九名市民因服用含有毒性中草藥"鬼臼"的"威靈仙"，而須入院接受治療。

(b) 在過去三年期間，香港沒有發生任何因服用中藥中毒而導致死亡的個案。

(c) 中醫藥發展籌備委員會（簡稱“中醫藥籌委會”）現正編訂一份烈性／毒性中藥名單，供市民參考。 生署與中醫藥籌委會會合作教育市民小心和正確地使用中藥。

中醫藥籌委會的職責之一，是協助政府制定推廣發展和管制中醫藥的政策，籌備委員會亦負責研究本港中藥的入口、中藥的分銷、中藥製造銷售的情❤，有關毒性中草藥須附加標籤的建議，將會交由中醫藥籌備委員會考慮。

何敏嘉議員問：*主席先生， 生福利司回答我問題的(c)部分時，是非常不清楚的。我是問政府有何具體的行政措施來防止再有市民誤服毒性中藥的事件，但答覆只告訴我們會教育市民。主席先生，現在是配藥方面出了問題，以及藥材混雜了，市民去配藥時，根本藥店方面已經混亂了藥材。在這種情❤下，政府有何具體措施確保這種中毒事件不再出現？*

生福利司答：主席先生，香港售賣的中藥大部分來自中國大陸，今次發生夾雜了“鬼臼”的事件，是在藥物來港之前已經混入“威靈仙”內，所以，我們在香港是很難有辦法確保這些藥物附加正確的標籤。中醫藥發展籌備委員會非常關注這方面，而 生署短期內會考慮與中國入口商和香港的銷售商商討，如何可以確保入口的中藥來港前加上安全標籤。但這方面我們是需要一段時間進行和有很多考慮的，並非可以即時做到。

梁智鴻議員問：*主席先生，我申報利益，我是這個籌委會的成員。 生福利司在(c)段的答覆說要製備一份關於這些毒性藥品的名單來教育市民，我覺得此舉未必可以達到目的，因為大部分市民就診時，都是倚靠醫生開甚麼藥和靠所謂“掌櫃”執甚麼藥給他，名單未必達致成效。問題是，當 生福利司未與中方方面作正式商討，確定所有中藥運入香港時真如其藥名所示之前，會否考慮禁止售賣這類毒性藥物，待有機制可審查時才發售？*

生福利司答：主席先生，剛才梁議員所提議的辦法在本港現時的法例不是不能做到的，因為現時中藥不受法例管制。但發生最近這件事時，我們與中藥商、入口商及銷售商均有密切聯絡，而業內人士亦很合作地和樂意地因應最近的事件，當時立刻停止出售有問題或者發生問題的中藥，特別是“威靈仙”，因為這種藥可能夾雜了“鬼臼”。我們希望繼續與業內人士聯絡和跟進有關事項，但是以法例或行政手段來限制或禁止出售這類藥品是不可能的。

莫應帆議員問：*主席先生，我想蔬菜也沒有受政府管制，不過，大家知道政府也設有一個部門，在文錦渡檢查入口蔬菜，因為蔬菜有時也會有毒的。生福利司在(c)段說會發表一份烈性毒藥的名單，或者與入口商研究如何管制入口中藥。但聽剛才的說話又似乎亦很困難。我想問政府，雖然現在誤服中藥中毒的紀錄並非很多，但是對於一些現在已經混和了毒性成分的進口中藥，政府會否盡快制定一些措施，例如像檢查毒菜一樣，即是在藥物進口時進行一些檢驗，特別是一些與沒有毒性的中藥相類似的有毒中藥，以保障市民在購藥時不致購入混和了毒性中藥的藥品？其實現時中藥入口是已經有標籤的了，問題是如何多做一點這方面的工夫罷了。*

生福利司答：我想莫議員所提的建議可能需要很龐大的資源才可以做到。要檢查和確保每一種入口中藥安全，是很困難的，也不可能即時做到。我們只可以依賴入口商和出口地方做全面性的安全標籤工作。我知道中醫藥籌委會已展開研究這方面的問題。

關於如何可以教育市民適當而安全地使用中藥，我們須要令市民明白到很多時候，是需要經過中醫師診斷之後才配藥。但香港市民有一個頗流行的習慣，就是未經中醫師或醫師診治便自行配藥服用。這亦是我們需要進行教育和做多些推廣的。

至於可否在文錦渡檢驗每一批中藥，即使現在菜蔬入口也不是每一條蔬菜也檢驗的。所以，在這方面，我們發覺有很嚴重的問題時，才可以考慮議員剛才所提的措施，不過，議員亦同意這幾年中草藥夾混其他烈性草藥的情形並不多。

PRESIDENT: Mr MOK Ying-fan, you have raised your hand again, but I think it was an adequate answer. I will put you down for a further supplementary.

黃震遐議員問：*主席先生，其實現在根本在普通的百貨公司櫃● 也能購買到有毒性的中藥成藥，有很多這類藥物可以在藥房購買得到，亦未必一定經中醫師處方執配。在這情💔之下，政府還是說不打算一定要有標籤或其他措施，要等待籌委會作出建議。請問有關建議何時可以提出來呢？有了建議之後，又何時有法例呢？假如在短期內不能有結果的話，政府是否真的要等待出現 生福利司所說的嚴重後果，例如有很多人死亡，然後才採取措施限制有毒中藥的銷售？為何政府不可以現時就立例管制毒性中藥？*

生福利司答：管制中藥，特別是有毒性或者烈性的中藥，是籌委會的主要任務。在短期內，大概在六、七月，就可以制定名單供參考之用。其次，我們亦打算參考中國大陸所用的標籤和管制辦法。在短期內，我們會做多一些教育方面的工作和提醒市民使用中藥時的適當用法。中藥在香港是比較普遍的，而中醫中藥也是香港人喜歡使用的醫療和治療方法。我們亦要看近三年因為中毒而須要進醫院的人數，在九三至九五年兩名，九六年是九名，而從沒有人因為服食中藥中毒而死亡，所以，情💔並非很嚴重。

黃震遐議員問：*主席先生，我的質詢未獲答覆，即籌委會何時可以作出關於標籤或者其他立法方面的建議？以及有了這些建議之後，政府預計何時可以將法案呈交立法局？希望政府可以回答我們。*

生福利司答：主席先生，我在這階段不可以給一個確實的時間表答覆議員，但是我知道籌委會已經非常急切研究這方面的問題。籌委會之下亦有兩個專家小組研究中藥和中醫的監管問題。一俟有報告或者短期內有些甚麼消息，我希望盡快而且一定向立法局的 生事務委員會報告。

楊孝華議員問：*主席先生，政府知否“鬼臼”這種藥本身是否有中藥上的療效，以及它是否屬於政府已經認為是危險中藥的其中一種，或是屬於打算編列入主要答覆(c)段所述的烈性、毒性中藥名單的藥之一呢？*

生福利司答：主席先生，“鬼臼”是一種烈性的中草藥，亦有它特定的醫療效用。香港有很多中醫師也用這種藥物來配方，但是如果適當配方和適當的飲用是安全的。

DR LEONG CHE-HUNG: *Mr President, in the first paragraph of the Secretary's reply, she said that very few people in Hong Kong have been intoxicated with Chinese herbs. I wonder if the Secretary is aware of the fact that in late 1989, the Health Panel of this Council actually requested the Administration to make a pro-active study of the number of cases from public hospital in which people developed harmful effects as a result of taking Chinese herbs. I wonder whether there is any result from this study or this survey and if so, what is the result of the survey so that Members of this Council and perhaps the Preparatory Committee for Chinese Medicine could base their further analysis on this meaningful data?*

生福利司答：我今天手邊沒有這類資料，但我會向議員提供書面答覆。(Annex II)

莫應帆議員問：*主席先生，謝謝你讓我再多問一個問題。剛才　生福利司說中藥在香港的使用很普遍，正因為很普遍所以我們就應該更小心。我剛才提出的質詢不是說要檢驗全部的入口中藥，而是一些和非毒性中藥很相似的毒性中藥，如“鬼臼”和“威靈仙”；抽查這些入口中藥時並不需要很多資源。請問政府可否做得到呢？*

生福利司答：主席先生，我會向　生署轉達議員剛才所提出的建議。

羅致光議員問：*主席先生，剛才　生福利司答覆梁智鴻議員的質詢時，表示出事後才由入口商自律停止銷售；在回答莫應帆議員時又說進行入口抽查工作可能太龐大，未必能做得到。究竟政府有否考慮過鼓勵入口商去進行入口的抽查呢？*

生福利司答：主席先生，剛才的意見可能是個不錯的提議，我們亦會跟進。

Appointments to Committees, Boards and Advisory Committees

3. **任善寧議員問**：*政府可否告知本局：*

(a) 政府向總督推薦委任各種“委員會”、“管理局”及“諮詢委員會”的非官方成員，是否有既定的準則，其推薦程序及篩選過程為何；

(b) 有否考慮規定須推薦基層代表（如區議員），令基層民意得以在該等委員會／管理局反映；及

(c) 當局如何評核已獲委任者的表現；過去三年有否獲委任者因表現欠佳而其委任被終止；若有，數目有多少？

SECRETARY FOR HOME AFFAIRS: Mr President, in making appointments to advisory boards and committees, and other bodies, the Government seeks to secure the services of the best available persons to meet the requirements of the bodies concerned. The expertise, experience, integrity and commitment to public service of prospective appointees are carefully considered. Due regard is also given to the need to ensure a good balance of members in the body concerned. To achieve a reasonable turnover of membership, the Government, as a general rule, tries to avoid re-appointing someone who has already served on the same committee for six years. In addition, to ensure a reasonable workload, the Government normally does not appoint one person to sit on more than six committees at any one time. These are, however, general guidelines which may not be followed rigidly as some committees may find it necessary to retain the services of members who possess particular expertise and would provide continuity in the work of the committee concerned.

Recommendations to the Governor for appointments to advisory boards and committees, and other bodies are made by the relevant Policy Secretaries or Heads of Departments. Prospective candidates are selected in the light of the general criteria outlined above. In some cases, the individuals selected are already known to the concerned Branches and Departments. In others, they are nominated by professional bodies or other organizations in accordance with the relevant legislative provisions. Where appropriate, suggestions are also sought from the Home Affairs Branch and Home Affairs Department, in view of their close contacts with people from a wide cross-section of the community.

In recommending appointments, the Government gives due consideration to the experience and background of people at the district level, including members of local groups such as district boards. I can assure the Honourable Member that this practice will continue.

Policy Secretaries and Heads of Departments are responsible for the assessment of performance of members of the boards and committees under their purview. In general, the performance of individual members is assessed against their contributions to discussions, their commitment to public service and the functions of the particular committees. It is not usual for us to terminate appointments prematurely. There is no record of any member of advisory boards and committees and other bodies whose term of service was terminated early on account of poor performance in the past three years. Any member who does not perform satisfactorily would normally not be recommended for re-appointment.

任善寧議員問：*政府可否在每次總督公布委任名單後，向立法局提交資料，解釋委任那些人士的原因？*

政務司答：主席先生，就個別委任向總督所作出的建議，通常會依照我剛才所說的原因考慮。這些文件通常載有個人資料以及政府內部的討論，並不適宜向外公布。

廖成利議員問：*主席先生，主要答覆提到委任時會充分顧及有關團體成員各*

方面的平衡。這是否包括平衡各成員的議員背景或政黨背景，以避免引致房屋司黃星華先生經常擔心的所謂政治化問題？如果有這種考慮，為何政府在今次的答覆中沒有坦白說出來？

政務司答：主席先生，當我們考慮委任社會人士加入各委員會時，主要會考慮委員會的功能、責任及負責的工作。當然，我們會考慮是否需要委任專業人士個人經驗、公信力及個人操守等問題，但政治背景並非重要的考慮因素。

梁耀忠議員問：*主席先生，政府主要答覆的第三段提到政府會充分考慮當地人士，(我估計這可能是翻譯上的問題，可能應該是"地區人士"，因為英文本是"district level")其中包括區議會等地方團體的成員的經驗和背景。請問政府，直至目前為止，在上述委員會、諮詢委員會和管理局當中，有多少位區議員獲得委任？如果政府現在即時未有資料，可以書面方式提供。此外，請問政府會否考慮.....*

PRESIDENT: One supplementary at a time please, Mr LEUNG. Is your second supplementary related to the first supplementary?

梁耀忠議員問：*請問政府，目前獲得委任的區議會議員數目是多少？*

政務司答：主席先生，我手邊沒有單單區議會的數字。如果是地區人士的話，即包括區議會、分區委員會、鄉事委員會和地區滅罪委員會，則九五年共委任了82人。

黃偉賢議員問：*主席先生，政務司主要答覆的最後一段提到，評核這些委員會成員的表現，會視乎他們對討論的貢獻、服務社會的熱誠等。不過，以我的經驗所得，有一些成員加入了委員會數年也從沒有發言，但卻一直獲得委任。請問經常捐款贊助地區活動，是否已符合了政務司剛才所說的服務社會的熱誠？*

政務司答：主席先生，我不太清楚是否真的有成員在個別委員會的討論中從沒有發表意見，而我覺得我們現時很難得出事實真相。至於一些人士對地方捐款，我相信也是一種對地方的服務或對社會的貢獻，因為捐款確能使很多活動得以進行，我相信對社會也有益處。

李華明議員問：*主席先生，據我所知，一些委員會和諮詢委員會中會有一些具政黨背景的成員；但有些委員會卻完全沒有這類人士。請問政府以甚麼準則來決定哪些委員會需要政治人物作為成員；哪些卻不需要？又這些準則又如何釐定的？*

政務司答：主席先生，我的答覆很簡單，就是個別人士的政黨背景或政治取向並不是我們考慮是否委任其加入某一個委員會的重要因素。

蔡根培議員問：*主席先生，過去三年來，民選區議員獲得委任加入委員會的數目平均每年不足30名。請問政府有否向總督推薦這些人士；抑或總督不願意委任地區的民意代表？*

政務司答：主席先生，在考慮委任時，我相信最重要是視乎個人的背景和專長是否適合委員會工作的需要。至於民選議員沒有獲委任加入委員會，我認為這說法並不正確，因為我們不會有意不考慮民選議員。

李永達議員問：*主席先生，諮詢委員會和法定機構的組成一直被人批評為有欠平衡，政府只委任大多數與政府持相近意見的人士。政府的主要答覆第一段提到，在委任時會充分考慮各方面的平衡，但卻不公布如何達致平衡，又不向公眾解釋如何才算是平衡。請問政務司，這如何能令公眾覺得平衡呢？是否政府要我們自己心領神會；抑或政府認為已有平衡，只是我們不明白？政務司可否就“平衡”一詞再作解釋？*

政務司答：主席先生，香港約有三百多個委員會，我相信大家都同意各個委員會都扮演不同的角色，有不同的工作範圍，因此，當我們委任社會人士加

入這些委員會時，最重要看看如何能令委員會有效地工作。我們會就委員會的工作需要來考慮需要委任哪一方面的人士，“平衡”便是這方面的取向。我們會看看是否需要委任專業人士、有經驗人士、具社會其他背景的人士，抑或地區人士等。我們希望在人選方面能如李永達議員所說，達到平衡，使各方面的意見都可以在委員會內表達。

PRESIDENT: Mr LEE, I think you have made your point.

陳婉嫻議員問：*主席先生，我想提出一項剛才曾有同事提出而政府還未作答的質詢，就是政府現時在委任時，專業人士、業內人士和基層人士的百分比各佔多少？請問有否一個準則；而有關準則的百分比又是多少？*

政務司答：主席先生，我剛才也曾說過，香港有三百多個委員會，性質各有不同。即使說專業人士，大家對其定義都可能會有不同意見，人言人殊，地方人士的定義亦然。因此，我們很難界定這些定義，或刻意釐定一些數據。

張炳良議員問：*主席先生，署理政務司可否確實說明，在各諮詢委員會中，假如個別成員經常持有與政府有關決策科或部門的看法或委員會主流意見相反的見解時，會否被視為表現欠佳而不獲推薦連任？*

政務司答：主席先生，我們不會因為這個原因而不委任那些人士。相信大家都同意，香港是一個自由社會，我們希望各方面人士都可以表達意見。

劉慧卿議員問：*主席先生，政府的主要答覆提到，他們盡量不會在同一時間內委任一名人士加入六個或以上的委員會。主席先生，這是很驚人的，因為我覺得六個委員會的工作量會非常沉重。政府可否告知我們，你們估計委員會成員一般會付出多少時間？有多少人加入六個或以上的委員會？又多少人的出席率是每年少於50%的？*

PRESIDENT: Miss LAU, are you seeking an answer to the first supplementary

or the second supplementary?

MISS EMILY LAU: *Sorry.*

PRESIDENT: Your second supplementary was on the attendance rate.

劉慧卿議員問：*主席先生，也許你不會批准，但我所有的質詢都只是有關一名人士加入多少個委員會的工作量問題。加入六個委員會須付出多少時間？有多少人沒有出席？如果很多人沒有出席會議，證明委任也是多此一舉，是表面工夫而已，你看看是否讓政府作答。*

PRESIDENT: Are your seeking an answer to a supplementary only on the attendance rate of all those members who have been appointed to six committees? Or else, these will be two supplementaries.

劉慧卿議員：*不是，主席先生。*

PRESIDENT: Would you like to rephrase your supplementary?

劉慧卿議員問：*你不讓我提出第二項質詢，那便留待下次有機會才提出吧。我是問所有的，主席先生。不過，如果你說可以提問加入六個委員會那些人士的出席率，我便先問這事吧。謝謝主席先生。請問加入六個委員會的人士的出席率為何？*

政務司答：有關劉議員剛才提出的第一項補充質詢，我想先澄清加入六個委員會是否過多這問題。我們的意見是“否”，因為很多委員會的性質都不同，某些的工作量可能較重；某些可能較輕，這須視乎委員會所須處理的工作。因此，以我們多年來的經驗來看，加入六個委員會是較為合理的數目。

另一方面，我剛才在答覆時也曾說這並非一項規定，如果我們發覺某位人士加入了三個委員會後工作量已經太多，我們就會因此而不會考慮委任他加入六個委員會。

劉慧卿議員：*主席先生，她並未回答我的質詢。*

PRESIDENT: I think the Secretary was attempting to answer your question and not the rephrased question. She was attempting to answer both supplementaries.

劉慧卿議員問：*主席先生，不是的，我是問她取一些數字的，但她只說工作量不太重。我問她有多少人是加入六個委員會以上，他們所付出的時間為何，但她全都沒有回答。*

PRESIDENT: Secretary, would you supply the figures in a written reply?

政務司答：主席先生，有關加入六個或以上委員會的人士數目，我會以書面形式答覆。（Annex III）

PRESIDENT: That was the first supplementary. The second supplementary was on the attendance rate of all members.

政務司答：如果有關出席率方面，主席先生，我相信我們要花很多時間進行研究才可以取得這方面的資料。我現時並沒有這些資料，我們必須諮詢各科和各部門，因為我們有三百多個委員會，我不知在人力物力方面是否值得這樣做。不過，如果議員需要這些資料的話，我們會嘗試去做。（Annex IV）

Traffic Accidents Caused by Container Vehicles

4. **陳偉業議員問**：*主席先生，關於近日接連發生多宗貨櫃車翻側意外，*

釀成人命傷亡，政府可否告知本局：

(a) 過去三年發生的貨櫃車翻側意外的數目和所導致的傷亡人數；及

(b) 政府會否考慮立例規定貨櫃車拖架與拖頭同樣須每年檢驗，以確保拖架的制動系統操作正常？

SECRETARY FOR TRANSPORT: Mr President, over the past three years there have been an average of 21 accidents per annum in which container vehicles overturned. Details are given in the annex to my reply.

To put this in perspective, it should be noted that there are over 13 300 licensed container trucks and 21 000 trailers. Nevertheless, we cannot afford to be complacent and the Honourable CHAN Wai-yip is quite right in raising the question of inspections and control.

Under section 78 of the Road Traffic Ordinance, the Commissioner for Transport has powers to require the examination of all classes of motor vehicles before they are licensed. All tractors are now subject to annual inspections. As for trailers, only those over 10 years old have to pass an examination before relicensing. This is not satisfactory and, to enhance roadworthiness of trailers, the Administration plans to introduce annual inspections as soon as the necessary facilities and staff can be provided. Such inspections will include a functional check of the braking system.

Annex

Traffic Accidents Involving
Overturning Container Vehicles
in the Past Three Years

	1993	*1994*	*1995*
Accident	21	20	23

Casualties			
Fatal	3	1	0
Serious	6	7	7
Slight	27	16	21
Total	36	24	28

陳偉業議員問：*主席先生，我對政府現時承認問題存在，並正研究處理方法，表示歡迎，但卻擔憂有關計劃何時可以實施。政府可否告知本局，估計何時才可以真正落實每年進行拖架檢驗，以及在這段期間，就拖架因檢驗不足而可能導致機件出現問題一事，政府可以做到甚麼，以避免因此而引致更多意外？*

SECRETARY FOR TRANSPORT: Mr President, one of the difficulties in arranging for the early inspection of trailers is the difficulty in finding sites. This is because of the length and the manoeuvrability of articulated vehicles, that is, both the trailers and the tractors. We need sites with good access which would not cause disruption to other traffic. We have searched for several sites; one in Yuen Long was recently rejected by the district representatives and other sites have also run into problems. Despite these setbacks, the Transport Department is trying to seek a successful outcome. But I fear it will be at least nine months to a year before we can actually implement the annual inspection scheme.

When it comes to the actual inspection of vehicles, there are many items which will have to be very carefully checked. These include items such as road-wheel tyres, trailer-couplings, the driving and seating controls, the brake-controls, the chassis frame and so forth. But I assure the Honourable Member that we will do our utmost to bring this into operation as soon as possible.

劉健儀議員問：*主席先生，主要答覆內提到過去三年共有64宗涉及貨車及貨櫃車翻側交通意外，運輸司可否告知本局，其中有多少宗是因拖架制動系統失靈而導致；又有多少宗是因拖頭制動系統失靈而導致；而餘下的是否因為*

人為疏忽而導致？

SECRETARY FOR TRANSPORT: Mr President, I am afraid I do not have the exact and precise details that the Honourable Member has asked for. I think, obviously, when trailers are involved in accidents, they are of course attached to the tractors and it is sometimes difficult to pinpoint the precise cause. To provide the detailed answers that the Honourable Member wants would require a great deal of research. Bearing in mind that in total, over three years, there have only been 64 such accidents, I do not, with respect, think it is productive to analyze these causes. But obviously, the police do jot down the causes and if there are specific problems which need to be addressed, they are referred to the Commissioner for Transport.

PRESIDENT: Mrs LAU, are you claiming that your question has not been answered?

劉健儀議員問：*是的，因為運輸司說沒有辦法向我提供答覆。請問可否容許我再提出質詢，也許會較易得到我所需要的答覆？請問運輸司，有多少宗意外是因制動系統失靈，無論是拖頭或拖架而導致的？我相信運輸司會有這數據。*

SECRETARY FOR TRASNPORT: I shall provide the answer to the Honourable Member in writing. (Annex V)

PRESIDENT: That is if the police have those records.

SECRETARY FOR TRASNPORT: Yes.

張漢忠議員問：*主席先生，貨櫃車翻側意外往往會令交通癱瘓，在現行安排下，政府會租用一些重型吊機來解決問題。請問政府會否計劃購置一些重型吊機，以處理貨櫃車翻側意外的清理工作？*

PRESIDENT: I am afraid this is outside the scope of the original question.

蔡根培議員問：*主席先生，政府可否告知本局，在過去三年的貨櫃車翻側意外中，有多少宗與司機有直接關係，例如是他們的技術和經驗出了問題？*

PRESIDENT: I am afraid this is also outside the scope of the original question.

黃偉賢議員問：*主席先生，據行內人士說，一些貨櫃車翻側意外是由於司機為求方便，沒有把車輛與貨箱的樁頭連接起來，以致在轉彎時，貨箱擺動而造成翻側意外，我想問一問.....。*

PRESIDENT: Your question is also outside the scope of the original question.

黃偉賢議員：*主席先生，.....*

PRESIDENT: The original question was if there would be inspection of trailers and tractors.

Road Safety of Heavy Container Trucks

5. **陳婉嫻議員問**：*主席先生，日前，荃錦公路交匯處發生貨櫃車翻倒的交通意外，令人關注貨櫃車的安全行駛及各交通意外黑點的道路安全問題。就此，政府可否告知本局：*

(a) *導致貨櫃車意外的主要成因為何；會否作出相應的改善措施；*

(b) *會否考慮制定一套“重型貨櫃車使用道路”的指引，以指導司機如何安全駕駛；及*

(c) 會否考慮改善各交通意外黑點的道路安全情❤，例如檢討路面設計，以及在未到黑點前，盡早設置減速指示牌？

SECRETARY FOR TRANSPORT: Mr President, the results of police investigations have indicated that the main causes of accidents involving container trucks are: driving too closely to the vehicle in front, careless lane changing, loss of control of the vehicle, and defective brakes.

The first three causes relate directly to driving behaviour. Container truck drivers have been reminded periodically of the dangers of tailgating and careless lane changing through their associations and at seminars. There have also been publicity campaigns and APIs on television. These will be repeated in the coming months.

As an experiment to further alert drivers, a trial road marking scheme will be shortly introduced on a section of Tolo Highway near Taipo in July 1996. Distinctive chevron markings, spaced apart, will be painted on the carriageway to help drivers judge what would be a safe and correct distance from the vehicle in front.

As I have indicated in my reply to the previous question, both trucks and trailers are subject to licensing checks to ascertain their roadworthiness.

As regards guidelines, the Road Users' Code provides advice on safety for all road users, including goods vehicle drivers. The Code is currently being revised and updated. Separate advisory booklets for goods vehicle drivers will be produced. In addition, advice on keeping a safe distance from the vehicle in front will be highlighted in future editions of the Road Safety Quarterly which is published by the Transport Department.

Blackspots are defined as those where there have been six or more accidents involving pedestrians or nine or more accidents involving passengers in a vehicle during a 12-month period.

Blackspots are monitored closely by the Administration in an attempt to reduce the number of accidents. The remedial measures taken include the

provision of better signage, roadmarkings, more police spot checks as well as improving the layout of the roads and the laying of anti-skid road surfacing.

陳婉嫻議員問：*主席先生，多謝運輸司剛才很詳細講述了政府最近的措施，但我仍然很關心一個問題，就是由於中港兩地貨櫃車的交通十分頻繁，而其中又牽涉到兩地載貨重量有不同標準的問題，請問這是否令貨櫃車經常出現意外的原因之一？*

SECRETARY FOR TRANSPORT: Mr President, what I can say is, for those drivers who come from the other side of the border, to qualify to drive in Hong Kong, obviously they must have proper driving licences and to that extent we must be satisfied that they are qualified. In our dealings with the Container Associations and in our discussions with the drivers themselves, through the Transport Department, they will be reminded of the point made by the Honourable Member. We shall take this up in our further publicity campaigns.

PRESIDENT: Miss CHAN, are you claiming that your question has not been answered? You have to point out which part has not been answered.

陳婉嫻議員問：*是的。剛才我的質詢是，現時中國與香港的載貨量規定不同，這是否交通意外的成因之一？我希望運輸司能作出解答。*

SECRETARY FOR TRANSPORT: I am afraid, Mr President, I cannot give a definite answer, but I shall certainly ask the police to check and if in fact, for example, the cause of cabbing the trailer and the tractor is a cause, then obviously we will follow up this and take necessary action.

鄭耀棠議員問：*主席先生，根據業內人士反映的意見，近期貨櫃車交通意外會涉及持有香港貨櫃車駕駛執照的內地司機，政府會否考慮重新檢討內地司機的考牌制度，確保他們在取得牌照後，能熟悉香港的道路環境和駕駛模式？*

SECRETARY FOR TRANSPORT: Mr President, I am not sure whether the comment by the Honourable Member is in fact accurate. As I said in my reply to an earlier supplementary, those drivers from China must meet our own driving standards.

陳榮燦議員問：*主席先生，據知現時有些中國貨櫃車司機持有本港牌照，請問這類貨櫃車司機有多少人；他們在本港發生事故的情*❤*為何？*

SECRETARY FOR TRANSPORT: Mr President, all drivers in Hong Kong must possess the necessary driving licences which are recognized. Given the vast number of licensed drivers, it is not possible to identify those who come from China.

張漢忠議員問：*主席先生，請問現時本港貨櫃車的超載情*❤*是否嚴重；有多少宗交通意外是因超載而導致的？*

SECRETARY FOR TRANSPORT: Mr President, overloading is indeed a problem and in reply to a question in this Council in January, I provided some figures. As far as the causes of accidents are concerned, this is not one of the main causes, it is a supplementary cause. As I have tried to illustrate, the total number of accidents which involve container trucks, although they are a cause for concern, is small. In terms of traffic accidents in Hong Kong, the total number of which amounts to nearly 20 000 a year, it is not a great number.

We are taking specific measures against overloading. We are going to require construction sites, for example, to have weighing-scales and we will step up enforcement. Last year, we also introduced higher penalties — fixed penalties for overloading — and the police will continue to enforce this.

黃偉賢議員問：*主席先生，我的質詢關乎意外成因，相信會與主要質詢的內容有關。一些業內人士告知本人，貨櫃車及貨箱須接駁一個樁頭，但很多司機為求方便，並沒有把這樁頭掛接，因而造成翻側意外。請問運輸司，在過*

去三年，有多少宗翻側意外是由於司機沒有掛接櫈頭而造成的呢？又政府如何防止這種情❤出現？

SECRETARY FOR TRANSPORT: Mr President, I obviously cannot provide specific statistics on the different types of accidents or their causes; I do not have my computer with me. But I shall try and obtain the information and provide it to the Honourable Member. (Annex VI)

劉健儀議員問：*主席先生，運輸司可否告知本局，政府會否考慮在一些已經認定為交通黑點的地方，進一步限制或減低重型車輛的最高行車車速，以求減低意外率？*

SECRETARY FOR TRANSPORT: Mr President, where it is proven that in fact the speed limit is inappropriate, of course we will consider adjusting the speed limit at blackspots. If I can, as an example, refer to the recent accident outside the Shing Mun Tunnel along Cheung Pei Shan Road, in March this year. We have looked into the site. Because space allows us, we will try to provide what is known as an escape lane for the container trucks which lose their brakes. This is common in other parts of the world. So we are taking such measures.

Also, in this particular case, the 50 kph speed limit will be extended to a 100 m stretch. These are measures which will be taken where it is possible to do so, site conditions permitting.

PRESIDENT: Last supplementary. If Mr CHOY Kan-pui wishes to ask his original supplementary to the previous question, he may ask it as a supplementary to this question.

蔡根培議員問：*主席先生，政府可否告知本局，過去三年，有多少宗貨櫃車翻側意外是與司機有直接關係，例如與他們的技術和經驗有關？*

SECRETARY FOR TRANSPORT: Mr President, I have indicated in my main reply that the primary causes of accidents, not only for container trucks but also for other types of motors, is normally because of driver behaviour and these are: changing lanes, speeding — tailgating and careless driving. But I am unable to indicate the specific numbers of accidents which have been caused by the non-observance of traffic regulations by drivers.

WRITTEN ANSWERS TO QUESTIONS

Financial Support for Voluntary Agencies

6. **MR DAVID CHU** asked: *It was mentioned in the Progress Report on Individual Undertakings in the Governor's 1992 policy address that a sum of $2.3 billion had been injected into the Lotteries Fund to meet the recurrent expenditure on various social welfare and rehabilitation services up to 1996-97. In this connection, will the Administration inform this Council what arrangements have been made to ensure that the voluntary agencies responsible for providing such services will receive adequate financial support so that they can continue to provide such services in the long run?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, to provide a secure source of funding to assist in implementing the significant expansion of social welfare and rehabilitation services announced in the Governor's address to the Legislative Council on 7 October 1992, the Finance Committee of the Legislative Council approved on 6 November 1992 an injection of $2.3 billion into the Lotteries Fund. This amount is principally being used to pay for the recurrent cost of services required to meet the key targets for the period from 1993-94 to 1996-97. This arrangement will come to an end in 1997-98. As I assured this Council on 29 March and 2 November 1995, the General Revenue Account will be able to absorb from that year onwards all the recurrent expenditure being met from the Lotteries Fund in 1996-97. Under this arrangement, non-governmental organizations providing services with recurrent

subventions from the Lotteries Fund at that time will receive funds from the Government to continue such services beyond 1996-97.

Consultation Paper on the Review of Industrial Safety in Hong Kong

7. **曾健成議員問**：*有關去年七月公布的《香港工業安全檢討諮詢文件》，政府可否告知本局：*

(a) 未來一年當局將採取何種措施以加強職業安全健康局（以下簡稱"職安局"）的功能及角色，以落實諮詢文件的建議；及

(b) 職安局及政府方面，有否預計因應諮詢文件的建議而加強職安局的功能及角色所需的開支為何；若有，具體開支項目及計劃為何；若否，原因為何？

教育統籌司答：主席先生，

(a) 正如一九九五年七月發表的《香港工業安全檢討諮詢文件》所建議，日後，本港在舉辦及統籌職業安全訓練，以及推廣職業安全意識的工作上，將由職安局負起主要責任。政府現正與職安局緊密合作，制定該局在未來數年的活動計劃及財政預算，以便該局能夠繼續執行推廣香港職業安全的重要工作，直至跨越二零零零年。

職安局的擴展活動計劃包括：

- 接管勞工處在一般職業安全訓練方面所肩負的所有責任。
- 負責全面統籌發展商及承建商等各有關方面所舉辦的建築業安全訓練。
- 向規模細小的公司推行教育工作，增加公司各級人員對職業安全的認識。
- 設立鼓勵計劃，嘉許在建築地盤推行妥善安全措施的人士。
- 加速進行有關訓練和教育的研究工作。

(b) 政府促請職安局承擔更大的責任，為僱主、僱員和市民大眾提供以職業安全為題的訓練，以及向他們推廣和宣傳職業安全概念。為回應政府的呼籲，職安局已就一項為達致這些目標而制定的擴展計劃，提交了一九九六至九七年度的收支預算。該局一九九六至九七年度的預算，已獲政府批准，所涉及的開支達47,553,000元，較一九九五至九六年度的修訂開支增加約55.8%。預算獲得批准，使用於以下各主要項目的經費得以大幅提高：

	獲批准的開支
宣傳活動	11,600,000元
以職業安全和健康為題的訓練／研究／顧問工作	19,600,000元
有關職業安全和健康的刊物、諮詢委員會及會議／研討會	3,080,000元
有關職業安全和健康的資訊和圖書館服務	700,000元

Non-departmental Quarters and Private Tenancy Allowance

8. **鄭家富議員問**：*有報道指出，目前本港有大量空置的高級公務員宿舍單位，但另一方面，政府卻給予公務員自行租屋津貼以租住私人住宅單位，每年支出數以百萬計，政府可否告知本局：*

(a) 過去三年，每年向公務員提供的自行租屋津貼總額為何；

(b) 公務員離職後，如何處理空置的高級公務員宿舍；

(c) 目前共有多少空置的高級公務員宿舍單位；

(d) 現時公務員入住政府提供的高級公務員宿舍數目與以自行租屋津貼租住私人住宅單位的數目及二者比例為何；及

(e) 為何有為數不少的高級公務員宿舍單位空置的同時，政府還繼續向公務員提供自行租屋津貼？

公務員事務司答：主席先生，一九九零年十月，當局取消向新招聘人員提供自行租屋津貼及高級公務員宿舍這兩種房屋福利，而代之以居所資助計劃及新修訂的自置居所資助計劃。該兩項計劃的資助期最長可達120個月。此舉旨在鼓勵公務員自置物業，並減低政府的長遠房屋福利開支。自此，公務員對高級公務員宿舍及自行租屋津貼計劃的需求日降，因為部分合格人員已相繼離職，或選擇參加居所資助計劃。相信高級公務員宿舍的需求會持續下降，假以時日，當可完全取消高級公務員宿舍及自行租屋津貼這兩種房屋福利。

當局了解到政策轉變會發揮成效，因此已訂定一套計劃，一方面逐步停止租用私人樓宇作高級公務員宿舍，同時又出售一些地皮，以減少宿舍過剩的情💔。至目前為止，高級公務員宿舍的數目已大幅下降，由一九九零年十月的3 135個減少至一九九六年三月的1 926個。同時，領取自行租屋津貼的公務員人數，亦由一九九零年十月的2 428人大幅減少至一九九六年三月的778人。

最近，當局成立了一個工作小組，以檢討有關計劃的進度，並評估未來高級公務員宿舍的需求，以期按需要作出調整。工作小組已商定多項措施，包括出租空置單位及把個別單位出售等短期措施，以便在地皮售出或改作其他用途前，盡量善用過剩的宿舍。

現談談各項有關的質詢 —

過去三年自行租屋津貼的開支

在一九九三至九四年度，自行租屋津貼的開支為1.9億元，一九九四至九五年度為2.22億元，一九九五至九六年度則為2.25億元。

空置宿舍的分配方法

目前政府設有兩類宿舍：一為高級公務員宿舍，另為部門宿舍。高級公務員宿舍是政府按合資格公務員的服務條件而提供的房屋福利，這是合資格人員的一項權利。部門宿舍則是基於工作需要提供，而並非一種權利，對象主要是紀律部隊人員。這些宿舍是由有關部門首長管理。回答這項質詢時，

我只會針對評論高級公務員宿舍的空置情💔。

公務員事務科宿舍編配組負責高級公務員宿舍的管理。凡有公務員騰出宿舍單位，宿舍編配委員會便會公布周知，以便重行分配給其他合資格公務員。未予分配而剩餘的單位會視乎情💔，予以出售、出租給公眾人士，或改作其他政府／團體／社區用途。

可供分配的高級公務員宿舍

本期宿舍編配通告所載列的高級公務員宿舍共有130個，可供分配給合資格的公務員入住。

入住高級公務員宿舍與領取自行租屋津貼的公務員比例

現時，共有1 737名公務員入住高級公務員宿舍；領取自行租屋津貼的公務員，則約有778名。比例約為：一名公務員領取自行租屋津貼，對稍微多於兩名公務員入住高級公務員宿舍。

發放津貼予合資格入住宿舍的公務員

凡在一九九零年十月一日前受聘的公務員，只要沒有參加居所資助計劃或自置居所資助計劃，便可保留領取自行租屋津貼的權利。公務員一旦到達總薪級表第34點，便可申領自行租屋津貼。對於希望申領這種房屋福利的僱員，政府是必須履行合約責任的。

高級公務員宿舍只分配予有資格入住的公務員，即一九九零年十月一日前入職，而薪金達總薪級表第45點的人員。有些公務員雖然符合這個資格，但卻選擇領取自行租屋津貼，而不入住高級公務員宿舍。各有關人員已在一九九六年一月獲悉，政府將會行使權力，不再發放自行租屋津貼。這些人員已獲得通知，需要在七個月限期內遷出利用自行租屋津貼租住的單位。他們可以選擇遷入高級公務員宿舍或領取居所資助津貼。限期過後，當局即會停止向有關人員發放自行租屋津貼。至目前為止，已有大約34名公務員因此而放棄領取自行租屋津貼。

我們認為，容許不合資格申請高級公務員宿舍的人員入住這些宿舍，既不適當，亦不符合成本效益。這個做法完全違反我們的政策。正如前文所指出，我們有意把過剩的宿舍出租、出售或改作其他用途，這才是適當的做

法。雖然如此，我們仍會一如以往，對總薪級表第45點以下，而仍合資格領取自行租屋津貼的公務員，履行合約規定的責任。

British Beef and Canned Beef Products

9. **唐英年議員問**：*政府雖已禁止輸入英國牛肉，但英國牛奶及罐頭牛肉食品卻不在禁制之列。就此，政府可否告知本局：*

(a) 市民如何知悉一些供人類及動物食用的非英國製牛肉罐頭食品及其他用牛肉製用品，並非以英國牛隻製成；

(b) 政府有否資料顯示，從醫學及化學研究所知，瘋牛症病毒可否在罐頭食品中生存及繁殖；

(c) 由於當局將不會向食肆收回已購入的英國牛肉，政府如何防止有關的食肆向顧客供應英國牛肉食品；及

(d) 按現行做法，除非證實某種食物影響市民健康，否則不能禁止出售；當局會否考慮修訂現行法例，使之更切合社會實際的需要？

生福利司答：主席先生，世界 生組織指出，目前並無證據顯示，“牛類海棉狀腦病”（俗稱“瘋牛症”）與人類有機會感染的同類疾病“魯茲菲德雅各症”（又稱“克雅二氏病”）確有關連。此外，迄今仍未能確定，感染“魯茲菲德雅各症”與食用英國牛肉有關。歐洲委員會於本年三月二十七日宣布禁止英國牛肉出口。翌日，本港政府亦宣布暫時禁止英國牛肉進口。以上措施旨為避免市場出現混亂，同時讓市民恢復信心，繼續安心食用其他國家進口的牛肉，並非恐防市民的健康受到影響。

雖然單憑標籤無法知道非英國製的產品，是否含有英國牛肉，但自一九八九年起，多項預防“瘋牛症”的措施已落實推行。一九八九年，英國政府禁止將指定牛隻內臟供人類食用或出口。（如牛隻染上“瘋牛症”，指定牛隻內臟是最容易感染病毒的部分。）一九九五年八月，英國政府更禁止銷售及使用指定牛隻內臟作為動物飼料。自從歐洲委員會於本年三月全面禁止英

國牛肉外銷後，英國已停止向其他國家輸出牛肉，以製造供人類食用或餵飼動物的產品。

現在資料顯示，罐頭食品的製造過程未必能令“瘋牛症”的病原體徹底消滅，但可遏止它們繁殖。

當局已通知食肆，應向顧客說明所供應牛肉的原產地。

《公眾　生及市政條例》（第132章）第54(1)條訂明，任何人出售或調製任何供出售的食品，而該等食品擬供人食用但實際卻不適宜食用，均屬犯罪。當局認為，此項條文在保障公眾　生方面，公正而又切實可行，並會不時加以檢討。

Government Sale of Basic Law Copies

10. **李家祥議員問**：*政府可否告知本局，政府刊物銷售處會否售賣《香港特別行政區基本法》；若否，原因為何？*

政務司答：主席先生，有關以上查詢，我們證實，政府正準備在政府刊物銷售處存放《香港特別行政區基本法》，供市民免費取閱，使這份重要的文件，可在本港社區得到最廣泛的傳閱。

Code of Industrial Safety for Toys and Plastics Industries

11. **劉千石議員問**：*據悉香港玩具協會最近聯同香港塑膠業廠商會有限公司向工業署申請撥款 100 萬元，用以合編一套針對玩具及塑膠業的工業安全守則，有關的申請書仍在審議中。就此事宜，政府可否告知本局：*

(a)　可否讓本局及公眾人士參閱該申請書；

(b)　工業署依據甚麼準則去衡量撥款與否；及

(c)　其他團體可否申請類似的撥款？

工商司答：主席先生，香港玩具協會及香港塑膠業廠商會曾向工業支援資助計劃申請撥款56.8萬元（而非100萬元），資助他們編訂一份塑膠業安全及健康指南。政府於一九九六年二月批准該項申請。

關於質詢的(a)部，一般來說，工業支援資助計劃的申請書，是不會供立法局或公眾人士索閱的，因為申請書或項目建議本身或會包含一些申請人不願公開的資料，而我們在評審過程中也尊重這項保密原則。但另一方面，如申請人不介意將資料公開，他可隨時這樣做。至於獲得撥款的申請，申請人在完成有關項目時，必須將研究結果和工作成果向有關人士及／或公眾人士公開，而這些研究結果和工作成果，是可供本局及公眾人士索閱的。

關於質詢的(b)部，決定應否批出撥款的主要準則包括：

(a) 建議項目會為本港工業界帶來甚麼好處；

(b) 能否證明建議項目是有需要進行的；

(c) 申請人的技術水平及管理有關項目的能力；

(d) 建議項目的施行計劃是否周詳，所需時間是否合理；

(e) 擬議的資助款額是否合理及切合現實；

(f) 建議項目是否較適宜由其他經費來源，如大學教育資助委員會或應用研究發展計劃撥款資助；

(g) 建議項目是否或可能重複支援工業團體目前進行的工作；以及

(h) 如須支付經常開支（如人力開支及其他行政費用），建議項目在一段時間後，是否有能力自負盈虧。

關於質詢的(c)部，所有支援工業的組織、工業貿易協會、高等教育院校、專業團體及從事研究的機構，均有資格向工業支援資助計劃申請撥款。在特殊情💔下，本地註冊公司如能證明其項目並非純粹為促進公司的利益，而是會使整個製造業受惠，則其申請亦可獲得考慮。

Pirated Compact Discs

12. **DR DAVID LI** asked: *In a report to the United States Congress on trade barriers, the Office of the United States Trade Representative stated that the United States music industry estimated that 20% of the recorded music sold in Hong Kong was pirated. Will the Government inform this Council how it plans to strengthen its law-enforcement efforts to crack down on hawkers and retailers as well as the criminal syndicates that supply pirated compact discs in the territory?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Government is totally and firmly committed to the protection of intellectual property rights (IPR) in Hong Kong. In this context, the Government has been pursuing a number of initiatives to strengthen the effectiveness of its enforcement measures against copyright piracy. They include:

(a) increasing the staffing resources in the Intellectual Property Investigation Bureau of the Hong Kong Customs by 40%, from 117 in 1994-95 to 164 in 1996-97, in order to strengthen intelligence gathering, border surveillance and interceptions. Intensified enforcement action against the various blackspots selling pirated copyright products has been taken by the Customs in recent months and will continue. A hotline to receive IPR infringement-related information has been set up in the Customs since March this year;

(b) a pro-active enforcement approach in the form of intelligence gathering and investigation work relating to alleged triad and organized criminal involvement in local and cross-border copyright piracy activities. The Customs and the police have been closely co-operating with each other on this front, resulting in a number of successful raids on storage premises for pirated CD-ROMs;

(c) providing new legislative tools to more effectively combat copyright piracy. The statutory maximum penalties against copyright piracy were substantially increased last May. New copyright piracy offence provisions are expected to be passed today in the Intellectual Property (World Trade Organization Amendments) Bill 1995 to help tackle masterminds of cross-border piracy activities. New customs border measures will soon be put in place to facilitate copyright owners to take civil infringement action against pirates; and

(d) forging closer co-operation between the Hong Kong Customs and the relevant counterpart authorities in China. Good progress has been made in the past month with the IPR-related enforcement agencies in the Guangdong Province and the Shenzhen Special Economic Zone on a number of initiatives, including setting up of specific contact points, exchange of information and intelligence, organization of seminars and visits, and where appropriate, the possibility of mounting joint anti-piracy operations.

Fraud in Sale of Properties

13. **李華明議員問**：*警方最近公布，涉及匪徒冒充業主身分出售樓宇的詐騙案近年有大幅上升的趨勢。就此，政府可否告知本局：*

(a) 有否發現：

(i) 現行監管物業轉讓的法例，

(ii) 有關樓宇買賣的法律程序，

(iii) 處理索取或更改存於政府檔案內與物業業權有關的資料（例如：商業登記及物業業權的登記）的程序，

存有漏洞，以致匪徒有機可乘；

(b) 會否考慮全面檢討物業轉讓的程序及訂立守則以堵塞此類案件

發生的機會；若否，原因為何；及

(c) 有否具體措施打擊此類罪案，以保障業主權益？

規劃環境地政司答：主席先生，

(a) 自一九九六年年初以來，警方(商業罪案調查科)共發現 14 宗涉及匪徒冒充業主的買賣樓宇個案。在部分個案中，假冒的業主收取買方的訂金，但由於無法出示屋契正本，因此沒有完成樓宇買賣。在另外一些個案中，買方向假冒的業主悉數支付樓價後，才發現物業轉讓者並非真正的業主。所有事件均在有關人士向土地註冊處登記文件前發生。

鑑別賣方或按揭人的身分，是賣方律師的責任。在進行買賣時，賣方或按揭人須向他們的律師出示屋契正本。為防止罪案發生，及保障業主和買方的利益，處理買賣的律師及銀行，在繼續進行工作或向賣方發放按揭物業的屋契正本前，必須提高警覺，核對賣方提交的身分證及文件。沒有屋契的正本，買方不應支付樓價。

(i)、(ii) 我們並未發現現有的法例和法律程序存在任何漏洞，以致匪徒容易冒充業主，或進行有關物業轉讓的詐騙。物業業權的轉讓程序是由律師及律師會制定，以保障顧客的權益。不過，我們會徵詢律師會和其他有關組織的意見，以考慮是否有需要檢討現時的法例。

(iii) 一如其他地方的土地註冊處，香港的土地註冊處存有土地註冊記錄冊，供市民查閱。現時有關查閱及更改冊內資料的程序，已採取足夠的防範措施。在冊內加進最新資料的工作，是由訓練有素的註冊人員，採用附有保安設備的土地註冊電腦系統執行。註冊人員會核對冊內的資料，確保與律師核證無誤的契約內所載資料相同。

(b) 請參閱上文(a)項。

(c) 警方在一九九六年四月一日召開記者招待會，報告有關物業詐騙的案件，促請市民提高警惕。警方提醒市民，在向自稱有意購買或租用樓宇的人士提供身分證、差餉收據及按揭供款表等文件的副本

時，必須格外小心。同時，警方已把一份詳載近日案件的報告送交香港律師會及香港銀行公會，以便這兩個組織通知屬下會員提高警覺。警方亦正作出安排，為這些組織及機構籌辦研習班，講述如何鑑別偽造的身分證明文件。香港銀行公會並已在一九九六年四月十二日向會員發出指引，其中載列各種預防措施，以期盡量減少發生這類詐騙案的機會。

Local and Expatriate Terms for University Teaching Staff

14. **羅祥國議員問**：*政府可否告知本局，大學教育資助委員會（"教資會"）是否知悉：*

(a) 各間大學聘任教職員時所採用的"本地僱員條件"和"海外僱員條件"有何差別；

(b) 各間大學現時以"海外僱員條件"聘用的教職員人數分別為何；及

(c) 各間大學對取消"海外僱員條件"的政策分別為何？

教育統籌司答：主席先生，

(a) 由教資會資助的六間大學及嶺南學院，在釐定教職員聘用條款方面是享有自主權的，但有關條款須等同而非高出政府同級公務員的聘用條款。教資會知道各間受資助院校所提供的僱用條款，是有本地及海外兩種之分，差別主要在於員工是否有資格享用旅費津貼、行李津貼、房屋福利和海外教育津貼。

(b) 截至一九九五年十二月三十一日止，按海外僱用條款受聘於七間教資會資助院校的教學人員數目，載列於附件A。

(c) 根據教資會提供的資料，自一九九五年起，香港浸會大學（"浸大"）、香港理工大學（"理大"）、嶺南學院"嶺南"及香港中文大學（"中大"）均已採用統一的服務條款，來聘用初入職人員

以及在新服務條款生效後續約的人員。至於香港城市大學（“城大”）、香港科技大學（“科大”）及香港大學（“港大”），則目前仍繼續以本地及海外兩種僱用條款任用新招聘人員。不過，城大校董會在一九九五年十一月通過，校方應盡量按本地僱用條款聘用初入職人員，只有在特殊情💔下，方可提供海外僱用條款。此外，城大亦正草擬一套統一的僱用條款，以消除本地及海外兩種服務條款的差異。科大及港大目前正檢討本身的本地僱員及海外僱員的服務條款，以便定出一套統一的服務條款。

附件A

按海外僱用條款受聘於教資會資助院校的教學人員數目

院校	*按海外僱用條款受聘的教學人員數目*
城大	134
浸大	71
嶺南	34
中大	241
理大	145
科大	251
港大	386
總數	1 263

資料來源：教資會秘書處

Government Land Grant to Non-governmental Organizations

15. **謝永齡議員問**：*有關政府撥地予非政府機構作慈善福利用途事宜，政*

府可否告知本局：

(a) 政府有否就此類撥地訂定準則；

(b) 有多少機構以此方式獲得撥地；該等機構所獲土地的總面積為何；

(c) 政府如何監管此類土地的實際用途，以確保其符合申請時所述的用途；

(d) 出售此類土地是否須經政府同意；若然，政府用何準則審批這些賣地申請；及

(e) 過去三年此類賣地個案的數目及其所涉及的款項分別為何；政府有否監管從此類賣地所得的款項用途，以確保該等款項是用於慈善福利事宜？

規劃環境地政司答：主席先生，

(a) 簡單來說，在向政府申請批地作慈善及福利用途時，申請人必須：

(i) 獲得社會福利署署長的支持；

(ii) 證明準承批人有經濟能力發展該土地，經營管理擬提供的服務；及

(iii) 使地政總署署長相信該土地會得到最佳的運用。

此外，是否有適合的地點作該用途，亦是一項重要的準則。

一般來說，社會福利署署長會按照下列規定，支持申請：

(i) 計劃的性質必須與福利有關；

(ii) 該地區對擬提供的服務有所需求；

(iii) 申請人具備所需的經濟能力，能夠發展及營辦該項計劃（包括有能力支付資本成本及經常費用）；及

(iv) 申請人具備營辦擬提供服務的有關經驗及能力。

(b) 自一九八五年以來，政府已向25個機構撥地作慈善及福利用途，批出的土地共30幅，總面積約為12.89公頃。政府並無編製一九八五年前這類批地的統計數字；

(c) 每次批出這類土地時，批地契約文件均規定有關土地的用途，這與原先申請時註明的用途是一樣的。如承批人把土地作其他用途或停止使用該土地，或該土地的使用率下降，政府有權收回該土地；

(d) 政府並不准許出售這類土地。不過，如該土地未盡其用，承批人可申請把土地重新發展。政府會按照個別情💔，考慮每宗個案，而每宗申請亦須獲總督會同行政局特別批准；及

(e) 上述(d)項已闡明，這類土地不准出售，因此，我們未能提供議員要求的資料。

British Naturalization

16. **MISS EMILY LAU** asked: *In view of the large number of people who have applied for naturalization last month, will the Administration inform this Council:*

(a) of the number of applications for naturalization received in each of the past three years as well as in the first three months of this year;

(b) how long the applicants have to wait for a decision on their applications given that there are only 433 days left before the transfer of sovereignty;

(c) whether the successful applicants will be given adequate time to apply for and be issued with the British National (Overseas) passports; and

(d) how many applications have been rejected in the past three years and whether the applicants have been notified of the reasons for the rejection; if not, why not?

SECRETARY FOR SECURITY: Mr President,

(a) The number of applications for naturalization/registration as British Dependent Territories Citizens in the past three years and in the first three months of this year is as follows:

Year	*No. of applications*
1993	17 391
1994	17 803
1995	34 580
1996	217 603

(b) The Hong Kong Immigration Department aims to complete processing of all outstanding naturalization/registration applications by the end of September 1996.

(c) Article 4(5) of the Hong Kong (British Nationality) Order 1986, as amended by the Hong Kong (British Nationality) (Amendment) Order 1993, allows a successful applicant to apply for a British National (Overseas) passports within three months after the date he has obtained a naturalization/registration certificate.

(d) The number of applications rejected in the past three years and in the first three months of this year is as follows:

Year	*No. of applications*
1993	147
1994	282
1995	451

1996 (Jan-Mar) 348

In line with the practice in the United Kingdom and in accordance with section 44(2) of the British Nationality Act 1981, the reasons for rejection of such applications are not disclosed.

Debts of Correctional Services Department Staff

17. **黃偉賢議員問**：*政府可否告知本局：*

(a) 懲教署管理層是否知悉懲教署職員過去三年的欠債數額及欠債原因；及

(b) 懲教署管理層有何機制防止職員因舉債而影響工作？

保安司答：

(a) 在懲教署的7 184名職員中，目前已知欠債者有13人，欠債總額約為183萬元。至於負債原因則各有不同，例如基於個人理由借款、投資不當或賭博等。我們並無過去三年的有關統計數字。

(b) 懲教署會鼓勵欠債人員與該署的職員福利主任聯絡，要求他們提供意見和輔導。如果知悉某職員負債，上司會予以接見，協助他擬定清還債項的計劃。管理層將繼續密切監察有關情❤，以提供進一步的意見和指引。

Processing of Estate Duty Cases

18. **MR ERIC LI** asked: *Will the Government inform this Council:*

(a) of the total number of deceased persons registered in the territory, as well as the number of cases where the estate of the deceased is subject to estate duty, in each of the past five years (that is, from

1991-92 to 1995-96);

(b) of the number of cases referred to in (a) above which were outstanding as at 31 March in each of the five years in question, together with a breakdown by age of the deceased and estimated total amount of estate involved;

(c) what are the reasons for those cases which have not been settled within two years from the date of filing the application; and

(d) what measures have been adopted by the Inland Revenue Department to settle estate duty cases expeditiously so as to avoid causing undue hardship to the families of the deceased?

SECRETARY FOR THE TREASURY: Mr President,

(a) The total number of deceased persons registered and the number of cases where the estate of the deceased is subject to estate duty in each of the past five years, that is, from 1991-92 to 1995-96 are as follows:

(i) Number of deaths registered:

For year ended 31 March				
1992	*1993*	*1994*	*1995*	*1996*
30 258	30 085	30 054	30 493	25 060 (up to 31.1.96)

(ii) Number of estate duty cases filed:

For year ended 31 March				
1992	*1993*	*1994*	*1995*	*1996*

No. of dutiable cases	365	429	468	408	217
No. of non-dutiable cases	10 289	10 633	10 926	11 169	11 460
Total number of affidavits/ statements in lieu of affidavits filed	10 654	11 062	11 394	11 577	11 677

(b) The number of cases outstanding as at 31 March for each year in the past five years with age analysis and the estimated amount of duty involved:

	For year ended 31 March				
	1992	*1993*	*1994*	*1995*	*1996*
Dutiable cases	693	770	728	649	517
Non-dutiable cases	1 004	1 125	836	1 051	980
Total	1 697	1 895	1 564	1 700	1 497

	For year ended 31 March				
	1992	*1993*	*1994*	*1995*	*1996*
Estimated amount of duty involved*	$400m	$500m	$700m	$700m	$750m
Estimated amount of estate involved (dutiable cases only)	$7,400m	$9,300m	$13,000m	$13,000m	13,900m

* These amounts are rolled-over from year to year. About two-thirds of the amounts represent the additional duty collectable on assets which

were either undisclosed or were declared below market values.

The Inland Revenue Department does not keep statistics on the age of the deceased in the outstanding cases or the estimated amount of estate involved in non-dutiable cases.

(c) The main reasons for those cases which have not been settled within two years from the date of filing the application are:

(i) pending outcome of litigation (in most cases between executors and beneficiaries);

(ii) disputes on valuation of landed properties and shares in private companies;

(iii) valuation of a deceased's interest in a complicated predeceased's estate;

(iv) in-depth inquiry into potential tax avoidance schemes;

(v) slow response to enquiries from executors and third parties;

(vi) tracing of a deceased's life-time gifts;

(vii) tracing of undisclosed assets; or

(viii) disputes between beneficiaries of the estate.

(d) It has always been the Inland Revenue Department's policy to settle estate duty cases as expeditiously as possible. In fact, the Estate Duty Office's current performance pledge is to finalize 98% of the exempt and simple cases (not involving landed properties, private company shares and interest in business) within six weeks from the receipt of the application; 80% of the other exempt and simple cases within six months; and 75% of the complicated or dutiable cases within two years. The senior management of the Department and its Users' Committee regularly review actual performance as compared to pledged targets. The actual performance achieved for the past two years is shown in Annex.

Where a deceased's dependants have difficulties in meeting his funeral expenses or providing for their own maintenance, the Commissioner of Inland Revenue may authorize banks to release money from the deceased's bank accounts to relieve the hardship.

Where a case cannot be finalized within a reasonable time because of the need to trace life-time gifts and so on, the executor or the administrator can apply for the issue of provisional estate duty clearance papers upon production of a satisfactory guarantee (that is, bank guarantee, equitable mortgage, deposit of quoted shares, transfer of bank account balances as payment on account). The executor or the administrator can then proceed with the application for the grant to administer the estate. For duty payable on the leasehold properties held solely by the deceased, the executor may opt to settle by instalments.

Annex

Processing of Estate Duty Affidavits

	Apr 94 to Mar 95		*Apr 95 to Mar 96*	
	Target (Cumulative)	*Output (Cumulative)*	*Target (Cumulative)*	*Output (Cumulative)*
EXEMPT AND SIMPLE cases not invoiving landed properties, private shares or business interests				
Performance evaluation				
		Achieved		*Achieved*
Assessments or certificates issued within				
first 6 weeks	98%	99.6%	98%	99.7%
next 10 weeks	100%	100.0%	100%	100.0%
Number of cases processed		6 295		6 383
EXEMPT AND SIMPLE cases involving landed properties, private shares or business interests				
Performance evaluation				
		Achieved		*Achieved*

Assessments or certificates issued within:				
first 6 months	80%	97.0%	80%	92.86%
next 12 months	100%	100.0%	100%	99.56%
Number of cases processed		3 600		4 459
DUTABLE or COMPLICATED Cases				
		Acceptable		*Acceptable*
Performance evaluation				
Assessments or certificates issued within				
1 year	25%	62.8%	50%	61.15%
2 years	70%	87.3%	75%	84.43%
3 years	90%	93.5%	90%	91.28%
4 years	95%	96.4%	95%	95.08%
5 years	100%	97.9%	100%	96.38%
Number of cases processed		1 316		919

Liberalization of Local Fixed Telephone Networks

19. **羅祥國議員問**：*政府可否告知本局：*

(a) 自去年七月開放本地固定電話網絡後，三家新獲發牌經營公司的業務發展為何；及

(b) 為促進經營本地固定電話網絡的各家公司公平競爭而制定的具體政策中，何者已付諸實行，何者仍在計劃中？

經濟司答：主席先生，

(a) 新的三間固定電訊網絡服務公司已裝妥它們的總交換機樓，並開始為市民提供服務。三間公司現時都提供“國際電話本地接駁”服務，接駁香港國際電訊國際電話服務，並正積極開展其電訊網絡。一九九六年四月二日，三間公司一起與香港地下鐵路公司簽訂協議，為其幹線網絡裝設光纖電纜。三間公司亦聯同市場上主要的經營公司 — 香港電話有限公司，在新的基建工程內安裝電纜，以及為填海區及新機場提供新的交換機樓設施。由於三間新公司需要時間發展本身的網絡，故此，目前由三間新公司提供直接接駁服務

的客戶數目仍然不多。與此同時，三間新公司正透過“國際電話本地接駁”服務、個人電話號碼和國際電話咭服務建立其客戶網。

(b) 政府透過修訂的《電訊條例》和四間公司的固定電訊網絡服務牌照，促進各固定電訊網絡服務公司之間的公平競爭。已推行的具體措施計有：由電訊管理局局長在一九九三年接管電話號碼計劃，以執行公平分配電話號碼政策；推行電話號碼可攜性（即客戶更改電話公司時，可以保留現有電話號碼）；規定各公司為不同服務開立獨立帳目，以監察各種服務之間的交互補貼情💔；由電訊管理局局長向物業業主、發展商及管理公司發出關於各公司均可進入私人樓宇的公用部分的指引；以及發出有關網絡接駁的指引。固定電訊網絡服務牌照載有規定，禁止妨礙競爭的行為和濫用在市場的佔優勢地位，以及要求各公司共用“樽頸”設施。此外，作為主要經營公司的香港電話有限公司的收費，亦受到電訊管理局局長的規管。

政府會繼續監管電訊市場的運作及執行《電訊條例》和固定電訊網絡服務牌照的規定。我們現正檢討《電訊條例》，並打算在今年較後時間向立法局提出條例草案的修正案，其中一些修正項目可強化與發展固定電訊網絡服務市場公平競爭有關的條文。

Use of natural Gas as Bus Fuel

20. **黃偉賢議員問**：*政府可否告知本局：*

(a) 現時政府是否正進行以天然氣代替柴油作為巴士燃料的研究計劃；若然，該計劃有何進展；

(b) 規定本港專利巴士轉用天然氣，在技術上有何困難，實施的可行性又如何；及

(c) 在研究過程中，政府有否徵詢業內人士意見以作參考；若否，原因何在？

規劃環境地政司答：主席先生，

(a) 我們最近成立了一個跨部門工作小組，就能否轉用其他燃料開動的車輛，包括使用天然氣的車輛及電動車輛，統籌有關的研究工作。一些私營公司亦對本港以天然氣作為汽車燃料的技術可行性，進行了研究。雖然我們亦曾參與初期計劃，但迄今並未收到任何明確的建議。

(b) 在本港專利巴士能夠轉用天然氣前，我們必須全面研究一些問題，包括能否獲得天然氣的供應和來源是否穩定、儲存和分配天然氣的安排、補充天然氣的設備、會否有適合使用天然氣的巴士配合本港的運輸需求、裝設和維修天然氣系統所需的基本設施和支援，以及風險和安全的問題。

(c) 我們仍在考慮本港以天然氣作為汽車燃料的計劃，在基本設施及技術方面所涉及的問題。我們未能在現階段徵詢業內人士的意見。

BILLS

First Reading of Bills

PLANT VARIETIES PROTECTION BILL

MERCHANT SHIPPING (SAFETY) (AMENDMENT) BILL 1996

IMMIGRATION (AMENDMENT) BILL 1996

CONSUMER GOODS SAFETY (AMENDMENT) (NO. 2) BILL 1996

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) (NO. 2) BILL 1996

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1996

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

Second Reading of Bills

PLANT VARIETIES PROTECTION BILL

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to provide for the protection of plant varieties."

經濟司致辭：主席先生，我謹動議二讀《植物品種保護條例草案》。

《世界貿易組織協議》下的《知識產權協議》規定所有簽署成員，當中包括香港在內，必須訂定保護植物品種權利的措施。本條例草案旨在履行這方面的責任。

條例草案建議委任漁農處處長為植物品種權利處處長，由他審議有關植物品種權利的註冊申請。

條例草案訂明植物品種在獲考慮保護前須符合的準則，並界定有權獲得保障的有關人士和保障的期限及範圍。一般而言，申請人須證明擬申請註冊的植物品種是新及獨特的品種。總的來說，某種植物品種權利授權證一經發出，承授人可控制該植物品種的繁殖和商業上的用途20年。這種保障對本地和海外的植物育種人士都適用。

為阻止非法使用植物品種作商業用途，條例草案訂明與虛假聲明、虛假陳述及不當地使用受保護植物品種名稱有關的罪行，每項罪行的建議最高罰則為罰款10萬元。

要成功培育和發展適合銷售的新品種，例如蔬菜和觀賞植物，需要作出龐大投資和有合理的商業回報前景。條例草案的建議，將會保障現時在本港培育植物和蔬菜的公司和個別人士，以及有意在香港推出新植物品種的海外植物育種人士的知識產權。這對香港經濟和消費者都有裨益。因此，我謹建議本局通過條例草案。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MERCHANT SHIPPING (SAFETY) (AMENDMENT) BILL 1996

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to amend the Merchant Shipping (Safety) Ordinance."

經濟司致辭：主席先生，我謹動議二讀《1996年商船（安全）（修訂）條例草案》。

商船的安全問題，是受國際海事組織支持下所簽訂的國際公約規管的。這些國際海事組織公約的條文，受世界各地的航運業接納為必須遵守的國際標準。由於這些國際公約適用於香港，故此，香港必須實施公約所載的標準。目前，安全標準是藉《商船（安全）條例》訂立的規例而實施的。這些受規管的事項大多屬於高度技術性的問題，並須不時作出修訂。故此，在現行的程序下，這些修訂工作無疑加重了行政局及律政署法律草擬科的工作量。另一方面，香港必須及時履行有關的國際性法律責任，否則，香港在國際航運界的信譽，將會受到影響。

為減輕行政局的工作量，使該局能夠集中處理主要的政策問題，以及在更短時間內實施有關國際公約的條文，本條例草案作出規定：一，將大部分訂立規例的權力由總督會同行政局轉授予經濟司；二，以便實施適用於香港的國際公約條文，訂明只須將該等條文在有關規例或附表列明，並可載列其他條文，指明因應本港環境而須作出的必要修改及適應。

此外，我們亦需修訂《商船條例》，以訂明《商船（安全）條例》規定的驗船服務費用，可在《商船條例》的附屬法例內列明。

在《商船（安全）條例》制定以前，海事安全是由《商船條例》規管的。及後《商船（安全）條例》在一九八一年生效，將與海事安全有關的本地法例綜合起來。當時，《商船條例》中若干關於驗船服務和規定的條文，亦轉載於《商船（安全）條例》內。不過，當局仍然根據《商船條例》的附屬法例，即《商船（收費）規例》，收取驗船服務費用。我們打算繼續這個做法，但我們認為應在主體條例中明確訂明這項安排。為此，本條例草案的修正案對《商船條例》作出了有關的輕微修訂。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee

pursuant to Standing Order 42(3A).

IMMIGRATION (AMENDMENT) BILL 1996

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to amend the Immigration Ordinance."

SECRETARY FOR SECURITY: Mr President, I move the Second Reading of the Immigration (Amendment) Bill 1996.

The purpose of the Bill is to prevent certain Vietnamese migrants from seeking release from detention in the wake of a recent Privy Council judgement.

Since 16 June 1988, Vietnamese migrants arriving in the territory who request to stay are detained pending determination as to whether they are refugees and, if they are determined to be non-refugees, pending removal to Vietnam. They are encouraged to return to Vietnam through the United Nations High Commissioner for Refugees' (UNHCR) voluntary repatriation programme. Otherwise, they are subject to the orderly repatriation programme run by the Hong Kong Government. Clearance by the Vietnamese authorities is required before a Vietnamese migrant can be repatriated. This applied to both the voluntary and the orderly return programmes.

In 1994, the UNHCR brought to our attention that a number of voluntary repatriation applicants had been awaiting clearance for return for some time. We examined these cases and concluded that there were 124 migrants who, because of their individual circumstances, had little prospect of being returned in the immediate future and thus their further detention might be unlawful. They were accordingly released on recognizance in November 1994.

Between early 1995 and March 1996, a *habeas corpus* action involving four Vietnamese migrants was considered successively by the High Court, the Court of Appeal and the Privy Council. These Vietnamese migrants argued that the Vietnamese authorities had a policy of not taking back non-nationals, that they were non-nationals and, thus, if they applied to return they would be rejected; consequently, the purpose of their detention was therefore spent and

they could no longer be lawfully detained. The Privy Council accepted these arguments in respect of three of the appellants. As for the fourth one, although neither the High Court nor the Court of Appeal found him to be a non-national, the Privy Council believed that given the time that he has been awaiting clearance, he would not be accepted for return and should also be released.

Consequent to the Privy Council judgement we have, after careful consideration, released 254 Vietnamese migrants to date who, in our judgement, fall within the terms of the Privy Council judgement and could thus no longer be lawfully detained.

The issue of "non-nationals" was raised with the Vietnamese Government during the visit of Foreign and Commonwealth Affairs Office Minister Mr Jeremy HANLEY to Hanoi on 9 April. The Vietnamese authorities agreed to study this problem again. We have also sought clarification on whether Taiwan would accept those released migrants who claimed to have Taiwanese papers, and a response is awaited.

Although we have already released all the migrants who came to our knowledge to date as failing within the terms of the Privy Council judgement, we are obliged to continue to release any new cases brought to our attention which fall under those terms. There is thus a risk of further releases.

Against the background that the Vietnamese authorities had to deal with over a hundred thousand cases from Asia and from Europe for repatriation, we do not believe that the hitherto apparently lengthy period for obtaining a response from the Vietnamese authorities should in general be treated as evidence of refusal or rejection by them. We thus propose in the Bill that where a request has been made to the Vietnamese Government for the repatriation of a Vietnamese migrant, the court shall not find that the purpose of his detention has failed, or become spent, until the request has been rejected by the Vietnamese Government, or unless the court finds that, in all the circumstances, the Vietnamese migrant has been detained for an unreasonable period. We also propose an additional, minor amendment which seeks to put beyond doubt the power to enable the released migrants to enter into recognizance.

We believe that the longer the relevant provisions of the Immigration Ordinance remain unamended, the greater the risk of having to make further

releases. This in turn could lead to an erosion of our detention policy and will not be welcomed by the community; it will also increase our difficulties should the Vietnamese authorities later clear them for return, and we then have to search for and redetain them pending removal.

Since we have made known our intention to legislate in this regard, there have been some unfounded criticisms, mainly centred on whether we are seeking to legislate for indefinite or arbitrary detention. I should like to reiterate a few key points here. First, the need to detain Vietnamese migrants, even for long periods of time, is recognized by the courts as essential in order to maintain effective immigration control. Secondly, this detention policy is, of course, subject to the supervisory jurisdiction of the courts, and we are not seeking to change this. In particular, we are not seeking to legislate to bar a Court from ordering the release of a Vietnamese migrant on the grounds that his period of detention is too long. Thirdly, we are only seeking to ensure that in deciding claims by Vietnamese migrants that they are non-nationals, the court may not assume that they will not be accepted back unless the Vietnamese authorities have rejected them. Fourthly, there are over 7 000 Vietnamese migrants in Hong Kong whose clearance is not yet obtained, and there is a real risk that fraudulently obtained documents may be produced by them to seek release from detention. In the Administration's view, this is a potential loophole which should be closed as quickly as possible.

In short, Mr President, the Bill does not seek to provide for arbitrary or indefinite detention, nor does it set a precedent for such; in our view, it is consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong. It does not offend against the spirit of common law. It should not be read across to other kinds of detention, as section 13(D) of the Immigration Ordinance relates solely to Vietnamese illegal entrants and is there to deal with the massive influx of Vietnamese migrants that has occurred in the past. Once the Vietnamese migrant problem is completely resolved, that section of the law will have served its purpose and may then be repealed.

I would also like to make it clear that the introduction of this Bill in no way indicates disrespect to the Privy Council. The role of the Judiciary is to decide what the current law is, and to apply it to the facts of the case before it. But it is incumbent on the executive and the legislature to decide what law is best for the community. If we decide that the law should be changed, we are merely

fulfilling our roles as policy-makers and as legislators. This is standard procedure in democratic societies subscribing to the basic concept of separation of powers, whether those societies be Hong Kong, the United Kingdom or any other common law jurisdiction. I trust Honourable Members will consider the Bill on its merits without fear of acting improperly towards the Judiciary.

Finally, the Administration urges Honourable Members to deal with the Bill expeditiously. We will be working closely together with the subcommittee established to examine this Bill; indeed the subcommittee has already begun its work this morning. I hope it will come to a conclusion speedily.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

CONSUMER GOODS SAFETY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR TRADE AND INDUSTRY to move the Second Reading of: "A Bill to amend the Consumer Goods Safety Ordinance."

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I move that the Consumer Goods Safety (Amendment) (No. 2) Bill 1996 be read the Second time.

The purpose of the Bill is to enhance consumer protection by requiring all consumer goods covered by the Consumer Goods Safety Ordinance to have all safety markings or labels provided in both English and Chinese, that is, the bilingual safety labelling requirement. It seeks to do so by empowering the Secretary for Trade and Industry to establish safety standards or safety specifications which she believes will materially enhance the safety of consumer goods. The proposed bilingual safety labelling requirement may then be established by regulation made by the Secretary for Trade and Industry under the new provision. It will be enforced by the Commissioner of Customs and Excise.

The Bill is proposed in response to requests from the community for the imposition of mandatory product labelling requirement in Chinese for all consumer goods, regardless of what the original language of the labelling is.

Having carefully considered the requests, we agree that safety labelling in Chinese, which is a language widely understood by the community, is of paramount importance to ensure consumer safety. We also see the need to ensure that the English-speaking-only community in Hong Kong understands the safety labelling on consumer goods. We therefore proposed that all safety markings or labels on consumer goods covered by the Consumer Goods Safety Ordinance must be expressed in both English and Chinese.

The bilingual safety labelling requirement will be confined to markings or labels relating to warning or caution phrases concerned with the safe keeping, use, consumption or disposal of the consumer goods. Such markings or labels should be legible and placed in a conspicuous position on the consumer goods, the packaging or a document enclosed in the package, as the case may require. By doing so, the proposed requirement will achieve the objective of enhancing consumer safety while at the same time avoid imposing an undue burden on manufacturers, importers or suppliers.

Upon enactment of the Bill, I will table the Consumer Goods Safety Regulation in the Council for Members' approval by the negative procedure. Members may wish to note that a similar regulation on the introduction of requirement for bilingual safety labelling for toys and children's products covered by the Toys and Children's Products Safety Ordinance will also be made. To give the industry and trade sufficient time to adjust, there will be a grace period of 12 months before the Regulations come into operation.

Mr President, I move that debate on this motion be adjourned.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR TRADE AND INDUSTRY to move the Second Reading of: "A Bill to amend the Toys and Children's Products Safety Ordinance."

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I move that the Toys and Children's Products Safety (Amendment) (No. 2) Bill 1996 be read the Second time.

The Bill provides for the adoption of safety standards other than the British Standards Institution (BSI) standards for children's products under the Toys and Children's Products Safety Ordinance. The Bill is made in response to requests from the trade and industrial organizations that multiple safety standards should be adopted for children's products because adoption of the BSI standards alone is considered too restrictive and would limit consumers' choice.

At present, the Toys and Children's Products Safety Ordinance only permits the adoption of the BSI safety standards for children's products. This is because when the Ordinance was enacted, the BSI standards were considered to be the most comprehensive in product range and safety aspects.

We have no objection in principle to the proposed adoption of multiple safety standards other than the BSI standards for children's products, provided that the alternative standards are equivalent in their safety requirements to the existing BSI standards already adopted in the Ordinance. Preliminary examination by the Government Chemist on a number of non-BSI safety standards applicable to children's products, including those suggested by the trade and industrial organizations, reveals that some of them are suitable for adoption as alternative standards. Clause 3 of the Bill seeks to empower the Secretary for Trade and Industry to adopt alternative safety standards other than the BSI ones for children's products. Clause 4 empowers the Secretary for Trade and Industry to amend the Schedule. This includes the addition of alternative safety standards and updating of existing standards. In order to ensure that the level of safety requirement will not be compromised when alternative standards are adopted, the Secretary for Trade and Industry must be satisfied that any new standards intended to be adopted are equivalent to the existing BSI standards already adopted for that particular children's product in terms of safety requirements.

The proposed adoption of multiple safety standards of children's products will encourage competition in the Hong Kong market and hence increase consumers' choice.

Mr President, I move that debate on this motion be adjourned.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR THE TREASURY to move the Second Reading of: "A Bill to amend the Stamp Duty Ordinance."

庫務司致辭：主席先生，我謹動議二讀《1996年印花稅（修訂）（第2號）條例草案》。

本條例草案包括兩項主要建議。第一項建議，是將向住宅物業買賣合約徵收印花稅的措施定為永久措施。第二項建議，是對自願裁定服務，按收回全部成本原則徵收費用。

讓我先談談有關買賣住宅物業的印花稅措施。首先，我想說明這項措施的背景。各位議員或許仍然記得，這項措施最初在一九九二年一月實施，作為遏止住宅物業炒賣活動的其中一項措施。但這項措施只屬臨時性質，須不時將有效期延長。本局在一九九三年十二月首次把這項措施的有效期延長兩年至一九九五年年底。去年十二月，我在本局動議通過決議，再延長這項措施的有效期兩年，直至一九九七年年底。該決議獲本局通過。在動議通過該項決議時，我亦表示我們有意在本屆立法會期內對《印花稅條例》作出修訂，將這項措施定為永久措施。今天我向議員提交的條例草案，旨在實行這項建議。現在讓我解釋我們將這項措施定為永久措施的原因。

第一，現行措施證明有助打擊住宅物業的炒賣活動。現時，物業市場已穩定下來，而投機炒賣活動亦已收斂。把這項措施定為永久措施，對炒賣物業有持續抑制作用。無論市場情❤ 如何變動，亦可藉這項措施打擊炒風，這也顯示我們堅決打擊物業炒賣的長期目標。

第二，這是一項公平的措施，因為它可以確保政府向每宗住宅物業交易，包括短期轉售交易，徵收印花稅，亦使我們得以就基本上屬商業買賣的物業交易中獲得的利潤徵收利得稅。從課稅的角度來說，這項措施應定為永久措施。

第三，這項措施除了達到對付炒賣活動及使稅制更為公平的目的外，對真正置業人士並無影響，他們只須略為提早繳交印花稅。

因此，我們有充分理由將這項措施定為永久措施。我們並不預期日後會出現任何情💔，會需要長期或暫時撤銷這項做法。因此，我們建議修訂《印花稅條例》，將這項措施定為永久安排。

我們明白有些議員關注到印花稅對置業人士所造成的負擔。我們對此已加以研究，並認為定期檢討印花稅的稅率結構，從而減輕置業人士的負擔，是適當和切實可行的方法。相信各位議員會記得，我們曾在一九九四年減收價值300萬元或以下物業的印花稅，使置業人士受惠。在本年的財政預算案中，我們又建議進一步減低物業交易印花稅，使購買價值350萬元或以下樓宇的人士受惠。這項稅務寬減，對於那些購置中下價樓宇，包括購置居者有其屋單位及夾心階層房屋計劃物業的人士，會有所裨益。

現在我想轉談本條例草案的第二項主要建議。在印花稅的裁定過程中，印花稅署署長會就一份文書是否可予徵收印花稅表示意見，以及如須徵收，則評定該文書可予徵收的款額。裁定分為兩類：強制裁定是為了保障政府稅收而對某類文書所進行的裁定；自願裁定則是由申請人自動要求進行的。現時，不論裁定服務是在強制或自動要求的情💔下進行，稅務局都會徵收象徵式的費用。

核數署署長於一九九五年年初完成有關裁定服務的帳目審查，並建議應按收回全部成本原則，徵收裁定費用。經檢討後，我們認為強制裁定及自願裁定應加以明確的區分。由於強制裁定主要是為了保障政府收入而進行，因此應無須收費；只有自願裁定服務，才須按收回全部成本原則來釐定收費。我們的意見已獲政府帳目委員會接納。因此，我們建議修訂該條例，以實施這項向部分裁定服務收費的建議。

我們亦藉這次修訂條例的機會，將該條例賦予總督會同行政局的權力中，並不涉及主要政策考慮的部分，轉授庫務司，以減輕總督會同行政局的工作負擔。當然，有關權力的行使，仍須按慣常方式受本局監察。

主席先生，我謹此陳辭，建議本局通過本條例草案。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

Resumption of Second Reading Debate on Bills

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

Resumption of debate on Second Reading which was moved on 8 November 1995

MR EDWARD HO: Mr President, the Medical Registration (Amendment) (No. 2) Bill 1995 was introduced into the Legislative Council on 8 November 1995. The purposes of the Bill are to expand the Medical Council and to revise its committee structure, to provide for the establishment of a Specialist Register and to streamline the procedure for transacting businesses of the Medical Council.

A Bills Committee, of which I am the Chairman, was set up to study the Bill. The Bills Committee has received submissions from seven interested organizations and individuals and has met deputations from five of the organizations as well as the Chairman of the Medical Council. It has held seven meetings with the Administration to discuss the various provisions of the Bill.

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

The first issue relates to the composition of the Medical Council.

Members consider it essential to have lay members participating in the work of the Medical Council, particularly in the areas concerning the interests of the public, such as the Preliminary Investigation Committee's investigations into complaints against medical practitioners and the disciplinary inquiries.

Under clause 3(1)(e), it is proposed to increase the number of lay members in the Medical Council from one to two. Members see the need to further

increase the number so that there will be sufficient lay members to monitor the work of the Council. After discussion, a majority of Members agree to increase the number of lay members to four. This is agreed by the Administration and the Secretary for Health and Welfare will move an amendment to effect the change.

The Bills Committee's proposal to increase the number of lay members to four will mean a total of 14 appointed members, which outnumbers the 12 elected members. In order to maintain the balance between appointed and elected members, Members and the Administration agreed to increase the membership to 28, with 14 elected members and 14 appointed members including the four lay members.

The second issue relates to inclusion in the Specialist Register which is a major issue of concern to the Hong Kong Academy of Medicine, the Hong Kong Medical Association and the North American Medical Association.

The proposed new section 20K spells out the requirement for inclusion in the Specialist Register. Following discussion with the Hong Kong Academy of Medicine after the introduction of the (No.1) Bill in the last Legislative Council Session, the Medical Council has proposed changes to allow an applicant who is not a Fellow of the Hong Kong Academy of Medicine but who satisfies the Education and Accreditation Committee that he is of good character and has achieved the necessary professional standards and continuing medical education requirements to be included in the Specialist Register.

The Hong Kong Academy of Medicine considers that the Medical Council should approve such an application under exceptional circumstances only and this should be reflected in the Bill. It argues that the absence of the phrase "under exceptional circumstances" in the (No. 2) Bill would cause misunderstanding that either the Hong Kong Academy of Medicine or the Medical Council could assess specialist qualifications and suggests that phrase which was included in the (No.1) Bill should be reinstated in the present Bill. The Hong Kong Medical Association holds the same view. On the other hand, the North American Medical Association supports the new section because it provides an alternative route for specialists trained in North America to become listed as specialists in Hong Kong without taking remedial training in Hong Kong as required of them for Fellowship of the Hong Kong Academy of

Medicine.

The Medical Council is of the view that basically, specialists who are qualified for inclusion in the Specialist Register should be a member of the Hong Kong Academy of Medicine as it is the statutory body to provide specialist training and to assess and accredit specialist qualifications. However, there may be circumstances under which a specialist, who does not wish to join the Hong Kong Academy of Medicine but is professionally qualified for inclusion in the Specialist Register, may wish to practise as a specialist in Hong Kong. The Medical Council would consult the Hong Kong Academy of Medicine regarding the qualifications of the specialist before making its decision.

The Administration further explains that the new section 20K(5) is added to provide a redress channel for those who are not Fellows of the Hong Kong Academy of Medicine but who wish to apply for inclusion in the Specialist Register. It points out that under Article 18 of the Hong Kong Bill of Rights Ordinance, people in Hong Kong are guaranteed freedom of association which also means that no one should be forced to become a member of any association. If a specialist does not want to join the Hong Kong Academy of Medicine, the Administration should not force him to do so by imposing Fellowship as a definite requirement for inclusion in the Specialist Register.

Some Members are worried that if medical practitioners are allowed to apply first to the Medical Council for inclusion in the Specialist Register under the proposed new section 20K(5), no one would apply under the new section 20K(3) which requires Fellowship and recommendation of the Hong Kong Academy of Medicine.

After further discussion with the Bills Committee and following consultation with the Medical Council and the Hong Kong Academy of Medicine, the Administration has worked out a new proposal in which an applicant for inclusion in the Specialist Register shall approach the Registrar who will have the following three options:

(a) If the applicant is a Fellow of the Hong Kong Academy of Medicine, the Registrar will submit the application to the Education and Accreditation Committee directly;

(b) If the applicant is not a Fellow of the Hong Kong Academy of Medicine but has obtained from it a certification that he has achieved a professional standard and has satisfied continuing medical education requirements comparable to those of its Fellowship, the Registrar will submit the application to the Education and Accreditation Committee directly, or

(c) If the applicant is not a Fellow of the Hong Kong Academy of Medicine and has not obtained any certification from the Hong Kong Academy of Medicine, the Registrar will submit the application to the Hong Kong Academy of Medicine for certification. If the Hong Kong Academy of Medicine certifies that the applicant has not achieved a professional standard or has not completed postgraduate medical training and satisfied continuing medical educational requirements comparable to those recommended by the Hong Kong Academy of Medicine for the relevant speciality, the Registrar shall reject the application, stating the reason for rejection.

If the application is rejected by the Registrar, the applicant may appeal to the Education and Accreditation Committee.

The Bills Committee supports the proposal. The Secretary for Health and Welfare will move an amendment to the clause at the Committee stage.

The composition of the various committees to be established under the Medical Council has also been carefully examined by Members.

Members note that under the new section 20S, the Preliminary Investigation Committee comprises a chairman, a deputy chairman, four medical practitioners and one of the lay members of the Medical Council and that quorum of a Preliminary Investigation Committee meeting is three, including the chairman or deputy chairman, or both.

Since it is the task of the Preliminary Investigation Committee to look into evidence produced by the complainants and the medical practitioners concerned and to make recommendations to the Medical Council for the holding of disciplinary inquiries, Members agree that lay representation in Preliminary

Investigation Committee meetings is essential and therefore the quorum should include at least one lay member subject to the majority being registered medical practitioners. The Administration agrees and will move an amendment to that effect.

Members have also deliberated on the need for inclusion of lay members in the Health Committee. They note that the Medical Council strongly opposes the formal inclusion of lay members in the Health Committee which is an internal review committee conducted by the medical profession to ascertain whether a particular medical practitioner is medically fit to continue his practice.

The Administration has pointed out that under the proposed new section 20U(1)(f), the Medical Council shall appoint to the Health Committee, *inter alia*, "1 to 3 persons, not being members of the Council, whom the Council considers appropriate" and therefore it will have the discretion to appoint lay persons if considered appropriate.

Some Members wish to include lay members in the Health Committee, preferably lay members of the Medical Council who would be in a better position than ordinary lay persons to handle the sensitive nature of cases involved and to make an objective judgement, and to spot irregularities, if any.

Other Members have doubts as to whether a lay member would be able to function effectively in the Health Committee. They observe that without the necessary professional knowledge, it would be difficult for the lay member to spot irregularities, if any, and to challenge the professional judgement of other members.

Members have divided views on this issue and no consensus has been reached.

In this connection, I would like to mention that the Honourable LAW Chi-kwong, a Member of the Bills Committee, will move an amendment at the Committee stage to include one of the four lay members of the Medical Council in the Health Committee.

The Bills Committee has also scrutinized the composition of the meeting of the Council held for the purpose of an inquiry under section 21.

The new subsection (1) stipulates that at any meeting of the Council held for the purpose of an inquiry under section 21, either five members of the Council or not less than three members of the Council and two assessors from the panel appointed under subsection (2) shall be a quorum. Members consider that there should be at least one lay member attending each disciplinary inquiry. After discussion, the Administration has agreed to amend the new section 21B(1) to the effect that at least one of the five persons forming the quorum shall be a lay member, subject to the majority being registered medical practitioners.

As regards the panel of assessors to be appointed under the new subsection (2), Members note that the panel serves as a pool of reserves to supplement members of the Medical Council for the purpose of conducting an inquiry under section 21 and that its composition is modelled on that of the Medical Council.

In considering the composition of the Preliminary Investigation Committee, Members have noted that under clause 26(3), a new section 21(4A) is added to provide that a member of the Preliminary Investigation Committee who is also a member of the Council shall not attend the subsequent disciplinary inquiry, if there is one. In order to ensure that there will be lay member's participation in such inquiries, Members consider that the number of lay member on the panel of assessors should be increased so that they can take turns to attend disciplinary inquiries, if required. Some Members also observe that lay persons serving on the panel could become suitable candidates for appointment to the Medical Council in future after they have acquired sufficient experience on the panel.

After discussion, Members and the Administration agree that the number of lay members on the panel of assessors should be increased from two to four.

The Administration has proposed to add a new clause 39A. Section 5 of the Medical Registration (Amendment) Ordinance (No. 87 of 1995) added a new section 7A to the Medical Registration Ordinance to state the eligibility criteria for taking the Licensing Examination.

Members note that since the introduction of the Licentiate Examination in 1977-78, the Medical Council has an internal guideline under which overseas medical graduates must have undertaken a period of internship before taking the Examination as the Medical Council considers that internship is part and parcel

of the medical training programme.

To provide legislative support for this practice, the Administration has proposed a new clause 39A to amend section 5 of the Medical Registration (Amendment) Ordinance to state that for the purpose of subsection 1(b)(i), the five-year full-time medical training shall include a period of internship as approved by the Council. Members support the proposed provision.

The various amendments to be moved by the Secretary for Health and Welfare at the Committee stage are supported by the Bills Committee.

Mr President, with these remarks, I commend the Medical Registration (Amendment) (No. 2) Bill to Honourable Members.

梁耀忠議員致辭：主席先生，就《1995年醫生註冊（修訂）（第2號）條例草案》的內容來說，我認為有兩點是有問題的，第一點是與醫務委員會的成員組織有關。雖然是項條例草案將業外人士的成員人數增至四名，但與業內人士的成員人數相比，仍屬偏低的數字，不足以充分反映市民大眾的意見。第二點則是關乎處理醫生精神事宜的健康狀💔小組，該小組成員組織尤其不合理，竟然連一名業外人士成員也沒有，也就是說業外人士的意見完全無法向該小組反映出來的。

基於這兩點，我是絕對不能信服和支持這項條例草案的。特別是這個醫務委員會的功能亦包括處理醫生的道德操守問題，例如有關醫生會否販賣禁藥、會否騙取病人診金，或是對病人有不道德行為等等；如果業外人士不能就這些問題參與表達意見或作仲裁，只是由業內人士作仲裁的話，我想一定會有偏頗的情💔出現的。為某一項專業的執業人士設立的委員會，必須公平、公開，以及能使市民對其增加信心，才可為社會所接受。

大家也知道今時今日的香港市民的民主意識及人權意識正不斷增長，並且要求政府增加透明度；而醫務委員會在這情💔下，卻不能夠順應民意，將業外人士人數增加的話，我覺得非常遺憾。我在這裏重申，我希望醫務委員會將來的業外人士人數會不斷增加，而健康狀💔小組的成員亦會加入一些業外人士。我的陳辭很簡單，最主要的原因是我在條例草案審議委員會內也曾表達我的意見，而當時我亦提及現時醫務委員會只得四名業外人士仍然是不足夠的。我在這裏重申我自己的立場，我是不贊成這兩個小組的成員組織的，而我的陳辭主要是針對這兩點。

謝謝主席先生。

MRS ELIZABETH WONG: Mr President, I welcome this Bill which I support. This Bill has been very carefully studied and scrutinized by the Bills Committee under the able chairmanship of the Honourable Edward HO. But I would like to make two simple points. First is on the dangers of protectionism, and secondly, on membership.

As regards the first point, Hong Kong has achieved a present excellent position by the legacy of a high standard through international recognition. To pursue this recognition, I think we should not be drawing in our horns or withdraw from the wisdom of our international involvement. To do so, we will pay dearly in future years and we will decimate the network of traditional goodwill that we enjoy today. We shall be penny wise today and pound foolish tomorrow. The underpinnings of Hong Kong's achievement today will then be corroded for as long as we are seen to adopt either a patronizing attitude or protectionistic manner towards what should really be a question of pursuit of technical knowledge. Without knowledge, our rice bowls will be broken. We who are legislators today should not be asleep at our wheel but must keep a vigilant watch that the process of registration under the Bill, which will be an Ordinance, will be kept to be as fair and transparent as possible.

As regards the second point on membership, I have received representation from many sources and the representations have made it clear that lay membership will be very relevant to the application of medical skill. The application of medical skill must necessarily involved patients and consumers. The rights of patients are best protected by the presence of some lay members on the Council itself and on its subcommittees or committees without arbitrary or artificial distinction between different committees. This is a necessary presence and does not, in my opinion, either undermine the dignity or the authority of the excellent professionals involved in the Medical Council.

Thank you, Mr President.

羅致光議員致辭：主席先生，民主黨在整體上是支持《1995年醫生註冊（修訂）（第2號）條例草案》的。不過，除了我在稍後提出的修訂之外，條例草

案內仍有一些美中不足的地方，希望日後有機會再作修訂時考慮。這其中包括了兩點，第一點是現時法例中的醫務委員會的成員組織給人一種很強烈的“分餅仔”的感覺，例如中文大學、香港大學、醫管局、香港醫學專科學院也各分了兩個席位，結果令修訂後的醫務委員會人數倍增，難怪有一群私人執業醫生也認為他們亦具代表性，要爭回一、兩個席位。

我是業外人士，本來不應該多說，但我欲以社工的身分在社工界內致力推動這個專業的發展，並且希望同業能夠團結一起，不要“各據山頭”，力爭自己的“山頭”比別的“山頭”高。我希望醫生朋友亦能夠就此問題團結起來，為專業發展而努力，不要在這裏“爭山頭”、“爭餅仔”。條例草案的審議委員會在初期便達到一個共識，就是醫務委員會內應該有20%的業外人士，所以建議將業外人士的數目由原來建議的兩名增設至四名。可惜發展至後期，醫務委員會的人數一直在增加，到最後總共變了28人，結果業外人士的比例跌至14%，這令人覺得很遺憾。當然我們可以再要求將業外人士數目增加至六個，變成全部的30人中的六個，即20%。但如果作這修改的話，醫生便會說又要增加多兩人，如果這樣下去，便會無休止地增加醫務委員會的成員數目，原因就是剛才所說的“分餅仔”情❤所引起。希望下次檢討這問題的時候，業內人士能就這問題進行討論，以及調整業外人士的比例，致能達到我們的目標，就是20%。

謝謝主席先生。

葉國謙議員致辭：主席先生，民建聯是基於維護病人權益的角度，認為增加醫務委員會業外人士成員的比例，能夠確保正式的會議上，包括醫務委員會及其小組委員會，必須有業外人士出席；同時亦可以加強醫務委員會的公信力，並能夠更加公正和公平地處理投訴個案。民建聯亦同時基於保障非英聯邦醫生利益的角度，認為現時的中醫業的權益並不獲重視和適當的反映，故當局應當積極考慮非英聯邦及內地畢業的醫生加入醫務委員會內；同時亦應加快成立中醫業發展委員會的工作進度，最終是成立中醫業的醫務委員會。此外，還要正視西醫霸權的進一步延展的問題，以確保病人權益獲得充分的保障。

主席先生，民建聯是會支持這項條例草案的修正案的。

DR LEONG CHE-HUNG: May I begin by putting it on record the appreciation of the medical profession to the chairman and members of the Bills Committee

who have worked so hard to understand the intricacy of this Bill in relation to the registration of the medical profession. I must place on record too our appreciation of the Government in finally presenting this second half of the Bill and for agreeing to move certain amendments. Yes, the Government has procrastinated for quite a few years. Yes, there were times when I almost had to resort to moving a Member's Bill. But I presume it is better late than never.

Mr President, with the passage of this Bill, hopefully today, and together with the Medical Registration (Amendment) Bill 1995 passed last July, though never perfect, the following areas will be achieved both for the benefit of the public and the medical profession which I represent.

Strengthening professional autonomy

As a start, Mr President, the Bill calls for professional autonomy. Autonomy for the profession to determine standards on which registration to practise will depend, not by the Government nor by the state. This is fundamental to all professions and this is why the nine professional groups fought so hard to have this enshrined in the Basic Law during the days of the drafting exercise.

Mr President, the registration and controlling body for the medical profession lies in the Medical Council. Hitherto, even up to today, this Council is completely appointed by the Governor. In short, the current Council is answerable only to the Government, not to the profession. This defies the core of professional autonomy. Ironically, if you look at the other professions, other than the Councils of the four health-related professions, they are all elected by the respective professions and accountable to the professions.

The Medical Registration (Amendment) (No. 2) Bill seeks to alter the size and the composition of the Medical Council and with its passage, 50% of its members will be elected by the profession and answerable to the profession. This though inadequate must be said to be a big step forward. But I still fail to understand why the Government refuses to grant full membership of the Medical Council to the profession whilst there is already precedence for the lawyers, the

barristers, the accountants, the architects, and the engineers, and so on. With the passage of this Bill, I hope the other health care professions will look at their Councils, "Nursing Board" for example, and move towards achieving some degree, if not all, of professional control.

Mr President, the Honourable LAW Chi-kwong has queried why would the increase in lay members of two should be met with a similar increase in two elected members from the medical profession. The reason, Mr President, is basically very simple. The list of doctors from the two universities, for example, the Hospital Authority, the Department of Health and, obviously, the two lay members, are appointees of the Government. In short, they still represent the Government although they may well be doctors. On the other hand, those elected by the profession will be representing the profession, accountable to the profession. In short, to maintain the same degree or at least some degree of professional autonomy, a similar increase in elected number is necessary to allow at least a 50% of their members to be accountable to the profession. In this stage, Mr President, if all of us are concerned and looking forward for democratic process to represent the people, I hope that the Democratic Party would understand that with at least 50% elected, we would be able to represent the people, not the Government.

Mr President, Members of this Council may have received recommendations from different medical bodies to have these 50% elected seats designated by law to certain sectors of the medical profession. This will not do and this I will not condone. For such move not only will sectorize the profession, instead of unifying them, but by allotting the seats to different bodies by law, it goes against the basic concept of professional autonomy which must be our fundamental core value.

More lay members for professional bodies

With the change in size and composition of the Medical Council comes also the increase in participation of lay members. The current quota of one lay member will be increased to four. The profession welcomes the participation of lay members in the Council especially during the different stages of disciplinary inquiries. For we believe that justice must not only be done but seen to be done.

Furthermore, any disciplinary activities of the profession should not be done within a black box constituted by the professionals alone.

Incidentally, I would like to remind the Honourable Mrs Elizabeth WONG that the original Bill introduced by the Government consists only of two members and this Bill was devised many years ago when she herself was Secretary for Health and Welfare.

Ironically, whilst members of the public are all out to push for lay representatives in the Medical Council, none have today been forthcoming to demand lay representatives in other non-health care related professional councils which in most cases are entirely constituted by professional people. I always fail to understand these double standards and wonder how the public acquired these double standards.

Role of the academy in specialist register

The Bill before us, Mr President, calls for the setting up of a Specialist Register. This is long overdue. Without being boastful, Hong Kong's medical standards are in the world's forefront. Furthermore, our population demand not just medical care but quality care and specialist care. A Specialist Register is therefore needed so that the public would know who to go to in case of special needs. Yet this must be backed up with ways and means of training doctors to this level, with ways and means to vet their standards, and with ways and means to ensure that they catch up with the improvement of standards on a day-to-day basis. It was with this in mind that an Academy of Medicine was set up three years ago by law. The timing is therefore right now that the Academy is running at full scale, and we should be moving into specialist registration and recognition.

It therefore comes as a surprise that the Administration in its first draft of the Bill indicated that a doctor could register as a specialist even though he/she has no relationship whatsoever with the Academy. Hiding behind the Bill of Rights arguing that you cannot force any person to join any organization, the value and the role of the Academy is gently tuck out of the way. Fortunately, at the end of the day, the Administration is willing to concede that every applicant for Specialist Register must have their standards and training judged and certified by the Academy. The Medical Council would also act as an appeal body should

the applicant fail to pass the assessment of the Academy. This, though inadequate, is a big step forward. However, I would still like to place on record my personal reservation and that of the profession.

There are of course those within my own profession, who have received training in systems different from those determined by the Academy, had raised objection and have even brought in the pressure of politics to bear on the Bills Committee. I condemn all these of course. For whilst we should be as flexible as possible in determining our training criteria, we are here to establish a system for Hong Kong. It is a Hong Kong system we are after, not an American, not a Japanese, not a United Kingdom system. Furthermore, political pressure should never be allowed to override professional autonomy. This is against all democratic principles and that any democratic institution should condemn.

Fitness to practise

Finally, Mr President, the Bill calls for further enlargement of functions of the Medical Council, in particular, the setting up of a Health Committee. A doctor if determined by his peers to be suffering, or otherwise, from certain health (mental or physical) problems that would interfere with his practice, this Committee will be charged with the task to analyse the situation and to recommend and advise changes in his/her practice even up to termination of his/her practice on health reason.

It may be timely for me to stress that this Health Committee is not a disciplinary body. It does not act when a doctor has committed a misconduct in his/her own practice.

Mr President, as I mentioned at the very beginning, this amendment Bill, hopefully with the amended provisions passed last July, are still far from perfect. The medical profession will be looking at areas which perhaps will need further improvement to better the profession and to protect the public, and suggest amendment in the course of time.

With those remarks, Mr President, I support the Bill, the amendments to be moved by the Government, but would reject the amendment by the Honourable LAW Chi-kwong. Thank you.

莫應帆議員致辭：主席先生，我是代表民協站在消費者的角度來發言的。剛才我們有多位同事亦已說過很多相同的意見，所以我也不想重複。我的意見主要是關乎醫務委員會的成員組織，即是業外人士的比例，以及初步偵訊小組和評審小組方面的成員比例。我們中國人有一句很形像化的說法："真金不怕烘爐火"，我認為專業醫生如希望能夠給予公眾人士一個公平、公正和具公信力的形像的話，就必須讓醫務委員會有合適比例的業外人士成員加入其中。現在28個成員裏面只得四個業外人士，若是多加兩名業外人士，是否真的會影響醫務委員會的決策能力呢？

事實上是不會的，而這比例亦與英國的比例相去甚遠。大家也知道法庭的陪審團並不是全數由專業律師或法律界人士組成的，而這個制度亦已有很長久的歷史。現在醫務委員會只是踏出第一步，卻仍然那麼保守，我認為是與現今社會、民主訴求，以及向市民交代等方面的要求相距太遠，因此，民協對《1995年醫生註冊（修訂）（第2號）條例草案》內有關業外人士成員方面的比例，表示不能接受及有所保留。當然，有下功夫總比甚麼都不做好一點，在現有的情💔下，我們只可以勉強接受這項條例草案。不過，我們也會支持羅致光議員提出有關健康狀💔小組的業外人士成員比例的修訂。

謝謝主席先生。

何敏嘉議員致辭：主席先生，我歡迎《1995年醫生註冊（修訂）（第2號）條例草案》獲得通過，我亦很高興看到本條例草案為醫務委員會引入直接選舉50%成員的機制、擴大委員會的業外人士比例，以及增設專科醫生名冊。我亦很高興看到稍後羅致光議員所動議的修正案內，提出在健康狀💔小組加入業外人士作為成員。總括來說，這是一項進步，但是這項進步在將來仍然要再跨前一步。我很希望看到這個有50%的成員是經由選舉選出的醫務委員會可以更獨立，更不受政府影響。當然我亦很希望很快就可以看到有關護士管理委員會的條例草案亦向本局提交，且有同樣的修正，引進直選。

對於業外士在醫務委員會的數目，於今天修正之後還是只得四個議席，我仍然是感到不滿意的。我同意香港病人權益委員會的意見，就是即使醫務委員會的成員會有三分之一是業外人士，其實是可以進一步加強委員會的公信力的。在條例草案審議委員會內有很多不同的意見，而我們亦覺得不值得

在審議委員會內爭論要有多少名成員。不過，我很希望這四位業外人士成員可以令這個新的醫務委員會有一個嶄新的面貌，使醫務委員會的業內人士成員更接受他們，亦讓市民看到業外人士成員能夠怎樣幫助新的醫務委員會運作得更好。

回應剛才梁智鴻議員提及我們在此要求在醫務委員會增加那麼多的業外人士成員，是否有雙重標準呢？其實，主席先生，這類有關各個專業委員會的條例草案，在過往數年向本局提交的並不很多。我相信，如果 生福利科真的可以在明年向本局提交有關《護士註冊條例》的草案修正案的話，該條例草案應該會受到同樣的對待的，我不認為局內的同事有任何雙重標準。

至於健康狀💔小組方面，我支持羅致光議員的修正案。我認為這個小組如果能夠加入業外人士成員，是可以使這個小組更公道，同時亦能讓人感到它是更公道的。主席先生，我在稍後的委員會審議階段時將會再次發言，特別是就有關這方面的修正條文發言。

謝謝主席先生。

SECRETARY FOR HEALTH AND WELFARE: Mr President, I should like to thank the chairman and members of the Bills Committee for their careful scrutiny of the provisions in the Bill. The Bill, if passed by this Council, will lead to four major changes.

First, the Medical Council will have an expanded membership to broaden its representation and to help the sharing out of the increasing workload. The addition of 14 members to the Council will bring the total number of members to 28. Of the 28, 14 will be elected, seven to be elected from all registered medical practitioners on the General Register, and the remaining seven to be elected by the Council members of the Hong Kong Medical Association. The introduction of elected members into the Medical Council will encourage greater involvement of the profession in its own affairs.

Secondly, the provisions regarding the introduction of a Specialist Register pave the way for the formal registration and control of medical specialists.

Thirdly, apart from the existing Licentiate Committee and the Preliminary

Investigation Committee, three more statutory committees, namely, the Health Committee, the Education and Accreditation Committee and the Ethics Committee will be established to look after other important aspects of the Council's work.

Lastly, the Medical Council and its Health Committee will be able to prohibit the disclosure of information relating to an inquiry by the Council or a hearing by the Health Committee if it is in the interests of the complainant, defendant or witness. In addition, for the protection of the public, the Medical Council's Disciplinary Order will take effect on publication in the Gazette.

With these remarks, Mr President, 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).

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 13 March 1996

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).

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 13 March

1996

詹培忠議員致辭：主席先生，證券及期貨事務監察委員會（“證監會”）自一年多前引進管制槓桿式外匯買賣的條例後，一如資料所顯示，香港本來是一個自由社會，特別是政府說要保持香港作為一個金融中心而沾沾自喜。我們必須了解到，一件事從無拓展到有，由小做到大，是一個社會進步的現象。但如果以“監管”兩個字，而將一件事從大縮到小，從小縮到沒有，這項政策根本違背了香港政府的最基本政策 — 積極不干預政策，倒是積極地扼殺某些行業。

本人絕對支持政府就有關的監管作出適當步驟，但同時我也希望能在此提出，這運作是否正常或公平？從資料顯示，在過去一年多，獲得證監會批准的槓桿式外匯商只有37間，而其中已經有超過五間已經自動停業，甚或將牌照交回證監會。在這情形下，足證證監會必須檢討這樣做法是否符合香港人的最基本利益。

另一方面，證監會在期貨交易所引入另一種新品種，即日轉期匯，讓期貨交易所在屋 內推廣這一類產品。我想請財經事務司很明確告知香港市民，這是否一個合法的品種？政府是否意圖扼殺槓桿式外匯買賣，而以另一個品種代替？這品種的合法性如何；保障又如何？主席先生，我可以明確說明，我並沒有從事任何有關這方面的業務，或有任何接觸。政府絕對有需要明確地讓小投資者了解這件事。

第二，主席先生，有關條例草案內提到“適當人選”，我個人不會反對，因為作為一個政府機構，證監會是有權力任用適當人選，以評估任何人士申請牌照或董事，甚至是大股東的資格，這是有必要的。不過，我很希望能夠有一張很清晰的列表，列出甚麼是適當人選。證監會甚至可以規定他必定要大學畢業，或樣貌英俊等，但無論如何，絕對必須有清晰的列表，以資界定，而不能將這項解釋權授予當權者，因為這些當權者有時會跟整個香港的經濟或金融息息相關。原因是證監會內還有很多外籍人士，（我不是歧視他們或對外籍人士有偏見）一旦他們所代表的國家跟香港有競爭時，他們的行為表現難免會引起別人的質疑。

因此，我很希望財經事務司能夠清楚解釋何謂“適當人選”。如果他不能作出解釋，我也很希望他會運用權力，要求證監會制定一張列表，令有關人士能清楚知道自己是否符合那些規定，甚或會牴觸該條例，而得以有所遵從，甚或說得粗俗一些，能“死得眼閉”。否則，一些申請者遭拒絕也被蒙在鼓裏。我認為財經事務司是代表財政司及總督向證監會行使他的權力，但他往往說不是太足夠。我很希望在這事情上，他說他是有權這樣做的。如果再推搪，便是不負責任了。

主席先生，第三，這次要改革的是，如果一些不獲批准的槓桿式外匯買賣公司，或大股東是不適當人選，而他們利用職權去收購其他已獲批准的槓桿式外匯買賣公司，要發出大量所持有的股份予不適當的人選，我很希望財經事務司能夠詳細解釋何謂“大量”。超過50%是大量；抑或10%是大量；又抑或90%才是大量？我覺得甚麼比率也沒有問題，最重要是必須寫明是百分之幾，這樣便會較為明確。雖然這解釋權在監管當局，但我很希望任何法例都不要模棱兩可，造成一個不合理的情💔。以一個百分比來表達“大量”一詞，我堅信是問題不大的。

主席先生，道義上我絕對支持這條條例草案，因為大家都知道，自從有了槓桿式外匯買賣後，發生了一件爭執事件弄至雙方須付出相當龐大的律師費。因此，如發現有不足之處，而能知錯改正，是絕對適應現代社會，也是向市民負責的。我希望任何政府部門或監管部門不要墨守成規，如果有錯，就應該面對現實，接受社會的現實。這是現代的政治文化，也是監管的文化。

主席先生，雖然我支持這條條例草案，但我很希望財經事務司稍後能就我剛才提出的三個問題作出明確聲明。我更代表業界和社會關注這問題的有關人士表示支持。很可惜，本局很多同事都不大熟悉這條例草案，所以討論較少。不過，事實上，很多人的代表性都是很受質疑的。

主席先生，我謹此陳辭。

財經事務司致辭：主席先生，我謹就詹培忠議員剛才的發言很簡略地作出回應。

第一，有關槓桿式外匯買賣的監管，我們是就當時的實際情況，才定出這個政策方向，主要是因為很多投資者都感到保障不足，更有投資者作出投訴。設立監管機制的主要目的，當然不是想將這行業淘汰，而是希望為這行業設立一個較為完善的監管架構，使投資者得到充分的信心，這樣該行業才能得以繼續發展。

證監會最近也曾向業內代表進行諮詢，討論如何可以繼續發展該行業的業務，並已發出諮詢文件和一份問卷。證監會在收到意見後，會檢討情況，看看有否其他方法，幫助該行業正常發展業務。

詹議員的第二和第三點，是有關適當人選和控制股權界定的問題。在適當人選方面，證監會一向對證券和期貨的運作，訂有一套指引，而這套指引也適用於目前這個情況，所以無須將資格全部再次列出。在這方面，立法局秘書處也存有這份文件，解釋何謂“適當人選”。

至於控制股權的界定，我們會很明確提醒證監會，日後在執行法例時，應該事前訂立明確的指引，使對該行業有興趣的人士知道甚麼是可以接受，甚麼是不可以接受的。

至於剛才詹議員提到的期貨交易所的日轉期匯產品方面，在政府的立場來看，兩種產品是相輔相成的。它們有不同的功用、不同的目標，以及不同的投資者。推廣日轉期匯買賣，是期貨交易所份內的工作，這與槓桿式外匯買賣公司的業務沒有甚麼大衝突。無可否認，在過去12個月內，一些公司是停了業，或將牌照交回證監會，但這主要是與市場的轉變有關，而不是因監管方面出了問題。在這事上，我希望大家不要忽略市場和投資者意向的問題。

以上就是我對詹議員的意見所作出的回應。謝謝主席先生。

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).

REHABILITATION OF OFFENDERS (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 2 November 1995

MISS MARGARET NG: Mr President, a Bills Committee was formed to study the Rehabilitation of Offenders (Amendment) Bill 1995. The Bills Committee, chaired by the Honourable Mrs Selina CHOW, has held five meetings, including four with the Administration.

The Bills Committee is in support of the Bill. I would like to highlight the major issues considered by the Bills Committee.

Exclusion of vocational drivers from the "immediately spent conviction" scheme

The Bill provides that, in general, payments under the fixed penalty scheme and other road traffic convictions are to be spent immediately without the waiting period of three years. However, vocational drivers are excluded from the "immediately spent conviction" scheme, for the purpose of employment or continued employment in their profession, so that employers, in particular transport operators, or those making employment decisions on their behalf can take into consideration the traffic conviction records of applicants.

Members are concerned that the proposal may be prejudicial to vocational drivers. They note that this is not the proposal of the Fight Crime Committee, but that of the Transport Branch and Transport Department. The Administration explains that the main reason for the proposal is that some of the minor road traffic convictions are to be spent immediately, for example, driving in excess of speed limit by more than 45 km/h, failing to comply with traffic signals, and so on, may reflect on a person's driving behaviour which may jeopardize the safety of other road users. After detailed study of the offences in the fixed penalty scheme and the operation of the "immediately spent conviction" scheme, Members of the Bills Committee are convinced that exclusion of vocational drivers from the scheme is justified.

Views from the insurance industry

On consulting the insurance industry after the introduction of the Bill, the Administration proposes that:

(a) a person (including an employed or self-employed vocational driver) will have to disclose payment(s) under the fixed penalty scheme to insurers for the purpose of assessing and pricing a risk in respect of vehicle insurance unless the three-year waiting period had elapsed; and

(b) the rehabilitation scheme should not be applicable to insurance intermediaries registered under the Insurance Companies Ordinance (Cap. 41). This is in line with section 4(1)(e) of the Rehabilitation of Offenders Ordinance (Cap. 297) which excludes authorized insurers from the rehabilitation scheme.

Members support the proposed amendment.

Prescribed offices

The Schedule to the Rehabilitation of Offenders Ordinance provides a list of Prescribed Offices which are excluded from the rehabilitation scheme. The Bill proposes to add to the Schedule "any office" of the following organizations:

- Independent Commission Against Corruption

- Hong Kong Monetary Authority

- Office of the Commissioner of Insurance

- Securities and Futures Commission

Members are dissatisfied with this provision because it is not within the spirit of the Bill which is to liberalize the rehabilitation system. In particular, the proposal to exclude "any office" in these organizations from the scheme is too stringent because it may include minor and clerical staff. Moreover, it does not tally with the existing items in the Schedule which only cover officers of a certain level in certain departments or disciplined services. The four

organizations argue that their officers have regular access to confidential and sensitive information; therefore requiring a higher level of integrity. Members consider that the responsibility of the "offices", rather than regular access to sensitive documents, should be the criterion of inclusion in the Schedule.

In the light of Members' concern and after re-examination of their proposals, the four organizations agree to revise the proposals as follows:

For the Independent Commission Against Corruption

Any office of the Independent Commission Against Corruption grade staff or in the Operations Department.

For the Hong Kong Monetary Authority

Any office occupied by executive, professional, managerial, technical and secretarial staff.

For the Office of the Commissioner of Insurance

Any office in the Insurance Officer (including Commissioner and Assistant Commissioners) and secretarial grade.

For the Securities and Futures Commission

Any office occupied by executive staff (including Executive Directors) and secretarial staff.

The revised proposals are acceptable to the Bills Committee.

Certificate of No Criminal Conviction (CNCC)

Members strongly feel that the refusal to issue a Certificate of No Criminal Conviction (CNCC) to an applicant with a spent conviction is entirely contrary to the spirit of rehabilitation of offenders. Convictions should be "once spent, always spent". Noting that this is an old issue, they wished to take the opportunity to amend the Bill requiring the issue of a CNCC to an applicant with a spent conviction. However, the Bills Committee was advised that such an

amendment is outside the scope of the Bill.

In view of the fact that the issue of a CNCC is not within the ambit of the Bill and in order not to defer the passage of the Bill, it is decided that this issue should be followed up by the relevant Legislative Council Panels; that is, the Administration of Justice and Legal Services Panel and the Security Panel.

Mr President, with these remarks, I support the Bill.

羅致光議員致辭：主席先生，本人代表民主黨支持這項條例草案的精神。所謂“知錯能改，善莫大焉”，對一個改過自新的朋友，如果仍留有案底，便有如額上的烙印，是一個不能抹去的標誌。能為只是犯了輕微罪行的朋友消除案底，實在是一件好事。不過，可能由於我是一名社工的緣故，我總是覺得今次修改還有很多地方可以更進一步，令更多改過自新的朋友獲益。

本人加入這個條例草案審議委員會的其中一個主要原因，是希望幫助那些已消除案底和那些俗稱“洗底”的朋友，讓他們可以申請得到一份無案底的良民證。可惜，立法局的法律顧問告訴我們，這方面的問題超越了這條例草案的範圍。民主黨並不滿意政府的答覆，因為今次不能夠進行修訂，為上述朋友爭取到改善。在這裏，我代表民主黨重申，希望政府就有關良民證的安排作出改善，令那些改過自新及已“洗底”的朋友能獲發一份無案底的良民證。

本人代表民主黨支持今天條例草案提出的所有修正。

謝謝主席先生。

SECRETARY FOR SECURITY: Mr President, I should like to thank the Chairman, the Honourable Mrs Selina CHOW, and other Members of the Bills Committee for their thorough and careful study of the Rehabilitation of Offenders (Amendment) Bill 1995. I would also like to thank the Honourable Miss Margaret NG for her speech supporting the Bill. All the Committee stage amendments which I am going to move have been discussed and agreed by the Bills Committee.

This Bill, which was introduced into this Council in November last year, seeks to expand the scope of the rehabilitation scheme under the Rehabilitation of Offenders Ordinance, so that more people who have committed minor offences can benefit. The current scheme provides that where a person, on a first conviction, is not sentenced to imprisonment or a fine exceeding $5,000, the conviction can be "spent" after three years so long as the offender has no further conviction. The person concerned is permitted to say nothing about his spent conviction in his business and social dealings, such as in application for jobs, hire purchase and the like. Moreover, the person cannot lawfully be refused employment or admission to a profession on account of his spent conviction.

We propose in the Bill to expand the current rehabilitation scheme by raising the sentence limit, so as to cover any first-time offender who is sentenced to a fine not exceeding $10,000 or imprisonment not exceeding three months. We also propose that persons who have been convicted of minor triad-related offences, but have subsequently renounced their triad membership under the Triad Renunciation Scheme, should be covered by the rehabilitation scheme if they meet the requisite criteria.

In the course of examining the Bill, the Bills Committee has expressed concerned about the effect of a spent conviction on a prospective emigrant. I should in this context wish to point out that the Rehabilitation of Offenders Ordinance does not have extraterritorial effect, and cannot seek to override any law of a foreign country which requires applicants for emigration to disclose all criminal convictions. Within Hong Kong, an applicant's failure to disclose a spent conviction would be lawful, but whether or not he would be protected in the foreign country concerned would depend on the law of that country.

At present, prospective emigrants are required by the immigration authorities of the major emigration destinations to produce Certificates of No Criminal Conviction (CNCC) issued by the police. In making an application for a CNCC, the applicant is required to authorize the police to disclose any criminal conviction recorded against him to the relevant consulate and immigration authority. If the applicant has a spent conviction, the police will issue him with a refusal letter, which contains details of the conviction, and is stamped with a

chop stating clearly that the conviction is considered to be spent in Hong Kong by virtue of section 2(1) of the Rehabilitation of Offenders Ordinance. It is then up to the applicant to decide whether he wants to present it to the consulate. The issue by the police of refusal letters to applicants with spent convictions has been held by the courts to be consistent with the provisions of the Rehabilitation of Offenders Ordinance.

We have been advised by the consulates of major emigration destinations that a spent conviction is not necessarily a bar to emigration. Convictions of minor offences alone will not normally render a person ineligible for a visa, and convictions currently regarded in Hong Kong as spent are rarely considered sufficiently serious to cause rejection of an emigration application. However, if an emigration applicant fails to declare a spent conviction, and this fact comes to the consulate's attention, his application may be rejected. If the person concerned has already emigrated, it could result in his eventual deportation back to his original place of residence. Depending on the nature of the undeclared conviction, such refusal or deportation could have been avoided had the conviction been declared at the time of application. Seen in this light, the current police practice actually helps to protect the interests of emigration applicants. In response to the Bills Committee's request, we explained our position on the issue of CNCCs to the Administration of Justice and Legal Service Panel and the Security Panel at their joint-Panel meeting held this Monday.

I would now like to turn to the major amendments which I will move at the Committee stage. Clause 5 of the Bill proposes, among other things, the exclusion of certain proceedings under the Banking Ordinance and the Insurance Companies Ordinance from the rehabilitation scheme. Having consulted the insurance industry, we propose to move amendments to this clause, so as to expand the exclusion to cover proceedings under the Insurance Companies Ordinance in assessing a person's suitability to become, or continue to be, an appointed insurance agent or an authorized insurance broker, or continue to be, an appointed insurance agent or an authorized insurance broker. This proposal is made in the interests of the insuring public. Owing to the complicated nature of the insurance business, a potential policy holder relies heavily on the professional advice of the agent or broker, who may be handling substantial sums of clients' monies. To avoid any fraud or misappropriation of funds, it is necessary to ensure that an agent or a broker is a fit and proper person.

The proposed section 2(1B) under clause 3 of the Bill allows payments under the fixed penalty scheme to be spent immediately without the three-year waiting period. In the case of vocational drivers, we propose that, for the better protection of public safety, their payments under the fixed penalty scheme should only be spent after a period of three years, so as to enable transport operators to take into account such payments in determining applications for employment. However, professions currently excluded from the rehabilitation scheme under section 4 of the Ordinance, and those proposed to be excluded under clause 5 of the Bill, cannot benefit from this "immediately spent" arrangement. We consider this arrangement unreasonable. While the public has the right to expect the highest standard of probity from these professions (such as barristers, solicitors and accountants), we do not necessarily think that the public would expect them to drive better. I therefore propose to move amendments to clause 5, so that except for vocational drivers who have to wait three years, other professions excluded from the rehabilitation scheme can have their payments under the fixed penalty scheme spent immediately.

In the course of its deliberation, the Bills Committee recognized that traffic conviction records were not only important for assessing a person's suitability for employment as a vocational driver, they were also important factors in assessing and pricing a risk in respect of vehicle insurance policies. I will, therefore, move an amendment to clause 5(e) by adding a new subsection (6), so that an insurer, or a person acting on his behalf, can take into account fixed penalty payment in the previous three years when assessing and pricing a risk in respect of vehicle insurance. The amendments proposed would mean that while payments or orders to pay in respect of minor traffic offences are regarded as spent immediately for most purposes, they are not considered spent in the assessment of a risk in respect of vehicle insurance or a person's suitability as a vocational driver, unless a period of three years has elapsed.

Another area on which the Bills Committee expressed concern was the list of prescribed offences under clause 8(c), which are excluded from the rehabilitation scheme. As drafted, these include any posts in the Independent Commission Against Corruption, the Hong Kong Monetary Authority, the Office of the Commissioner of Insurance and the Securities and Futures Commission. The Bills Committee considered that minor staff, such as cleaners and office

assistants in these four organizations should not be excluded from the rehabilitation scheme. We agree with the Bills Committee' view, and I will move an amendment to clause 8(c) so that minor staff, and staff who do not have frequent access to sensitive information in these four organizations, are not excluded from the rehabilitation scheme. This is in line with the objective of the Bill to enable more people to benefit from the rehabilitation scheme, while at the same time ensures that public expectation of high probity in certain positions of trust will not be put at risk.

Mr President, with these remarks, I recommend the Bill to Honourable 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).

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

Resumption of debate on Second Reading which was moved on 18 October 1995

MR AMBROSE LAU: Mr President, a Bills Committee, chaired by me, was formed to study the Intellectual Property (World Trade Organization Amendments) Bill 1995. The Bills Committee and its technical subcommittee have held eight meetings with the Administration. Views from six deputations and 17 written submissions have been considered.

The Bills Committee is in support of the Bill, subject to the proposed Committee stage amendments to be moved by the Secretary for Trade and Industry. I would like to highlight the major issues considered by the Bills Committee in its scrutiny of the Bill.

The minimalist approach

Members of the Bills Committee note that the Bill is intended to serve as an interim measure to enable Hong Kong to fulfil its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Separate comprehensive bills on trade marks, patents, copyright and registered designs for modernization or localization purposes will be introduced later in the current 1995-96 Session.

Having regard to TRIPS Article 1 which provides that World Trade Organization (WTO) members are free to determine the appropriate method of implementation within their own legal system and practice, the existing intellectual property regime in Hong Kong, the interim nature of the present legislative exercise and the urgency in compliance with the TRIPS requirement, the Administration has taken a minimalist approach in drafting the Bill. The Bills Committee supports this approach.

Public consultation

Given the wide implications of the Bill on the industry and the general public, Members were concerned that no public consultation had been conducted on the Bill before its introduction.

To address Members' concern on public consultation, the Administration held a seminar in November 1995 for interested organizations; and the views collected together with the Administration's responses were forwarded to the Bills Committee for consideration. All participants (41 representatives from 20 organizations) at the seminar expressed support in principle for the Bill to implement TRIPS.

Major issues

In addition to the above general issues, there are five major issues of the Bill considered by the Bills Committee. They are: new copyright piracy offence, parallel import, rental right for film, definition of a trade mark and expanded

right of trademark owners to sue for infringement.

New copyright piracy offence

There is general support to the policy intention to provide additional legislative tools to combat copyright piracy more effectively, particularly in tackling organized syndicates masterminding copyright piracy activities. This will enable Hong Kong to fulfill its obligations under TRIPS Articles 61 to "tackle wilful piracy on a commercial scale".

Reservations have been expressed by the Bills Committee and some organizations, especially the legal profession, on the wide scope of application of this new offence and that the proposed offence cannot cater for the territorial nature of copyright. The Administration agrees to amend the proposed section 5A of the Copyright Ordinance in a manner that would limit the scope of the section to illegal manufacture and importation, which are offences under section 21 of the United Kingdom Copyright Act 1956 and are the primary acts involved in copyright piracy. The legislative objective of the proposed amendment is to make a specific offence to target those who make preparations for or who aid, abet, procure or counsel the importation into Hong Kong of infringing copies. The proposal is able to achieve the policy objective to combat cross-border copyright infringement more effectively whilst at the same time addressing the concerns raised by various parties.

Treatment of parallel imports under customs border measures

Clause 9 of the Bill provides for a set of customs border measures to enable copyright owners, as well as their exclusive licensees, to apply for court order to detain suspected imports of infringing copyright products, including pirated products and parallel imports. The customs border measures are additional channels to facilitate trade mark and copyright owners in taking civil actions.

The Bills Committee and the legal profession have expressed concern that such border measure provisions can be abused without adequate safeguards. Given the various views expressed on this issue, including the view that it may not be a strict requirement for WTO members under the TRIPS Agreement to

provide customs border measures to cover infringing parallel imports, and in order not to delay the enactment of the Bill, the Administration proposes to defer the issue of the treatment of parallel imports under customs border measures for further consideration until the proposed new Copyright Bill is introduced. It is therefore proposed to amend clause 9 to exclude parallel imports from the customs border measure provisions in this interim exercise.

In view of some Members' concern to ensure that all parallel imports from both contracting parties to copyright conventions and the dependent territories of the United Kingdom would be excluded from the customs border measures, the proposed amendment makes it clear that the definition of "infringing copy" excludes parallel imports from countries, territories or areas to which the 1956 Copyright Act extends or applies.

Rental right

Given the various views expressed on the issue of rental right for films, including the question of whether WTO members are required under Article 11 of the TRIPS Agreement to provide for rental right for films, and in order not to delay the enactment of the Bill, the Administration proposes to defer the issue of rental right for films for further consideration until the proposed new Copyright Bill is introduced. Clause 10 is to be amended to this effect in this interim exercise. The Bills Committee accepts this proposal.

There were suggestions to add certain conditions to clause 10 for the rental right provisions for computer programs and sound recording to bring the provisions more in line with the TRIPS requirement and prevent computer software piracy under the disguise of rental.

The Administration has accordingly proposed to redraft the definition of rental in relation to computer programmes and sound recordings to the effect that rental right will not apply if the computer programme or the sound recording is not the essential object of the rental. In the light of the comments received, provisions are also proposed to clarify the meaning of "essential object of rental".

Definition of trade mark

There are divergent views as to whether Article 15(1) of the TRIPS

Agreement requires WTO members to provide for the registration of signs which are not visually perceptible, such as sounds and smells in their trade marks legislation. Concern has been expressed that the definition in the Bill is based on the European Community Directive and is too wide and goes beyond the strict requirement of Article 15(1) of TRIPS.

After careful examination of the public responses on this issue, the Administration put forward two options for Members' consideration. The first option, which is the option preferred by the Administration, is to retain clause 18 as drafted. It is based on a liberal interpretation of Article 15(1) which the Administration considers is necessary to ensure that Hong Kong is in compliance with the minimum TRIPS requirements. The alternative option is to closely adopt the wording contained in Article 15 of the TRIPS Agreement. Members generally accept the alternative option which is in line with the minimalist approach.

Expanded infringement rights for trade mark owners

To address the concerns of the Law Society, the Administration proposes to add to clause 21 the words "or services associated with such goods" after the words "goods of the same description". These additional words, and the similar addition to clause 22, derived from section 20 of the Trade Marks Ordinance, would make clear that a proprietor of a trade mark would have the right to prevent a person from using similar marks for associated goods/services in cases where the use would result in the likelihood of confusion. However, the Bar Association disagrees with the Administration's revised clauses 21 and 22 which are considered to extend the rights given by registration in a manner not required by Article 16 of the TRIPS Agreement and change the law fundamentally by allowing infringement of a trade mark for goods by services mark use.

Member consider that the crux of the issue is whether a wider approach proposed by the Law Society or a narrower approach proposed by the Bar Association meets the minimum requirement of Article 16 of the TRIPS Agreement. In this connection, a narrower interpretation of Article 16 is considered consistent with the minimalist approach. No amendments are therefore proposed to these clauses.

Closing remarks

In closing, I would like to thank Members of the Bills Committee for their contribution and representatives of the Administration for their co-operation in the study of the Bill. Without their strenuous efforts, the scrutiny of this technical and controversial Bill would have taken a longer time to complete.

Mr President, with these remarks, I support the Bill.

MR JAMES TIEN: Mr President, the purpose of this Bill is to make the laws in relation to intellectual property rights in Hong Kong to meet the requirement of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) agreement as soon as possible. For Hong Kong, being categorized as a developing country member, although in theory only needs to comply the obligations by 1 January 2000, an early commencement of legislation procedure is desirable to show our endeavour to implement the TRIPS agreement. This Bill is only an interim measure. What the Administration needs to do is to inspect each of the legislation related to intellectual property rights, and make necessary amendment to bring them in line with what TRIPS required.

We have to differentiate two kinds of changes here, the first one being mandatory, and the second optional. Given our short-term objective in this stage is to bring our laws in line with what TRIPS required in this exercise, we should not commit ourselves to any amendment which goes beyond TRIPS requirement. In this connection, the business community and the Liberal Party agreed in the Bills Committee to adopt the minimalist approach in scrutinizing the Bill. We should, therefore, pick out the optional changes and leave other issues to the relevant Bills, such as the Copyright Bill, which is to be introduced to this Council later. In the absence of a deadline, we hope that we can spend enough time to consult the public and debate these controversial issues in future Bills Committee meetings.

Mr President, five major issues were identified and considered in the Bills Committee, namely, new copyright piracy offence, parallel imports, rental right for films, definition of a trade mark and expanded infringement rights for trade

mark owners.

First of all, we support the effort made by the Administration to provide additional legislative tools to combat copyright piracy more effectively. As a measure to strength protection of copyright licensees against piracy, we can hardly give a single reason not to support the Administration. We have received a number of complaints from copyright licensees of computer software, as well as audio and video software in the past who advocated their concerns on increasing the punishment of copyright pirates and strengthening enforcement by the Customs and Excise Department. Together with the increase of the establishment of the Customs and Excise Department, we hope the new amendments will facilitate the prosecution by the Legal Department and effectively discourage copyright piracy.

In view of the comments received by various organizations concerned, and given the time constraint of enacting the Bill as soon as possible, we support the suggestion to defer the more controversial issues, namely, the parallel imports and rental right of films, to the coming Copyright Bill to be submitted to this Council later.

Concerning the definition of trade mark, we support a liberal interpretation of Article 15(1) of TRIPS as proposed by the Administration.

As for the infringement rights for trade mark owners, we support the narrower interpretation of Article 16 of TRIPS as suggested by the Bar Association.

Mr President, as a conclusion, we support the adoption of the minimalist approach to this Bill of not going beyond what WTO required, and leave other issues to later legislation concerned.

Thank you.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am most grateful to the Bills Committee for its careful and efficient examination of the Intellectual Property (World Trade Organization Amendments) Bill 1995 under

the chairmanship of the Honourable Ambrose LAU.

The objective of the Bill is to render the intellectual property regime in Hong Kong compatible with the standards and requirements in the Agreement on Trade-Related Aspects of Intellectual Property Rights, or the TRIPS Agreement in short. This Agreement is one of the multilateral agreements under the World Trade Organization(WTO). Hong Kong, as a full member of the WTO, is obliged to comply with the Agreement.

I am gratified that members of the Bills Committee have fully supported the Administration's initiative to implement Hong Kong's obligations under the multilateral TRIPS Agreement as soon as possible. The pragmatic and co-operative approach adopted by Members in examining the Bill has made it possible for the passage of the Bill today, some three and a half years ahead of the deadline for Hong Kong to implement its TRIPS obligations. The enactment of the Bill will help Hong Kong to demonstrate to other WTO members our firm commitment to a high level of intellectual property protection. It will also enhance Hong Kong's image as a responsible trading partner in the multilateral trading system, and as an international trading and services centre in the world.

During the Bills Committee's deliberations, interested parties and the legal profession have commented on various technical aspects of the Bill as well as expressed concerns on a number of issues. These issues primarily stem from the divergent interpretations of certain articles in the TRIPS Agreement and the different views over the consistency of certain clauses in the Bill with the existing legal framework in Hong Kong. After careful consideration of all the views expressed and the written submissions received, the Administration has agreed to modify a number of proposals in the Bill. The Administration has also agreed that some issues would need to be reconsidered in the context of the ongoing comprehensive law reforms on copyright and trade marks. I hope to be in a position to introduce a Bill on copyright and one on trade marks later this year upon the completion of the law reform exercises and taking into account views expressed by the public, professional and interest groups.

At the Committee stage later in this sitting, I will move a number of amendments to the Bill to reflect the agreements reached in the Bills Committee.

I will also move other technical and minor amendments. All these amendments have been set out in the paper circulated in my name to Members earlier. There are just four major amendments that I wish to highlight.

The first one is concerned with the scope of the new copyright piracy offence. In clause 5 of the Bill, we originally proposed a new offence to fulfill the TRIPS obligation of combating wilful copyright piracy on a commercial scale more effectively. We received general support of this policy objective, but the legal profession expressed concerns over the scope and the application of the new offence as originally drafted.

To address these concerns, the Committee stage amendment to clause 5 seeks to replace the original offence provision with a new clause. The new clause adequately addresses the concerns of the legal profession while achieving the policy objective of tackling wilful piracy on a commercial scale more effectively. It makes clear the criminal acts, done outside Hong Kong, which are actionable. Such acts relate primarily to the manufacture of pirated copyright products outside Hong Kong for export to Hong Kong. The new clause also makes aiding, abetting, procuring or counselling of such acts an offence. I believe this new legislative tool will greatly enhance the Customs' capability in tackling cross-border piracy activities and the masterminds of copyright piracy syndicates, thereby protecting the legitimate interests of copyright owners and overseas investors in Hong Kong.

The second major amendment relates to the treatment of parallel imports under customs border measures. The Administration originally proposed to provide new customs border measures to strengthen border controls in order to help prevent the importation of infringing copyright products into Hong Kong, and to facilitate copyright holders including exclusive licensees to initiate civil actions against pirated copyright products and parallel imports.

The distinction between pirated copyright products and parallel imports is that the former generally refers to those copyright products manufactured without

the copyright owners' authorization, while the latter generally refers to those goods which are lawfully manufactured outside Hong Kong with the authorization of the copyright owners there, but their importation into Hong Kong is illegal under the existing copyright regime. The motion picture industry and the video rental business have expressed differing views on whether the new customs border measures should be applicable to parallel imports. They have also raised the broader issue of whether the existing criminal restriction against parallel imports should be maintained.

Having considered the various views on the interpretation of the requirement in the TRIPS Agreement and having assessed the importance of early enactment of the customs border measure provisions to enhance border control against pirated goods, the Administration has agreed to exclude parallel imports from the ambit of the new customs border measure provisions. The corresponding Committee stage amendment will achieve this by amending the definition of "infringing copy" in clause 9 of the Bill.

Members may wish to note that the Administration has advised the Bills Committee that it is not our intention to change the existing law relating to parallel imports in the present exercise. The Administration has undertaken to consider the broader issue of whether to maintain any restriction against parallel imports in the context of the comprehensive law reform on copyright. I can assure Members that before putting forward any legislative proposals relating to parallel imports, the Administration will examine carefully the views of interested parties and the public. We will seek to strike a fair balance between the various interests, including intellectual property protection, consumer welfare, free trade and competition.

Mr President, I would now like to turn to the third major amendment which is related to rental right for films. The Administration originally proposed in clause 10 of the Bill new rental right for computer programmes, sound recordings and films. During the Bills Committee's deliberations, divergent views have been expressed by the motion picture industry and the video rental business as to whether the new rental right is a requirement under the TRIPS Agreement and whether it would be in the consumers' interests to provide for rental right for films. Having considered the views expressed, the Administration has agreed to exclude films from the rental right provisions in the present exercise and clarify the meaning of "rental" for sound recordings and

computer programmes so as to tie in with the language used in the TRIPS Agreement. The issue of rental right for films will be reconsidered in the context of the comprehensive law reform on copyright.

The last major amendment is concerned with the definition of trade mark for the purpose of registration. The proposed new definition of trade mark in clause 18 of the Bill has been criticized as being too wide because the word "sign" used in the definition of "trade mark" could be widely interpreted to include any sound and smell. There have been concerns that such a piecemeal revision of the definition of trade mark might have undesirable implications on other areas of the existing trade marks law.

The Administration has explained to the Bills Committee the rationale for the proposal in clause 18 of the Bill, that is, to place it beyond any doubt that the new definition of "trade marks" would be fully compatible with the requirements of the TRIPS Agreement. Indeed, there have been similar legislative amendments in other common law jurisdictions to allow sounds and smells to be registerable as trade marks. Nevertheless, in view of the need for an early enactment of the Bill and the opportunity to reconsider the drafting of the definition of "trade mark" in the ongoing comprehensive "trade marks" law reform, we have agreed to revise the proposed definition of trade mark as set out in the Committee stage amendment to clause 18 to follow more closely the language used in the TRIPS Agreement.

Under the revised definition, any sign that is visually perceptible and capable of being represented graphically may be registerable as a "trade mark". The question of whether a sound or smell might still be registerable as a "trade mark" would be something to be decided by the Registrar of Trade Marks. The Registrar's decision is subject to appeal in court. The definition of "trade mark" would be considered again as part of the comprehensive review of the Trade Marks Ordinance.

Mr President, with these remarks and subject to the amendments I intend to propose at the Committee stage, I commend the Bill to Members. Thank you.

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).

NOISE CONTROL (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 6 December 1995

MRS MIRIAM LAU: Mr President, as this Bill is closely related to the Road Traffic Amendment (No. 2) Bill 1995, the House Committee sets up one Bills Committee to study both Bills. I therefore seek your indulgence, Mr President, to speak on both Bills at the same time.

As Chairman of the Bills Committee which studies these two Bills, I would like to report briefly on our deliberations to facilitate the Council's decision.

The two Bills have been introduced to impose stringent noise emission standards on vehicles when they apply for first registration so as to help reduce noise pollution in Hong Kong. When the Bills Committee studied the Bills, we also considered the environmental and economic implications of the proposed legislative amendments. We note that the noise emission standards adopted in the proposal are those standards currently adopted in Europe and in Japan, which have been regarded as the most stringent standards in the world. The Bills Committee is therefore satisfied that the proposed legislation would bring about some reduction in the overall traffic noise in a few years' time when the existing fleet is gradually replaced by vehicles which are able to meet the proposed legislation's stringent noise emission standards. As the proposal only targets at vehicles upon their first registration, it will not affect the existing vehicle fleet in Hong Kong.

However, while supporting the objectives of the Bills, the Bills Committee is concerned about the absence of an effective mechanism to monitor the noise performance of vehicles after registration as well, since vehicles can be modified

after first registration. In this regard, the Bills Committee was informed that modifications to vehicles require the approval of the Commissioner for Transport and modified vehicles should undergo noise tests to ensure that they meet the required standards. Modifications made without approval are criminal offences and road blocks are set up from time to time to check illegal modification of vehicles. Vehicles are also required to go through performance tests upon reaching six years after manufacture. The Administration has also agreed to convey the Bills Committee's concern to relevant government departments and to provide the Bills Committee with statistics on enforcement actions against illegal vehicle modifications. The Bills Committee therefore agreed to recommend that the Second Reading debate of both Bills be resumed at this sitting.

To tie in with the legislative timetable, the Administration has proposed two Committee stage amendments to postpone the effective date of the Bills from the original date of 31 March 1996 to a day appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette. The Noise Control (Motor Vehicles) Regulation to effect the proposed control scheme is expected to take effect two months thereafter so as to allow importers sufficient preparation time for compliance with the Regulation. The Bills Committee agrees to support these amendments.

With these remarks, Mr President, and subject to the Committee stage amendments to be moved by the Administration, the Bills Committee recommends to this Council that both the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995 be supported.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

謝永齡議員致辭：代理主席先生，對於政府提出加強管制車輛噪音，民主黨表示支持。

民主黨贊成政府透過首次登記，以管制汽車噪音，避免在財政及人手上的大幅增加，但民主黨仍然有以下建議：

條例草案只對新入口車輛的噪音表現作出管制，但當這些車輛入口及經行駛一段時間後，由於機件的損耗，這些老化車輛所發出的噪音將會增加。雖然有關方面表示規定製造年期滿六年的車輛須通過性能檢驗，但民主黨質疑政府是否有足夠人手確實執行這些有關噪音的管制。

條例草案雖然對整體的汽車噪音加以管制，但對於某部分人士的保障仍有不足。就以巴士司機為例，他們所承受的汽車噪音每每超過條例所規定的標準。更值得關注的是，由於工作需要，這些司機需要長時間忍受巴士引擎的噪音而影響聽覺。民主黨因此促請政府盡快制定有關法例，保障這些人士。

代理主席先生，我謹此陳辭，支持條例草案。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I am grateful to Mrs Miriam LAU, the chairman of the Bills Committee to study the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995, and other members of the Committee for supporting the Bills.

The Noise Control (Amendment) Bill is part of a legislative package which aims to control vehicle engine noise by requiring newly registered vehicles to meet specified noise emission standards. Adoption of noise standard will prevent vehicles with inferior noise performance from being imported into Hong Kong. The gradual phasing out of vehicles not meeting the standards will help keep noise levels down despite future increases in traffic volume.

When the Bills Committee considered the proposed controls, Members raised some concerns about the noise standards to be adopted and their enforcement.

Members have rightly suggested that we need very stringent noise emission standards to alleviate the problem of traffic noise, given that road traffic in Hong Kong is among the busiest in the world and that a lot of our major roads are very close to noise sensitive residential developments. We share this view wholeheartedly. Hence, we propose to adopt the European and Japanese standards, which are the most stringent standards in the world. It is also our intention to upgrade them in line with future international trend and technological advancement.

We expect that the implementation of the noise emission standards will bring about a reduction in the overall traffic noise in a few years' time when the existing fleet is gradually replaced by vehicles which are able to meet the stringent noise emission standards. Meanwhile, we would continue to address the problem of traffic noise through careful planning of roads and noise sensitive developments, and implementation of noise mitigation measures such as noise enclosures, noise barriers and quiet road resurfacing programmes.

On enforcement, the proposed standards will be integrated into the "Motor Vehicle Type Approval" process which currently covers roadworthiness and exhaust emission requirements for new vehicles. Only those which meet the specified noise standards or other standards which are at least as stringent as the specified standards will be approved for first registration. Imported used vehicles not covered by the Type Approval process will be required to be individually tested at competent testing centres to ascertain that they meet the specified standards. Vehicles which are designed to the required standards should be able to sustain its noise performance throughout its useful life.

In closing, Mr Deputy, I would like to draw Members' attention to the implementation timetable of the proposed controls. The Bill is originally scheduled to commence on 31 March 1996. However, because of the need to give time to the Bills Committee to be formed to consider the Bill, we now have to defer its effective date and I shall move the necessary amendments at the Committee stage.

After enactment of the Bill, we shall table the Noise Control (Motor Vehicles) Regulation before this Council. In order to give sufficient time for vehicle suppliers to comply with the new standards and for the public to understand the new requirements, we intend to implement the standards two months after the Regulation is approved by this Council, which will be around August this year.

Thank you, Mr Deputy.

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).

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

Resumption of debate on Second Reading which was moved on 6 December 1995

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I have explained, in the course of the resumption of the Second Reading debate of the Noise Control (Amendment) Bill 1995, our proposal to alleviate traffic noise by imposing the most stringent international noise emission standards on vehicles at the first registration stage. The Road Traffic (Amendment) Bill enables the Commissioner for Transport to refuse first registration of vehicles which do not meet the specified noise emission standards. I urge Members to support this Bill, which provides the enforcement mechanism for the proposed controls.

Thank you, Mr Deputy.

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).

TOWN PLANNING (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 15 November 1995

陳偉業議員致辭：代理主席先生，《1995年城市規劃（修訂）條例草案》於一九九五年十一月十五日提交立法局。該條例草案旨在：

(a) 賦權城市規劃委員會（”城規會”）委任其成員組成小組委員會，聆訊根據該條例第6條提出的反對意見；

(b) 清楚訂明“公職人員”並不包括法官在內，因此，總督可委任法官為上訴委員會小組成員；

(c) 訂明可委任多於一名小組副主席，以便多個上訴委員會可同時進行聆訊，以減少積壓的規劃上訴個案數目；

(d) 使成員中包括一名法官的上訴委員會所作的裁決得到認可；及

(e) 澄清該條例第23(6)條所指持續違例行為的性質。

以本人為主席的條例草案審議委員會在一九九五年十一月十七日成立，以研究《1995年城市規劃（修訂）條例草案》。條例草案審議委員會共接獲關注此條例草案的團體及個別人士所遞交的十份意見書，又曾與四個團體的代表會晤。

條例草案審議委員會曾與政府當局舉行過六次會議，在詳細研究過各重要事項後，商定對條例草案提出三項修正案。

第一項修正案關乎草案第2條。為使城規會能加速聆訊反對意見，清理現時積壓的個案，這項條文建議賦權城規會委任其成員，組成小組委員會，聆訊根據該條例第6條提出的反對意見，以及裁定有關的草圖須否因應反對意見作出修改。這些小組委員會須由最少五名成員組成，其中最少三名是非公職人員，而小組委員會的開會法定人數是三名成員，即主席或副主席，另加兩名成員。

議員從條例草案審議委員會接獲的意見書中得知，外界對這些小組委員會的成員組合及運作程序感到關注。

議員又注意到提出反對意見及聆訊反對個案的現行程序被批評為有欠公允，原因是反對草圖個案竟由製備草圖的同一組織（即城規會）進行聆訊。我們認為任命城規會的成員組成小組委員會，聆訊反對意見，或許有助提高聆訊效率，但卻不能解決有欠公允的問題。因此，議員認為若有可能，當局應建議作出修正，以解決城規會為自己作裁判的問題。

不過，當局卻認為這項建議須進一步深入研究，因此，應在當局現正全面檢討該條例的過程中予以考慮。

儘管大部分議員表示支持該等建議作為臨時措施，以清理積壓的個案，惟當局須承諾在一九九六年七月前提交主要的《城市規劃(修訂)條例草案》，同時該條例草案須涵蓋令人關注的重要事項，例如聆訊反對意見小組委員會的組成及運作程序等，但當局並沒有作出該項承諾，亦不允諾若條例草案並無涵蓋聆訊反對意見的安排，則當局不會以議員所提建議不在條例草案範圍內為理由，反對議員日後就修正有關條文提出建議。

由於當局未有作出所需承諾，審議委員會不支持草案第2條的條文。各議員認為，如果保留現狀，當局將更迫切須在主要條例草案中檢討聆訊反對意見的安排，及提出適當的修訂，以糾正現行制度中的缺點。

因此，本人將於委員會審議階段提出修正案，建議刪除條例草案第2條。

第二項修正案關乎條例草案第3條。為消除一名法官擔任上訴委員會主席的任命是否有效的疑問，條例草案第3(a)條建議清楚訂明“公職人員”並不包括法官在內。這項建議與高等法院在一九九五年十一月二十七日作出的一項裁決 合。

部分議員認為不宜委任上訴法院大法官為上訴委員會的正／副主席，理由是出任上訴委員會正／副主席的上訴法院大法官所作的裁決，倘若須由最高法院的法官推翻，將會引起尷尬。另外一些議員亦不主張任命法官為上訴委員會成員，因為城市規劃關乎行政問題而非司法事宜。

經商議後，條例草案審議委員會一致認為，日後獲委任的法官應來自高等法院或以下級別的法院，因此應為此提出委員會審議階段修正案。當局經檢討後，接納這項由審議委員會提出的建議，並且會在委員會審議階段提出修正案，以便作出上述更改。

第三項修正案關乎條例草案第5條。這項條文建議增訂條款，使有法官為成員的上訴委員會所作的裁決得到認可，除非上訴人對委任法官加入上訴委員會的效力提出疑問，而在一九九五年十月三十一日或以前申請司法審核推翻裁決。議員強烈表示對這樣的規定有所保留。他們認為建議增訂的條文剝奪市民要求司法審核的權利，故不合情理。

對於刪除使裁決得到認可的條文會有何影響，律政署表示該條文的內在用意，是在法官出任上訴委員會主席或成員的問題上，為該等委員會過去所作裁決提供一定的明確性。條例草案第3條澄清“公職人員”一詞並不包括法官在內，而第5條則與第3條互相呼應，其作用是避免上訴委員會過去所作的裁決只因成員身分的問題而受到質疑。倘若把這項條文刪除，上訴委員會過往所作的裁決在受到質疑時將不獲保障。

議員得悉，根據《最高法院規則》，申請司法覆核的時限是申請理由成立當天起計三個月。議員亦明悉，根據“事實”原則，即使一名人員的任命無效，他的作為在法律上仍可視為有效。然而，上述原則並不適用於該名人員在其任命被質疑後所作的裁決。

目前的情❤是，上訴委員會主席的任命在一九九五年五月受到質疑，理由是該名主席是上訴法院大法官，根據該條例第17A(2)條，屬公職人員身分。基於上述的原則，相信法院不會因為該項理由而接納任何人士對上訴委員會在一九九五年五月前所作裁決提出的質疑。

議員考慮此事的法律意見後，一致認為使裁決得到認可的條文應予刪除。當局經考慮議員的意見，並且檢討現時的情❤後，同意提出委員會審議階段修正案，把該條文刪除。

代理主席先生，我謹此陳辭，呼籲各位議員支持《1995年城市規劃（修訂）條例草案》及條例草案委員會同意的三項修正案。

謝謝代理主席先生。

何俊仁議員致辭：代理主席先生，本人代表民主黨支持《1995年城市規劃(修訂)條例草案》在經過委員會審議階段修正後獲得本局通過。我們支持這條例草案的主要理由已包括在條例草案審議委員會主席陳偉業議員的演辭內，我不再重複。但我想藉此機會表達民主黨對今次政府處理這項條例草案，包括提出這條例草案以及在審議階段中所採取的一些態度的不滿。

第一，這條例草案的一個重要目的是要界定“公職人員”在條例內的釋義並不包括法官。如果獲得通過的話，現時上訴委員會的一位上訴庭法官的身分，將不能再受到挑戰。這條例草案是在一九九五年十一月三日在憲報刊登，當時有兩宗訴訟正在進行，而它們都是涉及《城市規劃條例》“公職人員”的釋義問題。其中一宗案件剛審結完畢，但法官尚未作出判決。在這時提出這項修正案，明顯是為了要解決日後的訴訟問題。不過，提出這條例草案的時間是否適當？

代理主席先生，我記得以往就“公職人員”的法律釋義問題，已進行了數次訴訟，其中最少有三宗涉及立法局選舉，但政府從未提出條例草案，來解釋“公職人員”在不同法例內所代表的意思。但在有關《城市規劃條例》的事件中，卻在訴訟尚未完結前提出條例草案，確會引起很多人不滿。第一，如果現時提出的這項法例修訂獲得通過的話，會否令一些參與訴訟的訴訟人喪失了他們的權利？正如一些曾向條例草案審議委員會表達意見的人士所說，政府是否想利用立法手段來影響或干預司法程序？如果在訴訟進行期間這樣做，就正如一位參與訴訟的原告人所說，是否好像在一場足球比賽中，當某球員臨門起腳射球時，突然有人把龍門搬走一樣？我覺得政府在這時提出這項修訂條例是十分值得質疑的。

剛才條例草案審議委員會主席曾提到，在修訂條例中會有一些保留條文。這些條文表面上是希望保障一些既得權利者的權利不會受到影響，當然，表面上也包括那些正在進行訴訟的人士。不過，在這些保留條文內，卻附有三項先決條件。在我們審議條例草案時，不幸地發現正在進行訴訟的人士並不能滿足這三項條件，以致這些所謂保留條文並不能保障他們的利益。代理主席先生，如果原告人的起訴權利會很容易受到這項修訂條例所剝奪的話，這些保留條文無疑是形同虛設，是極之不合理的。

代理主席先生，更甚的是，這修訂條例內也有一條確認條文，指定上訴委員會所作出的決定，無論“公職人員”的界定和釋義是怎樣，都不應受到司法覆核的影響。這確認條文是具有追溯效力的，使日後打算申請司法覆核

的人士喪失了權利。代理主席先生，政府如果能夠剝奪這些訴訟人的司法覆核權利時，我們在立法方面是否造成了另一個很不尋常的先例？政府當時承認，如果不能通過修訂條例，而使日後有很多司法覆核的個案繼續進行，甚至推翻了上訴委員會的構成的合法性，受影響的案件並不會很多。因此，在這情❤下，為何政府這樣輕易就推出一些具有追溯效力而又會剝奪市民司法申訴權的條例？

代理主席先生，幸好在條例草案審議委員會審議期間，政府聽取意見，從善如流，接受意見，提出修正。不過，民主黨希望政府日後提出條例草案時，必須充分考慮這兩項重要原則：第一，已經獲得的權利應受到尊重，不要輕易剝奪；第二，除非在十分例外的情❤下，否則不應胡亂提出一些具有追溯效力的條文，而這些條文又會影響市民的司法訴訟權利。

代理主席先生，我們不滿的另一點是關於聆訊反對意見小組委員會的安排。剛才陳偉業議員已經提到，當時條例草案審議委員會的成員同意作為一項臨時措施，通過條例草案這一部分，但我們要求政府承諾日後必須進行檢討，因為我們聽取了很多業內人士的意見後，認為目前的安排是有問題的，有違自然公義的原則。政府再三對我們說需要時間考慮，並說遲些會就《城市規劃條例》進行全面的檢討，向本局提交全面的修訂條例，並會按照計劃，在本立法年度內提交。當時，我們只是提出了一個合理要求，就是政府保證檢討範圍必須包括聆訊反對意見小組委員會的運作。我們並不是要求政府保證檢討將會有甚麼結果，只是要求政府答應檢討。如果政府的檢討結果是決定不作修改的話，請讓我們提出我們的意見，讓我們提出修訂，政府不要反對，說這是超越法例的範圍，所以不能提出來討論。我們只是要求這樣簡單的一個保證，但卻為了這事而竟然糾纏了兩次會議。最後，政府說不願意作出任何保證，但希望我們通過這臨時性的安排措施。當時，條例草案審議委員會很多成員都覺得這項所謂臨時性的安排措施如果在這種情❤下也獲得通過的話，將會變成一項永久性措施。日後我們可能沒有辦法再迫政府進行檢討，甚至沒有辦法作出適當的修正。因此，在這種環境下，很遺憾，我們只能夠支持陳偉業議員所提出的修正，刪除這方面的改革，即授權城規會可以在他們成員之中委任小組來聆訊反對意見。

代理主席先生，現時確有很多積壓的反對個案，而城規會在差不多兩、三年內也不能全部進行聆訊。我記得我曾經代表一些受影響人士，他們的樓宇因政府執行有關草圖而受影響，但在他們的樓宇全遭清拆後還未有機會進行聆訊。到了我代表他們出席聆訊時已經沒有意思，他們也沒有興趣再來，這是極不公平的，也會引起其他可能出現的司法覆核程序和申訴。因此，在

這情❤下，我覺得政府真的要解釋，為何這麼簡單的保證也不可以作出；第二，政府事實上是否完全無心檢討聆訊反對意見小組委員會的運作。我很希望政府稍後作答時能清楚解釋其立場。

我重申，我們支持今天所提出的幾項修正以及經修正的條例草案。

謝謝代理主席先生。

顏錦全議員致辭：代理主席先生，民建聯基本上支持這條條例草案，但是不得不就過程中的一些不滿表達意見；但另一方面對政府在過程中作出了一些修改，表示讚賞。

有關問題的關鍵方面，第一，條例草案提出應清楚訂明“公職人員”並不包括法官在內，換言之，也同時可由上訴法院大法官擔任上訴委員會正副主席或成員。可是若任何人士要求就上訴委員會裁決進行司法覆核時，極有可能出現較低級法官覆核高級法官（如上訴法院大法官）的決定的情❤。此外，由同級大法官審理上訴委員會決定的做法，亦有違公正之嫌。民建聯並不反對任命法官為上訴委員會成員，但反對委任上訴法院大法官為小組正副主席或成員。據悉政府接受了各方議員的意見和看法，同意在審議階段提出修正。

第二，條例草案提出賦權予城市規劃委員會（“城規會”）委任其成員組成“反對小組委員會”，進行聆訊反對意見。民建聯認為當局以加快效率為理由成立小組委員會，未能正視城規會缺乏中立性的問題。目前欠妥的情❤是，城規會按法例規定負責製備草圖和審議規劃許可的申請，但同時又要負責處理就其決定提出反對意見的個案。這個“雙重身分”問題在九一年的《城市規劃條例》全面檢討中曾有詳細討論，但這條例草案卻未予正面處理。

第三，條例草案增加第17D條，使有法官為成員的上訴委員會所作的裁決得以生效，並訂明除非上訴人對委任法官加入上訴委員會的效力提出疑問，而在一九九五年十月三十一日或以前申請司法審核推翻裁決。就法例生效日期方面，有不少意見（包括規劃師學會）反對以此為限期，並認為哪有法例未正式訂立前就先預設較訂立日期更早的執行日期。較為合理的做法是以正式通過立法為法例生效日期。

第四，目前的條例草案明顯是為了某人，認可其任上訴委員會主席期間

裁決的案件，以堵塞法例上的漏洞。明顯這種“見招拆招”的做法，未能全面解決目前《城市規劃條例》不足之處。當局曾同意落實九一年《城市規劃條例》全面檢討建議的方向，但卻採“斬件方式”，逐點解決其中問題。就賦予城規會委任其成員組成所謂反對委員會，可知當局的被動態度。

總括而言，民建聯重申對政策的建議。

我們可以接受條例草案內容第二點，不反對任命法官為上訴委員會成員，但反對委任上訴法院大法官為小組正副主席或成員。

第二，根據第四及第五點，反對以一九九五年十月三十一日為有關修訂法例的預設生效日期。正式生效日期應以通過立法日期作準。

第三，可以有條件地支持第一項授權成立“反對小組委員會”，但當局要提出具體措施，改善目前城規會具“雙重身分”的問題，並同意盡快作全面的《城市規劃條例》修訂。目前“以快打慢”為理由的授權方式避談更原則性的問題，民建聯是不可以接受的。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I am grateful to members of the Bills Committee and in particular, the Honourable Albert CHAN, for their effort in studying the Town Planning (Amendment) Bill 1995. The Bills Committee has nevertheless raised a number of concerns on the Bill and I would like to take this opportunity to respond to them.

Clause 2

The comments made by some Members of the Bills Committee regarding the hearing of objections to draft amended town plans may, I am afraid, reflect a fundamental misunderstanding of the town planning procedure. Under the Town Planning Ordinance, the plan-making function of the Town Planning Board is to prepare and publish draft town plans or draft amended town plans for public inspection and comments. The Town Planning Board is not, I repeat not, the plan approval authority. The power to approve town plans rests with the Governor in Council. The publication of draft town plans or draft amended town plans by the Town Planning Board functions very much like a public consultation exercise in this regard. Similar to other public consultation

exercise, it is thus fair and reasonable that the body consulting the public should consider objections or comments to its proposals. This is indeed the spirit behind the existing Town Planning Ordinance which requires the Town Planning Board to consider objections to draft town plans. The Ordinance also goes one step further to enable the public to appear before the Town Planning Board to discuss their objections to draft town plans with the Board, thus providing more transparency and public access to the town planning system. When all the hearings are completed, the Town Planning Board is required to submit the draft town plans together with any unresolved objections and a schedule of the amendments proposed by the Board to meet the objections, to the Governor in Council for a decision. The Governor in Council may then approve the draft town plan, refuse to approve it or refer it back to the Town Planning Board for further consideration and amendments.

The Town Planning Ordinance however requires the Board itself to hear the objections, and there is no provision for delegation of this duty. The large number of objections in recent years has created a considerable backlog of cases to be heard. In order to complete the hearings expeditiously, the intention of the Bill is therefore to enable the Board to set up committees from its members and delegate the hearings of objections to them. When necessary, several hearings can be carried out concurrently to further expedite the procedure. Any unwithdrawn objections will still have to be presented to the Governor in Council for a decision. The intention is similar to a body which is consulting the public in setting up working groups to consider public comments. There is no question of the Town Planning Board judging its own cause.

The suggestion by some members of the Bills Committee that the objection hearing committee should be an independent body from the Town Planning Board goes against the intention of the Bill. The Administration's views to such a proposal, which is shared by the Town Planning Board, is that it will not assist the Board in hearing the outstanding objections quickly. Moreover, as I explained earlier, the Governor in Council is the plan approval authority. The consequences of having a body outside the Board to hear objections, its relationship with the Board and the Governor in Council and its operation in the context of the Town Planning Ordinance, let alone the likely financial implications, do not appear to have been thought through. The spirit of the extant legislation is to allow the Board to complete its "consultation" process through the consideration and hearing of objections, which are views of the

public on its plans, before submitting the plans to the approving authority. The Bills Committee has been advised that these important issues require detailed and careful consideration, and should not be rushed through in the form of a Committee stage amendment to the Bill.

In the event, the Bills Committee decided to move a Committee stage amendment to delete clause 2. The consequence of the deletion is that the proposed means to quicken up hearing the backlog of objections cannot be implemented and, hence, draft town plans cannot be submitted to the Governor in Council expeditiously for decisions, resulting in possible delays to development or redevelopment. We are disappointed at this outcome but would respect the decision of the Bills Committee.

Clause 3(a)

The Bills Committee supports it which clarifies that a judge may be appointed to the Town Planning Appeal Board. The Bills Committee also unanimously agrees that if in future a judge is appointed to chair the Appeal Board, he or she should come from the High Court or below. The Bills Committee considers that if the Appeal Board is chaired by a senior judge such as a Justice of Appeal, it would create difficulties for the Judiciary if Appeal Board decisions are challenged in the courts, because the senior judge's decision, albeit in a non-judicial capacity, would be seen to be reviewed by a junior judge acting judicially. This situation could give rise to criticism that justice may not be done. We accept the Bills Committee's view and I will move an amendment to clause 3(a) at the Committee stage to reflect the Bills Committee's proposal.

Clause 5

Clause 5 of the Bill seeks to validate the decisions made by the Town Planning Appeal Board when a member was a judge, except when the appellant has questioned the validity of the judge's appointment to the Appeal Board and applied for judicial review to quash the decision on or before 31 October 1995 which was the date of the Executive Council meeting before publication of the Bill. This ensures that proceedings currently before the court will not be interfered with while providing a measure of certainty to the status of past decisions of the Appeal Board.

The Bills Committee however maintains that it is not fair to impose a time limit on the right of interested parties to seek a judicial remedy against a Town Planning Appeal Board decision and has decided not to support the clause.

The Administration has reviewed the need for the clause in the light of the Bills Committee's decision, and the consequences if the clause is deleted. Since the validity of the appointment of the Chairman of the Town Planning Appeal Board was first called into question in May 1995, it is unlikely that a court would uphold a challenge to decisions taken by the Appeal Board before that time because the "*de facto*" doctrine would apply to such decisions. Under the doctrine, the acts of an official may be held to be valid even though his appointment is invalid. Once the flaw in the appointment became known the official would cease to have the benefit of the doctrine. The May 1995 challenge was dismissed by the High Court in November 1995. An appeal was lodged by the applicant but was abandoned a few days before the hearing date. While two other similar challenges were filed in December 1995 and January 1996, the Administration has concluded that we could live without clause 5 for the time being and has agreed to move a Committee stage amendment to delete it.

Thank you, Mr Deputy.

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).

BETTING DUTY (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 29 November

1995

MR HOWARD YOUNG: Mr President, a Bills Committee, chaired by me, was formed on 15 December 1995 to study the Betting Duty (Amendment) Bill 1995. The Bills Committee has held three meetings, including two with the Administration.

During the scrutiny of the Bill, Members have expressed concern on three main areas.

The first concern is about the social impact of the introduction of the Quinella Place Bet (QPB).

The Administration maintains the view that the social impact of the introduction of the QPB will be insignificant. Its analysis is that the estimated betting turnover ($6,660 million per season) amounts to about 9% of the total betting turnover ($72,277 million) for the 1994-95 racing season. The introduction of the QPB will sustain punters' interest in local horse racing. It is unlikely to induce non-punters to start betting. According to the statistics from the police, there have been increases in illegal bookmaking over the past years.

Mr President, members of the Bills Committee have divided views on this issue. Some members are concerned about the social impact of the introduction of another new form of bet. The QPB, being theoretically easier to win, will attract more gamblers and/or heavier bets; thus encourage gambling. Other members opine that this is merely an enhancement of the existing product. The majority of members support the introduction of QPB.

Another area of concern of the Bills Committee is on the authorization for "overseas bet".

"Overseas bet" is defined to mean "a bet of any form accepted at a venue outside Hong Kong authorized by the Club on any totalizator or pari-mutuel authorized by this Ordinance". The policy intention is, according to the Administration, to recognize the fact that the Club is an independent organization

which should be given authority to authorize the acceptance of bets at venues outside Hong Kong.

Members suggest that the Bill should be amended to provide that an agreement between the Club and its overseas partner for setting up an overseas betting venue should be subject to the approval of the Secretary for Home Affairs. The Administration has advised that it has no policy objection to this suggestion. On behalf of the Bills Committee, I shall be moving an amendment to the Bill to this effect.

The third concern is about the possibility of money laundering.

Some members opine that overseas bets may provide an avenue for international movement of money; hence opportunities for money laundering. The Administration's considered view is that the inherent risk of losing the bet may be a disincentive to the launderer. The proposals in the Bill will have marginal significance as far as money laundering is concerned.

Mr President, with these remarks, I support the Bill.

黃偉賢議員致辭：謝謝主席先生。我代表民主黨就這項《1995年博彩稅（修訂）條例草案》表明我們的立場。這項條例草案的主要目的，第一就是開設位置連贏投注方式。政府強調增設這個位置連贏的投注方式不會助長本地的賭風，但是在政府的文件上，或是政府與條例草案審議委員會開會時，都特別強調希望透過這項新的投注來維持博彩人士對本地賽馬的興趣。

首先，我要強調民主黨的立場，對於政府推動任何助長賭風的政策，我們都是不會支持的。正如政府強調，這項新的投注方式是希望能維持博彩人士的興趣，我們不禁要問，為何政府要絞盡腦汁增加不同的彩池，以維持香港的博彩人士對本地賽馬的興趣呢？事實上，我們從馬會的年報裏並沒有看見市民對於本地賽馬的熱誠有退減的跡象。每一年的投注總額都有超過10%的增長。九一年的投注總額有472.64億元；九二年的投注總額有556.2億元；九三年有601.43億元；九四年有663.88億元；去年，九五年，則有722.77億元。我們看到投注總額是在不斷的上升，很明顯本地的博彩人士一直對本地賽馬維持非常濃厚的興趣，為何政府還要不斷構思一些新的博彩形

式，以加強他們的博彩心態？

正如剛才審議委員會主席說，這個新的位置連贏投注是會很易“中”，可能不懂賽馬的人也懂得去投注。而因為易“中”，相信也可以吸引一些普羅市民去嘗試，無形中便助長了本地的賭風。正如政府曾說過，如果設立了這個新的位置連贏投注方式，每一個馬季的投注總額將會增加66.6億元，而這並不是一個小數目。我們再回顧以往政府設立一些新彩池的情❤，例如八八年的時候，當時的舊有彩池 — 四重彩 — 的投注額不斷下降，政府當時便認為這項彩池沒有吸引力，可能是因為非法賭博場所提供一些新的博彩形式，吸引博彩人士參與非法的外圍投注；於是政府在八九年取消了四重彩，並推出孖T。八八年投注四重彩的金額只有1,600萬元，到八九年有新的孖T時，單是孖T的投注額便有18.38億元。可見，政府打擊非法博彩的方法，是採用一些新的彩池去取代一些舊而缺乏吸引力的彩池。但是我們看到現有的六種特別彩池和四種普通彩池的投注額也是一直上升，而六類特別彩池也不見得有很明顯的下降跡象；我們也看不到政府提出建議成立位置連贏的投注的用意是打擊非法外圍，因為政府也說不出現時何種特別彩池缺乏吸引力，需要找一種新的方式來取代。因此，民主黨認為政府提出新的位置連贏投注方式的理據是不足夠的，民主黨是不會支持設立新的博彩形式。

主席先生，條例草案第二項主要的修正，就是建議本地賽事可以接受海外投注。有關的文件，以及政府和我們開會時，都強調設立海外投注是不會助長本地賭風。在委員會審議階段，民主黨議員對於這一點沒有強烈反對意見，但是當我們將這個問題帶回民主黨討論時，民主黨內其他議員是有強烈的意見的。他們認為雖然接受海外投注不會助長本地賭風，但是在某種程度上是助長了海外人士的賭風；正所謂“己所不欲，勿施於人”，民主黨既然不希望助長香港的賭風，也不應鼓勵海外人士加強博彩風氣。因此，黨團經過很詳細和深入的討論後作出決定，不支持接受海外投注的建議。

主席先生，無論是增設位置連贏投注或是建議本地賽事接受海外投注，政府都會強調這樣的改動和修訂會為香港帶來更多博彩稅收入，並可以增加對本地慈善機構的撥款，使本地的慈善事業或福利事業能夠更加蓬勃。但是這樣的做法，對於香港市民尤其是年青人，可能會導致一個錯誤觀念，認為博彩是做善事，投注更多便是參與更多的福利事業。我認為不應該使年青人有這種錯誤觀念。事實上，我們從報章或傳媒的報道，也不時看到有不少悲劇是因為沉迷博彩而引致的，我們不希望香港有這麼多的悲劇發生，所以民主黨不會支持這項條例草案。

主席先生，最後我想說明民主黨的立場。我們在二讀時將不會支持這項條例草案，我們將會投反對票。但是若二讀獲得通過的話，民主黨是會支持楊孝華議員在委員會審議階段提出的修正，希望在設立海外投注時加入一個監察機制，馬會必須獲政務司批准才可設立海外投注。我們支持這項修正的目的，是希望如果最後民主黨不能否決這項條例草案時，我們也希望能令這項條例草案更加完善，使本地的博彩人士更獲保障。因為假如讓馬會可以有全權在海外設立投注站的話，我們不知道它會選擇甚麼地方，或會否到一些經常“收黑錢”的國家設立投注站；而有關的決定也會影響本地的彩池和本地的博彩人士。既然這會對本港市民造成影響，政府便不應該置身事外，因此民主黨將會支持有關的修正。但是在支持了修正之後，民主黨在三讀時仍會重申堅決反對鼓勵賭風，所以屆時民主黨將仍然會反對這項條例草案。

謝謝主席先生。

MR RONALD ARCULLI: Mr President, firstly I would like to remind colleagues of my position as a Steward of the Royal Hong Kong Jockey Club, and secondly, I would like to say a few words in support of the two amendments covered by the Bill.

As regards the proposal to introduce a new bet called the Quinella Place, this is not the first time, as Members have heard, that a new bet is proposed. Indeed, this has happened in the past. Apart from this, I am sure that the Jockey Club appreciates the responsibility it carries as the sole operator of horse racing in Hong Kong. This responsibility includes the eradication of illegal gambling on horses here, and that would entail the introduction of new product, if I could put it that way, from time to time so as to maintain punters' interest in horse racing in Hong Kong.

Mr President, we know that many overseas gambling establishments go through a lot of trouble and a lot of expenses to actually attract the gambling dollar from Hong Kong. You get free trips offered to overseas destinations, all expenses paid, first-class travel, and so on, and all that. So, I think to maintain punters' interest in horse racing in Hong Kong is not, in fact, in my respectful view, asking too much.

The other proposal is to allow the Jockey Club to enter into arrangements, subject to the approval of the Secretary for Home Affairs, with horse racing clubs or authorities overseas to enable them to accept bets on horse racing here. This

has happened from time to time in respect of specific races. That has happened in the past. However, the proposal is in fact for the Club, subject to the approval of the Secretary for Home Affairs, to enter into arrangements. And in my view, if accepted by this Council and if it is done by the Club, this will go some ways towards enhancing the high standard of horse racing in Hong Kong, which high standard is held in quite high regard overseas.

Mr President, I hope that colleagues will bear in mind the numerous benefits and enormous good that horse racing in Hong Kong has brought to the community as a whole, and I would ask them to support the Bill for that reason.

Mr WONG Wai-yin for the Democratic Party has indicated that the Democratic Party will not support either of these proposals. I am not surprised, but disappointed, particularly when the matter was first brought up at the Bills Committee level, the introduction of the approval by the Secretary for Home Affairs was done as a result of an agreement between myself and the Honourable James TO on the clear understanding that the Democratic Party would support that particular aspect of the Bill. But, as I say, they are entitled to their views and I think Mr WONG has given the reasons for not supporting it, although with respect I do not agree that allowing that to happen will create either double standards or would encourage our young ones to in fact gamble on horses in Hong Kong.

In many racing jurisdictions in the world, Mr President, babies, young people, are allowed onto race courses. We in Hong Kong respect the wish of the community and the concerns of the community, and we therefore have an age limit from which you cannot, in fact, enter the race courses or indeed any of the off-course betting centres run by the Jockey Club. So I believe, Mr President, that the activities of the Club and the responsibility carried by the Club in terms of ensuring that horse racing is carried out at a high standard, that the undesirable elements are kept out, that the undesirable features of horse racing is kept out, of racing in Hong Kong, enables the community as a whole to actually enjoy the occasional punt, if I could put it that way, at the two facilities provided by the Club.

Mr President, with those words, I urge Members to support the Bill and indeed the amendments.

SECRETARY FOR HOME AFFAIRS: Mr President, I am grateful to the Honourable Howard YOUNG and his colleagues on the Bills Committee to Study the Betting Duty (Amendment) Bill for their wise counsel and the time they have spent in examining the Bill.

The Bill has two main objectives. First, it introduces a QPB and defines the rate of betting duty on that bet. The QPB requires a punter to select two horses to finish in any order in the first three places to be eligible for a dividend.

During the deliberations of the Bills Committee, some members expressed concern that the introduction of this bet might encourage gambling and therefore would have social impact on our community. I would like to take this opportunity to explain that the QPB bet is essentially an extension of the existing Quinella and Place bets and it serves to sustain punters' interest in horse racing. It should not have the effect of inducing non-punters to start betting and that its social impact would be minimal.

The following figure will support this observation. The estimated annual betting turnover of this bet only amounts to about 9% of the total betting turnover of the 1994-95 racing season. The introduction of this bet will not have any significant impact.

The other main objective of the Bill is to impose betting duty on overseas bets on Hong Kong races into the Hong Kong pools at half of the prevailing rates. The other half would be allocated to the respective overseas governments, subject to the Royal Hong Kong Jockey Club's negotiations and finalization of the details with them. This proposal will not affect Hong Kong, apart from the fact that Hong Kong will benefit from an increase in betting duty and an increase in the funds available for allocation from the Royal Hong Kong Jockey Club to local charities.

I understand that the Honourable Howard YOUNG will move a Committee stage amendment to the effect that agreements between the Royal Hong Kong Jockey Club and its overseas partners on setting up overseas betting venues should be subject to the approval of the Secretary for Home Affairs. I confirm

that the Government has no policy objection to this Committee stage amendment. I take the opportunity to inform this Council that the Royal Hong Kong Jockey Club has also confirmed its agreement to it.

Once again, I thank members of the Bills Committee for their dedicated efforts in scrutinizing the Bill. I also thank the Law Draftsman's valuable assistance and advice.

Mr President, I recommend the Betting Duty (Amendment) Bill to Honourable Members.

Question on Second Reading of the Bill put.

Voice votes taken.

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

Mr Howard YOUNG and Mr TSANG Kin-shing claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are called upon to vote on the question that the Betting Duty (Amendment) Bill 1995 be read the Second time.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Miss Emily LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the motion.

Mr LEUNG Yiu-chung abstained.

THE PRESIDENT announced that there were 33 votes in favour of the motion and 16 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).

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 10 January 1996

MRS MIRIAM LAU: Mr President, the object of the Law Amendment and

Reform (Consolidation) (Amendment) Bill 1995 is to relax the rule of public policy known as "the forfeiture rule" under which a person who unlawfully kills another is precluded from acquiring a benefit in consequence of the killing. The Bill seeks to empower the court to modify the effect of the forfeiture rule where the justice of the case requires it. This discretion will not apply to cases of murder.

The Bills Committee formed to study the Bill met the Administration on 12 March 1996. During the meeting, Members of the Bills Committee deliberated the policy aspects, scrutinized the clauses and sought clarification from the Administration on the Bill.

The Bills Committee noted that the Bill was modelled on the United Kingdom Forfeiture Act 1982 with adaptations to Hong Kong's circumstances and that it was to implement the Law Reform Commission's recommendation that Hong Kong should enact legislation similar to that of the United Kingdom. The Bills Committee realized that Hong Kong would differ from other jurisdictions such as the United Kingdom, Australia, Canada and the United States.

The Bills Committee also noted that the new section 25B(7) of the Bill would cover transitional arrangements and application of the Bill and the proposed relief from the forfeiture rule would apply to any interest in property which had not been distributed prior to the enforcement date of the Bill. The new section 25B(3) stipulated the time limit of 90 days for seeking the order from the court and expressly stated that, in case of appeal, the time limit of 90 days began on the day on which the appeal was determined or withdrawn, or in any other case, the period for an appeal expired.

During the course of deliberation, it came to the attention of the Bills Committee that beneficial interests in property under joint tenancy seemed to have been omitted, under the types of interests in property mentioned in the new section 25B(4). The Administration confirmed that the United Kingdom Forfeiture Act actually makes specific reference to such types of property. The Bills Committee therefore agreed with the Administration that a Committee stage amendment should be made to insert a subclause to the new section 25B(4) in order to make it consistent with the provisions of the United Kingdom Act.

Mr President, with these remarks and subject to the Committee stage

amendments, I recommend the Bill to Members.

SECRETARY FOR HOME AFFAIRS: Mr President, I would like to thank the Bills Committee chaired by the Honourable Mrs Miriam LAU which studied the Law Amendment and Reform (Consolidation) (Amendment) Bill 1995 for its work in scrutinizing the Bill.

The Bill is the last substantive change to Hong Kong's law of inheritance in the package of reforms proposed by the Law Reform Commission. It relates to the so-called "forfeiture rule". This is a legal rule of public policy that prohibits a person who has unlawfully killed another from gaining any beneficial interest as a result. The problem with the forfeiture rule is that it applies strictly even where a person who has unlawfully killed another is not morally blameworthy or there are mitigating circumstances that justify its relaxation.

The Bill addresses this deficiency by empowering the court to relax, or waive, the forfeiture rule in cases other than murder where justice demands this. Giving the court this discretionary power to modify the effect of the forfeiture rule will bring Hong Kong into line with other common law jurisdictions.

At the Committee stage, I will move one amendment, as agreed to by the Bills Committee, to extend the scope of beneficial interests covered by the Bill to include nominations, such as those of beneficiaries under insurance policies.

With these remarks, Mr President, I commend the Law Amendment and Reform (Consolidation) (Amendment) Bill 1995 to the Council.

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 Bills

Council went into Committee.

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

Clauses 1, 2, 4, 5, 7, 8, 10 to 17, 19, 20, 22, 23, 25, 28 to 35, 37, 39 and 42 to 47 were agreed to.

Clauses 3, 6, 9, 18, 21, 26, 27, 36, 38, 40 and 41

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

Clause 3(1), 3(3) and 3(6)

The purpose of amending clauses 3(1), 3(3) and 3(6) is to provide for the introduction of 14 elected members and the addition of three lay members (making a total of four lay members) to the Medical Council.

Clause 3(7) and 3(8)

The amended clauses 3(7) and 3(8) provide that the member's office of membership of the Medical Council would be declared vacant if he is the subject of any order made by the Council.

Clauses 6(1), 6 and 6(2)

It is necessary to amend clause 6(1), 6 and 6(2) to provide for the quorum of meetings and the transaction of business of the Medical Council and its Committees.

Clause 9

The amended clause 9 provides that an applicant's name would not be included into the General Register if he is not of good character.

Clause 18

By amending clause 18, committees and subcommittees of the Medical

Council would be subject to provisions in Schedule 2 of the Bill.

Clause 21(2)(b)

The amendment to clause 21(2)(b) is necessary to maintain the impartiality of the chairman of the review subcommittee.

Clause 26(1)(a)

The amendment to clause 26(1)(a) is necessary as the Health Committee may conduct a hearing into any case or matter concerning the health or physical or mental fitness to practise of a registered medical practitioner.

Clause 27 - section 21A(1)

The proposed addition to section 21A(1) under clause 27 provides a clearer explanation on the meaning of "fitness to practise."

Clause 27 - section 21B

By amending section 21B under clause 27, the quorum of any disciplinary inquiry of the Medical Council should include at least one lay member, subject to the majority being registered medical practitioners. Also, the number of lay persons in the panel of assessors would be increased from two to four.

Clause 36(1) and 36(2)

The purpose of amending clause 36(1) and 36(2) is to transfer certain powers to make regulations concerning registration and disciplinary/election matters to the Secretary for Health and Welfare and the Medical Council respectively.

Clause 38

The amended clause 38 provides for the arrangements for the appointment of members to the committees and subcommittees of the Medical Council.

Clause 40

The amendment to clause 40 is a consequential amendment to our proposed amendment to clause 9.

Clause 41

The amended clause 41 empowers the Medical Council to determine the format of the certificate of experience for the purpose of registration.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(1) be amended —

(a) in paragraph (e), by deleting "2" and substituting "4".

(b) in paragraph (f), by deleting the proposed paragraphs (i) and (j) and substituting -

"(i) 7 registered medical practitioners who are members of the Hong Kong Medical Association and nominated in accordance with the regulations or procedures of the Association relating to the filling of offices under this paragraph and elected by the Council members of the Association in accordance with those regulations or procedures;

(j) 7 registered medical practitioners registered in Part I of the General Register and ordinarily resident in Hong Kong elected by all registered medical practitioners registered in Parts I and III of the General Register

pursuant to an election held under the Election Regulation.".

That clause 3(3) be amended, in the proposed subsection (3A), by deleting "12" and substituting "14".

That clause 3(6) be amended —

(a) by deleting the proposed subsection (5A) and substituting -

"(5A) Where, before the expiry of the office of a member holding office under subsection (2)(i), the member resigns or his office becomes vacant, the Hong Kong Medical Association shall, as soon as possible, conduct an election to elect a person qualified under subsection (2)(i) to fill that vacancy, and the member elected to fill the vacancy shall hold office from the date of election until the expiry of the original term of office of the person whom he succeeds.".

(b) in the proposed subsection (5C) -

(i) by deleting "6" and substituting "7";

(ii) in paragraph (a), by deleting "2" and substituting "3".

(c) in the proposed subsection (5D) -

(i) by deleting "6" and substituting "7";

(ii) in paragraph (a), by deleting "2" and substituting "3".

That clause 3(7) be amended, by adding —

"(aa) in paragraph (b), by adding "or 21A" after "21";".

That clause 3(8) be amended, in the proposed subsection (6A)(b), by adding "or 21A" after "21".

Clause 6

That clause 6(1) be amended, by adding after "under section 21," —

"in an appeal hearing under section 20F, 200 or 20W, or in an election petition under the Election Regulation as defined in section 3,".

That clause 6 be amended, by adding —

"(1A) The following is added -

"(2A) In a meeting of the Council to hear an appeal under section 20F, 200 or 20W or an election petition under the Election Regulation as defined in section 3, 5 members shall be a quorum.".".

That clause 6(2) be amended, by deleting "The Council" and substituting —

"Except for an inquiry under section 21, for an appeal hearing under section 20F, 200 or 20W and for an election petition under the Election Regulation as defined in section 3, the Council".

Clause 9

That clause 9 be amended —

(a) by renumbering it as clause 9(1).

(b) by adding -

"(2) Section 14(4) is amended -

(a) in paragraph (b), by repealing the comma at the end and substituting "; or";

(b) by adding -

"(c) is not of good character,".".

Clause 18

That clause 18 be amended, in the proposed section 20BA —

(a) by deleting subsection (3);

(b) in subsections (5) and (11), by adding "or 21A" after "21";

(c) by adding -

"(9A) The relevant provisions of Schedule 2 have effect with respect to a committee or a sub-committee established under this section.".

Clause 21

That clause 21(2)(b) be amended, in the proposed paragraph (a), by deleting "who is a registered medical practitioner but".

Clause 26

That clause 26(1)(a) be amended, by adding ", the Health Committee" before "or

the".

Clause 27

That clause 27 be amended —

(a) in the proposed section 21A(1), by adding "physically or mentally" after "health,".

(b) in the proposed section 21B -

(i) in subsection (1), by adding before "shall be a quorum" -

"at least one of whom shall be a lay member but subject to the majority being registered medical practitioners,";

(ii) in subsection (2)(f), by deleting "2" and substituting "4".

Clause 36

That clause 36(1) be amended, by deleting "(fa)" and substituting "(f) (fa), (fb)".

That clause 36(2) be amended —

(a) by deleting the proposed subsection (3)(c) and (d) and substituting -

"(c) the minimum periods of employment mentioned in section 9;

(d) the period of assessment for the purposes of section 10A;".

(b) by deleting the proposed subsection (3)(g).

(c) in the proposed subsection (4)(a) -

(i) in subparagraph (i), by deleting "section 20F" and substituting "this Ordinance";

(ii) in subparagraph (ii), by deleting "section 20G" and substituting "this Ordinance";

(iii) by adding -

"(iia) the receipt of complaints or information touching any matter that may be inquired into by the Council;";

(iv) by adding -

"(via) the procedure to be followed in relation to inquiries held by the Council;";

(v) in subparagraph (vii), by adding after "Health Committee" -

"and references of cases to and by the Health Committee".

(d) by deleting the proposed subsection (4)(b) and substituting -

"(b) procedure and other matters in relation to an election or appointment to an office of the Council under section 3(2)(j) including the qualifications of candidates, electors and subscribers for a nomination paper, the particulars of any system of voting and counting, the determination of election results and questioning of the results;

(c) certificates, forms or other documents required for the purposes of this Ordinance, including the payment of a

fee for their issue.".

(e) in the proposed subsection (6) -

(i) by deleting "(2),";

(ii) by deleting paragraph (a) and substituting -

"(a) require documents for the purposes of this Ordinance to be submitted and to be in such form as may be prescribed and require matters or documents for those purposes to be supported by statutory declarations or such other declarations as specified or approved by the Council;".

Clause 38

That clause 38 be amended, in the proposed Schedule 2 —

(a) in the proposed section 2(1),

(i) by adding ", 20S(1)(g)" after "20P";

(ii) by deleting everything after "shall hold office for" and substituting -

"12 months. A member of a committee established under this Ordinance is eligible for re-election or reappointment, depending on the nature of his membership of the committee.";

(b) in the proposed section 2, by adding -

"(3) Notwithstanding his term of appointment, a member of a committee or sub-committee may at any time

resign by giving notice in writing to the Chairman or, as the case may be, the chairman of the committee which appointed the sub-committee.

(4) If during the period of his office a member of a committee who is not a member of the Council becomes a member of the Council, he ceases to be a member of the committee.";

(c) by adding -

"2A. **Temporary members**

Where for any reason a person elected or appointed to a committee or appointed to a sub-committee is or will be unable temporarily to perform his functions as such member, another person qualifying for election or appointment to that committee or sub-committee (depending on the nature of the membership of the person who is or will be temporarily unable to perform his functions) may be appointed by the Chairman or by the chairman of the committee, as may be appropriate, to be temporarily a member of the committee or sub-committee.

2B. **Outgoing member to continue transacting business**

If -

(a) at the time the notice of resignation under section 2(3) is given; or

(b) at the time the membership or temporary membership of a committee or sub-committee of a person terminates otherwise than by resignation,

the committee or sub-committee, as may be appropriate, is considering any complaint or information, conducting any hearing or conducting any review, as may be applicable, the person so resigning or the person whose membership is so terminating (unless he is re-elected or reappointed) shall, if so requested by the Council or the committee which appointed the sub-committee, continue to be a member of the committee or sub-committee for the purpose of completing the performance of that function in respect of that complaint, information, hearing or review, as the case may be, and for no other purpose.".

Clause 40

That clause 40 be amended, by deleting paragraph (a).

Clause 41

That clause 41 be amended —

(a) by renumbering it as clause 41(1).

(b) by adding -

"(2) Section 7(2) is amended by adding -

"(c) by repealing "as may be prescribed" where it last appears and substituting "as may be specified by the Council"."."

Question on the amendments proposed.

MRS ELIZABETH WONG: I would like to take this opportunity to respond to Dr LEONG Che-hung's remarks earlier on. Dr LEONG Che-hung earlier mentioned my name in his speech. I am enormously flattered by his reference to me when I was the Secretary for Health and Welfare. He reminded me that some years ago, I supported two laymen on the Council. Today, if I were the

Secretary for Health and Welfare, I would have supported seven and would have indeed recommended seven, but I will reluctantly accept four as on the Order Paper.

The reason for my doing so is not because I have changed my mind, but because I have been properly educated since I have left the Government. As we grow older, we are also wiser, and as a representative of the people, I am educated better now than before by my constituents.

Having said that, I support the amendments proposed by the Secretary rather reluctantly. Thank you.
Question on the amendments put and agreed to.

Question on clauses 3, 6, 9, 18, 21, 26, 27, 36, 38, 40 and 41, as amended, proposed, put and agreed to.

Clause 24

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 24 be amended as set out under my name in the paper circulated to Members.

Clause 24 - section 20K

The amended section 20K under clause 24 provides for an appeal channel for an applicant whose application for inclusion into the Specialist Register has been rejected by the Registrar.

Clause 24 - section 20M(b)

The proposed addition of the word "to" before "such" in section 20M(b) under clause 24 is a technical amendment.

Clause 24 - section 20S

By amending section 20S under clause 24, one of the four lay members of the Council would take turns to attend the meetings of the Preliminary Investigation Committee.

Clause 24 - section 20T

It is necessary to amend section 20T under clause 24 as the chairman and deputy chairman of the Preliminary Investigation Committee should act in accordance with procedures as stipulated in the regulations.

Clause 24 - section 20V

Amendments to section 20V under clause 24 provide a clearer description of the functions of the Health Committee.

Mr Chairman, I beg to move.

Proposed amendment

Clause 24

That clause 24 be amended —

(a) in the proposed section 20K -

(i) in subsection (1), by deleting "to be";

(ii) by deleting subsections (2) to (5) and substituting -

"(2) Where the Registrar is satisfied that an applicant -

(a) has been -

(i) awarded a Fellowship of the Academy of Medicine;

and

(ii) certified by the Academy of Medicine that he has completed the post-graduate medical training and has satisfied the continuing medical education requirements for the relevant specialty; or

(b) has been certified by the Academy of Medicine that he has achieved a professional standard comparable to that recognized by the Academy for the award of its fellowship and has completed the postgraduate medical training and satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the relevant specialty,

the Registrar shall refer the application to the Education and Accreditation Committee for its consideration.

(3) Where an applicant does not satisfy the requirements in subsection (2), the Registrar shall refer the matter to the Academy of Medicine for its certification as to whether the applicant has achieved a professional standard comparable to that recognized by the Academy for the award of its fellowship and has completed postgraduate medical training and

has satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the relevant specialty.

(4) If on a referral by the Registrar under subsection (3), the Academy of Medicine certifies that the applicant has not achieved that standard or has not completed that training and satisfied those requirements, the Registrar shall reject the applicant's application, stating the reason for rejection.

(5) If an application is rejected by the Registrar, the applicant may appeal to the Education and Accreditation Committee for its consideration of the appeal.

(5A) On a referral by the Registrar under subsection (2), the Education and Accreditation Committee shall, if it is also satisfied that the applicant is of good character, recommend to the Council that his name be included in the Specialist Register.

(5B) On an appeal under subsection (5), the Education and Accreditation Committee shall, if it is satisfied that the applicant -

(a) has achieved a professional standard comparable to that recognized by the Academy for the award of its fellowship and has completed postgraduate medical training and satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the

relevant specialty; and

(b) is of good character, recommend to the Council that his name be included in the Specialist Register, otherwise the Committee shall recommend to the Council that his application for inclusion of name in the Specialist Register be rejected.";

(iii) in subsection (6), by deleting "(3), (4) or (5)" and substituting "(5A) or (5B)".

(b) in the proposed section 20M(b), by adding "to" before "such".

(c) in the proposed section 20S -

(i) by deleting subsection (1)(g) and substituting

"(g) 1 of the 4 lay members of the Council.

(ii) in subsection (2), by adding after "3," -

"at least one of whom shall be a lay member, subject to the majority being registered medical practitioners,";

(iii) by adding -

"(4) Notwithstanding subsection (3), if both the chairman and the deputy chairman declare their interest in respect of a particular case which is to be decided at a meeting, neither of them may preside at the meeting and the members present (including the chairman and deputy chairman) shall elect another member to preside at the meeting.

(5) A member of the Preliminary

Investigation Committee appointed under subsection (1)(g) shall hold office for such period not exceeding 3 months as the Council may specify in his letter of appointment. Other members of the Preliminary Investigation Committee shall hold office for 12 months.".

(d) in the proposed section 20T -

(i) in subsection (1)(c), by deleting "subject to subsection (3),";

(ii) by deleting subsection (3).

(e) in the proposed section 20V -

(i) in subsection (1)(a), by adding "physical or mental" after "health or";

(ii) in subsection (1)(c), by adding after "12 months" -

", and that such an order for removal be suspended subject to such conditions as recommended by the Health Committee, where appropriate".

Question on the amendment proposed, put and agreed to.

委員羅致光議員致辭：主席先生，我動議進一步修正第24條，修正案內容一如提交各位議員傳閱的文件內於我名下所載者。主席先生，我提出這項修正，很希望本局的同事能細聽本人的陳述，支持本人名下的修正案。

本人代表民主黨提出修正，使健康狀💔小組按法例規定，加入業外人士成員。我們知道醫務委員會強烈反對健康狀💔小組正式加入業外人士成員，該委員會認為，健康狀💔小組好比一個醫療界的內部檢討委員會，目的是確定有關醫生的健康狀💔是否適宜繼續執業。

不過，我衷心希望醫務委員會能夠檢討上述看法，因為基於同一原因，醫務委員會亦可視違反專業操守的問題為內部檢討，亦可視整過註冊制度是一個內部問題，而大可拒絕任何業外人士成員參與整項專業的事務。這種看法並不符合專業亦要向公眾交代和接受公眾監察的原則。要向公眾交代和接受公眾監察，亦是在醫務委員會執照小組和專業操守小組加入業外人士的原因，這些業外人士雖然不是醫生，但卻可扮演監察者的角色。

我希望醫務委員會的朋友不要認為民主黨這項修訂是對醫務專業的挑戰，我們更不是要損害醫生的尊嚴。相反地，我們非常尊重醫務專業，亦希望透過今次法例的修訂，加強醫務委員會的公信力及其透明度。民主黨相信，專業人士自律是給予市民大眾一個服務質素的承諾；而讓業外人士參與，就是向市民大眾清楚交代其自律工作的執行情💔。一個負責任的專業委員會是理應歡迎業外人士參與監察和加入有關的工作的。所以民主黨希望這精神能貫徹於整項條例草案，在健康狀💔小組內加入業外人士成員，這樣將會令市民更尊重醫生的專業精神。

我希望立法局的同事能投票支持修正案，謝謝主席先生。

Proposed amendment

Clause 24

That clause 24 be amended, in the proposed section 20U —

(i) in subsection (1), by adding -

"(g) 1 of the 4 lay members of the Council.";

(ii) in subsection (3), by adding after "chairman" -

", at least one of whom shall be a lay member, subject to the majority being registered medical practitioners".

MR EDWARD HO: Mr Chairman, extensive discussions took place during the Bills Committee stage amongst Members as to whether it should be made mandatory that a lay member or members should be included in the Health

Committee of the Medical Council.

I think it should be made clear that we are now not talking about the accountability or transparency of the Council itself. I think Members have been satisfied when lay members have now been added to the Council. But I think it should be clear that the function of the Health Committee is to enable a medical practitioner to be examined as to whether he or she is medically fit to continue his or her practice as a medical practitioner.

I understand Mr LAW's amendment seeks to make it mandatory for a lay member or lay members to be appointed to the Health Committee and I understand its purpose is to increase the transparency and accountability of the Health Committee.

First of all, there is nothing in the Bill that would exclude lay members being included in the Health Committee, but I fail to see how a lay person in the Health Committee can contribute to judging whether an applicant or a practitioner is medically fit. That judgement must be made, and can only be made by qualified medical practitioners.

In practice, the proposed amendment would merely be window dressing and lack real meaning, and for that reason the Liberal Party would not support Mr LAW's amendment. We think that the medical profession is fully capable of regulating itself in this matter.

委員何敏嘉議員致辭：主席先生，我只是回應兩點，首先是有關現行法例的安排。不錯，現行的法例安排是可以從一群人中選擇一些人進入健康狀💔小組，而其中可以出現不同的組合，即是可以有業外人士成員，也可以沒有業外人士成員，這兩種情💔都是可以出現的。但我想在此提醒大家，在二月六日的條例草案審議委員會會議中，醫務委員會提出很強烈的反對，並且強調這項修訂將會影響醫生的尊嚴。但我沒法同意這項觀點，這項修訂其實是與醫生的尊嚴沒有關係的，而這亦不代表公眾人士對於醫務行業的執業者有任何不敬。既然有這樣的想法，當他們選擇小組成員的時候，是否可能出現有業外人士加入健康狀💔小組的情💔呢？當然不會出現，因為醫務委員會根本不可以接納有業外人士加入健康狀💔小組。

剛才何承天議員提及，究竟這些業外人士可以在該小組內作出怎樣的貢

獻呢？當然，如果決定一名醫生是否適合繼續執業，必須先由專家檢驗有關醫生的身體，然後提出一些證供。健康狀💔小組的成員，無論是醫生或業外人士，他們都是要根據專家給予的證供去決定有關醫生是否可以繼續執業。這情💔其實不應只是在西醫界內出現，律師、護士，以及其他任何的專業團體，如果要決定其中一名執業者因健康的理由而是否適合繼續執業，都需要聘請醫療專家作一些檢驗，然後提出證供。如果有關委員會是律師或護士的管理委員會，負責作決定的委員會成員其實都不是醫生，他們都是聽取專家的意見，然後作出決定。所以，醫務委員會健康狀💔小組的業外人士成員其實並不是要動手檢查醫生的身體，而是聽取專家的意見。

我還想提及另一項事宜，就是可能有人擔心私隱的問題。其實健康狀💔小組是否有業外人士成員，對私隱問題來說都不會有任何分別。我們要知道，若有醫生需要會見健康狀💔小組，他們所會見的是整個小組，而不是某一些成員。無論出席的是那一些成員，有關醫生所會見的都是該小組的成員，而這個小組的成員不論是醫生或業外人士，都是需要保守秘密的。所以我強調，如果在健康狀💔小組中加入業外人士成員，是不會出現不能夠作出貢獻，或是影響私隱或影響尊嚴等情💔的。謝謝主席先生。

DR LEONG CHE-HUNG: Thank you, Mr Chairman. First of all, may I thank the Honourable Edward HO for making those remarks, which I entirely endorse. There are four points, or rather five points, which I would like to make before I give, perhaps, Members some views on the whole issue.

Firstly, we are talking about membership of a Health Committee, not membership of the Medical Council. The Health Committee is a subcommittee of the Medical Council which this Legislative Council has already decided that it has responsibility and it is a recognizable institution.

Secondly, this Health Committee is not, and I stress not, a disciplinary body. In other words, the person, the doctor appearing before this Health Committee is not somebody who has already committed a possible professional misconduct. It is entirely a person who, for whatever reasons being viewed by his peers or otherwise, that he might have a health problem which may interfere with his practice. So I could just stress again this is not a disciplinary body.

Thirdly, to the current Bill, the Medical Council is already entrusted with a

power to choose members. Amongst them could be lay members or professional members, and lay members could come from the Medical Council itself or from outside the Medical Council. There is this degree of flexibility. Now, what my friend, the Honourable Law Chi-kwong wants is to ensure that there are lay members in the Health Committee specified by law. In other words, to remove the flexibility that this body, the Medical Council, considered by law has its power.

In response to what Mr Michael HO said in relation to, for example, a lawyer who could well be sick and whether he should be allowed to practise or not, yes, a doctor will especially be called to analyse him or her. But the doctor can only go all the way to say what is wrong physically or mentally with that particular lawyer, engineer, architect or otherwise. But there is no way that a doctor can say he is not suitable to practice law, engineering or otherwise. It is up to that professional body, and that professional body alone, to say whether that particular person is, in that physical state, mental state, proper to practise that particular profession.

Mr Chairman, with your permission, let me bring Members through two scenarios. Firstly is something that I have frequently encountered and hope Members will not have to encounter, and that is, as a doctor we are often asked and needed by our duty to explain to patients their problems. And usually in that sort of situation, their relatives are around and other health care professionals are around. Now, this is acceptable. This is perfectly acceptable to the patient and to the relatives. But should there be an outsider, say the patient fro the next bed or relatives of patient from next bed were to eavesdrop, now, this is not acceptable and a lot of hell would be raised by the patients or his relatives on that basis. The reason is very simple. It is on the ground of integrity and confidentiality.

Let me take Members through another scenario, and this time it is a doctor who is noticed by his peers to be unhealthy, either physically or mentally. He has committed no misconduct, and I stress that, and he is asked to face the Health Committee. He has now to face the embarrassment of interrogation not only by his own peers but, if Mr LAW's amendment is through, then he also has to face the embarrassment of a lay person who has no knowledge whatsoever of health problems. How would he feel? To the medical profession, this is obviously unacceptable as it really erodes into the dignity of that particular person who has

not at that point in time committed any offence whatsoever.

Mr Chairman, in these days when we all value human rights, value the power, value privacy and confidentiality, why should we apply double standards? A standard for doctors and a standard for everybody else? Now, I fail to understand this. Further, Mr Chairman, and I must reiterate, that section 20U already gives the flexibility to the Medical Council to appoint other members who are not within the medical profession, are from the four lay members of the Medical Council, and secondly, from other members who are not even members of the Medical Council. And I would like to read to Members section 20U which actually said: "1 to 3 persons not being members of the Council when the Council considers appropriate can be appointed to this Health Committee."

When we have already recognized, Mr Chairman, the establishment of the Council, and we have already given this Council the trust, should we not leave the details to this Council in making its appointment to the Health Committee, which is a subcommittee of this Council, or should we really move a law to control a professional body?

Mr Chairman, I would strongly go against this amendment as moved by the Honourable LAW Chi-kwong, and I represent my profession's views and my constituents' view and hope Members will vote against it too.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Honourable LAW Chi-kwong's proposed amendments to section 20U under clause 24 have in fact been thoroughly considered by the Bills Committee.

Unfortunately, the Bills Committee did not reach a consensus on this issue. The Health Committee is tasked to conduct a hearing into matters concerning the health or physical or mental fitness to practise of any registered medical practitioner. It serves as an internal review committee to ascertain whether a medical practitioner is medically fit to continue his practice, but it does not investigate whether he has committed any malpractice or misconduct. Medical practitioners are in the best position to determine one's health condition,

especially whether he is physically or mentally fit to practise.

I wish to stress that the Bill already provides for the presence of lay members in the Health Committee. Under section 20U(1)(a) and (b), a chairman and two other members of the Health Committee shall be elected by the Council from among its members. Four out of 28 members of the Council are proposed to be lay members. In addition, under section 20U(1)(f), the Council can appoint to the Health Committee one to three persons who are not members of the Council.

With these remarks, Mr Chairman, I object to the proposed amendment.

羅致光議員致辭：謝謝主席先生。我只是想簡單回應剛才的一些意見。我希望大家不要視加入健康狀💔小組的業外人士為外界人士，他們亦是參與工作去協助醫務專業加強其對公眾的交待。梁智鴻議員一再強調的彈性，即可以委任業外人士的彈性，事實上給我一個很矛盾的感覺；一方面很強烈地否定要委任業外人士加入，但另一方面又說有彈性，是會委任業外人士的，我認為這是非常矛盾，並且給人一種哄騙人的感覺。我希望大家考慮這個問題時，要考慮及這一點，就是如果各位認為醫生根本上是不希望有業外人士加入，而我們卻認為應該有的話，便不應該容許這彈性存在，因為他們已很清楚地表示不會委任業外人士。至於業外人士是否真的可以有所貢獻的問題，我可以舉一個很簡單的例子，就是我們曾提及的所謂專業疏忽問題。這問題並不能純粹由一些業外人可以審議，必須倚靠該項專業的專家的意見才容易去判斷是否出現專業疏忽。換句話說，一方面既需要業外人士的意見，另一方面亦是需要專家的意見。健康狀💔小組的工作亦一樣，健康問題當然需要醫生及專家的意見，但是讓該有關醫生繼續執業是否符合公眾利益的問題，便需要業外人士參與決定。

主席先生，我希望大家支持這項修正案，謝謝各位。

Question on the amendment put.

Voice vote taken.

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

Mr LAW Chi-kwong and Mr Michael HO claimed a division.

CHAIRMAN: The Committee shall proceed to a division.

CHAIRMAN: I would like to remind Members that they are called upon to vote on the question that the amendment moved by Mr LAW Chi-kwong be made to clause 24 of the Medical Registration (Amendment) (No. 2) Bill.

CHAIRMAN: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN and Miss Margaret NG voted

against the amendment.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and 12 votes against it. He therefore declared that the amendment was carried.

New clause 39A Section added

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 39A as set out in the paper circulated to Members be read the Second time.

Clause 39A arises from section 5 of the Medical Registration (Amendment) Ordinance 1995, which provides that an applicant is eligible to take the Licensing Examination if he has satisfactorily completed not less than five years' full time medical training. As internship forms one part of the medical training, 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 39A be added to the Bill.

Proposed addition

New clause 39A

That the Bill be amended, by adding —

"**39A. Section added**

Section 5 is amended -

(a) by renumbering the proposed section 7A as section 7A(1);

(b) by adding -

"(2) For the purpose of subsection (1)(b)(i), the 5 years full time medical training shall include a period of internship as approved by the Council.".

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

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

Clauses 1 to 7 were agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

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

Clause 2

財經事務司致辭：主席先生，我謹動議依照送交各位議員傳閱的文件所載的

提議，修正條例草案第2（2）條。

是項輕微修訂是根據立法局秘書處法律事務部的建議，有關“agency of the Government”一詞的中譯本，由“政府的代理人”修正為“政府代理機構”，以便更切合英文本的含義。

主席先生，我謹動議議案。

Proposed amendment

Clause 2

That clause 2(2) be amended, in the definition of "法團", in paragraph (a), by deleting "的代理人" and substituting "代理機構".

Question on the amendment proposed, put and agreed to.

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

REHABILITATION OF OFFENDERS (AMENDMENT) BILL 1995

Clauses 1, 2, 6 and 7 were agreed to.

Clauses 3, 4, 5 and 8

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Honourable Members.

The reasons for the main amendments have been explained in my earlier speech on resumption of the Second Reading debate. Other amendments are textual and technical in nature. All of them are supported by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(b) be amended, in the proposed subsection (1A) —

(a) in paragraph (c) by deleting "and" at the end;

(b) in paragraph (d) -

(i) by deleting "a triad society" and substituting "the triad society concerned";

(ii) by deleting the comma at the end and substituting "; and";

(c) by adding -

"(e) he was provided such information, including his fingerprints, as may be required by the Commissioner of Police to enable his conviction record to be verified and for this purpose, a police officer may take or record the individual's fingerprints and the fingerprints so taken or recorded shall be destroyed or delivered to the individual as soon as reasonably practicable after his conviction record has been verified.".

That clause 3(j) be amended, by deleting the proposed subsection (6A) and substituting —

"(7) For the purpose of subsection (1B)(a), (b) and (c) and section 3, a payment or an order to pay shall include -

(a) the offence or contravention which was the subject of that payment or order to pay;

(b) the conduct or circumstances constituting that offence

or contravention; and

(c) anything relating to that payment or order to pay which, if disclosed, would tend to show that the individual committed, was charged with, was prosecuted for, was convicted of or was sentenced for the offence or contravention which was the subject of the payment or order to pay.".

Clause 4

That clause 4(b) be amended, in the proposed subsection (3) by deleting "a criminal" and substituting "any criminal".

Clause 5

That clause 5(a) be amended, by deleting subparagraph (ii) and substituting —

"(ii) in paragraph (e) -

(A) it subparagraph (i), by repealing "or" at the end;

(B) in subparagraph (ii) by adding ", 66, 67, 69, 70, 75 and 76" after "35";

(C) by adding -

"(iii) relating to a person's suitability to become or continue to be a director or controllor of an authorized insurer;

(iv) relating to a person's suitability to become or continue to be an insurance broker authorized by the Insurance Authority under section 69 of that Ordinance, or to be a member of a body of insurance brokers approved by the Insurance Authority under section 70 of that Ordinance;

(v) relating to the approval of a body of insurance brokers, including the assessment of whether the persons who manage or supervise the body of insurance brokers are fit and proper persons to do so, by the Insurance Authority under section 70 of that Ordinance; or

(vi) relating to the appointment, registration and de-registration of an insurance agent for the purposes of Part X of that Ordinance;";".

That clause 5 be amended, by adding —

"(aa) in subsections (1) and (2) by repealing "Section 2" and substituting "Section 2(1) and (1A)";".

That clause 5(c) be amended, by deleting "subsections (2)(c) and (3)(a)" and substituting "subsection (2)(c)".

That clause 5 be amended, by adding —

"(ca) in subsection (2)(d) by adding after "(Cap. 41)" -

", or to be an authorized insurance broker, or a person who manages or supervises an approved body of insurance brokers or an appointed insurance agent for the purposes of section 2(1) and Part X of that Ordinance";".

That clause 5(d) be amended —

(a) in the proposed paragraph (g) by deleting the full stop and substituting "; or".

(b) by adding -

"(h) to become or continue to be a director or controller of

an authorized insurer under the Insurance Companies Ordinance (Cap. 41).".

That clause 5 be amended, by adding —

"(da) by repealing subsection (3) and substituting -

"(3) Section 2(1) and (1A) shall not apply to any dismissal or exclusion of an individual from practising as a barrister, solicitor or accountant or from any prescribed office.";".

That clause 5(e) be amended —

(a) be deleting the proposed subsection (4) and substituting -

"(4) Section 2(1B) shall not apply to any question asked by or on behalf of any employer or any individual who intends to employ a vocational driver, or any obligation to disclose information, regarding the suitability of another person for employment or continued employment as a vocational driver, unless a period of 3 years has elapsed from the date of payment or order to pay (whichever is the earlier) which is referred to in section 2(1B).".

(b) in the proposed subsection (5) -

(i) by deleting "解除" and substituting "排除";

(ii) by adding "or order to pay (whichever is the earlier)" after "payment".

(c) By adding -

"(6) Section 2(1B) shall not apply to any question asked by or on behalf of an insurer for the purpose of assessing and pricing a risk in respect of vehicle insurance, unless a period of 3 years has elapsed from the date of payment or order to pay (whichever is the earlier) which is referred to in section 2(1B).

(7) Section 2 shall not apply to any action taken for the purposes of safeguarding the security of Hong Kong.".

Clause 8

That clause 8 be amended, by deleting paragraph (c) and substituting —

"(c) by adding -

"10. Any office of the Directorate staff, the Commission Against Corruption Officer grade staff or in the Operations Department of the Independent Commission Against Corruption.

11. Any office occupied by the executive, professional, managerial, technical or secretarial staff of the Hong Kong Monetary Authority.

12. Any office of the insurance officer grade staff (including the Commissioner or Assistant Commissioner) or the secretarial staff of the Office of the Commissioner of Insurance.

PART 2
OTHER OFFICES

1. Any office occupied by the executive staff (including the Executive Directors) or the secretarial staff of the Securities and Futures Commission.".".

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 4, 5 and 8, as amended, proposed, put and agreed to.

Heading before New clause 9	Consequential Amendments Road Traffic Ordinance
New clause 9	Proof of matters relating to previous convictions

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 the Heading before new clause 9 and new clause 9 as set out in the paper circularized to Honourable Members be read the Second time.

In my speech at the resumption of the Second Reading debate, I have explained the reasons for the proposed amendments in relation to the fixed penalty scheme. The effect of those amendments is that, while payments or orders to pay under the fixed penalty scheme are regarded as spent immediately for most purposes, they are not considered spent in the assessment of a vehicle insurance or of a person's suitability as a vocational driver, unless a period of three years has elapsed.

Under section 75 of the Road Traffic Ordinance, an individual can obtain a record of all his previous traffic convictions from the police upon payment of the prescribed fee. With the amendments proposed earlier, a payment under the fixed penalty scheme may or may not be considered spent depending on the circumstances. For instance, for general purposes such a payment is spent immediately and will not be specified in the record. However, for the purpose of an application for a job as a vocational driver, or buying a vehicle insurance, such a payment will be specified in the record unless a period of three years has elapsed. To enable the police to give an accurate record of previous traffic convictions for different purposes, I propose to add a new clause 9 to the Bill to

make a consequential amendment to section 75 of the Road Traffic Ordinance, so that applicants for traffic conviction records have to pay the prescribed fee, and complete an application form to specify the purposes for which the records are to be used. It also makes it clear that the Commissioner of Police may reveal, at the request of an applicant, in a record issued under section 75 of the Road Traffic Ordinance all "spent" convictions, "spent" payments and "spent" orders to pay in respect of the applicant, notwithstanding the provisions of the Rehabilitation of Offenders Ordinance.

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 SECURITY: Mr Chairman, I move that the Heading before new clause 9 and new clause 9 be added to the Bill.

Proposed addition

New clause 9

That the Bill be amended, by adding —

"**Consequential Amendments**

Road Traffic Ordinance

9. Proof of matters relating to previous convictions

Section 75 of the Road Traffic Ordinance (Cap. 374) is amended -

(a) in subsection (5) -

(i) by repealing "on payment of the prescribed fee" and substituting ", on

payment of the prescribed fee and receipt of the completed application form for a record or certificate under this section,";

(ii) by adding "or payments or orders to pay under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)" after "Ordinance" where it first appears;

(b) by adding -

"(5B) For the avoidance of doubt, a record issued under subsection (5) may, at the written request of the applicant, reveal all convictions under this Ordinance or payments or orders to pay under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), notwithstanding the provisions of the Rehabilitation of Offenders Ordinance (Cap. 297).".".

Question on the addition of the Heading before new clause 9 and new clause 9 proposed, put and agreed to.

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

Clauses 1, 2, 3, 4, 7, 8, 12 to 16 and 19 to 26 were agreed to.

Clauses 5, 6, 9, 10, 11, 17 and 18

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. The reasons for the amendments have already been explained during the resumption of the Second Reading debate. All the amendments have been agreed to by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 5

That clause 5 be amended, by deleting the proposed section 5A and substituting —

"**5A. Making infringing copies outside Hong Kong, etc.**

(1) Any person who makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance shall be guilty of an offence.

(2) Any person who makes outside Hong Kong a plate, knowing that it is to be used or is intended to be used in Hong Kong for making an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance shall be guilty of an offence.

(3) Any person who makes outside Hong Kong or exports from Hong Kong a plate, knowing that -

(a) the plate is to be used or is intended to be used outside Hong Kong for making an article for export to Hong Kong; and

(b) the article mentioned in paragraph (a) would, if it were made in Hong Kong, constitute an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance,

shall be guilty of an offence.

(4) Any person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 21 of the Act.

(6) A person guilty of an offence under subsection (1), (2) or (3) shall be liable on conviction on indictment -

(a) in the case of a first conviction for that offence, to a fine of $250,000 and to imprisonment for 4 years; and

(b) in the case of a second or subsequent conviction for that offence, to a fine of $500,000 and to imprisonment for 8 years.

(7) For the purposes of this section, "infringing copy" does not include a copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance that is made in the United Kingdom or a country, territory or area to which section 5 or 16 of the Act extends or applies, by or with the consent of the person who, at the time and in the place where it was made, owned the copyright in that work or subject matter.".

Clause 6

That clause 6 be amended, in the proposed section 7B —

(a) by deleting "in respect of which" and substituting "to which";

(b) by adding "extend or" before "apply".

Clause 9

That clause 9 be amended —

(a) in the proposed section 12 -

(i) by deleting the definition of "copyright owner";

(ii) in the definition of "detention order", by deleting "issued under section 14" and substituting "made under section 14(1)";

(iii) by deleting the definition of "infringing copy" and substituting -

""infringing copy" does not include a copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance that is made in the United Kingdom or a country, territory or area to which section 5 or 16 of the Act extends or applies, by or with the consent of the person who, at the time and in the place where it was made, owned the copyright in that work or subject matter;";

(iv) by adding -

""right holder" means the owner or exclusive licensee of the copyright that subsists in a work or other subject matter under the Act or this Ordinance.".

(b) by deleting the proposed section 13(1) and substituting -

"(1) A right holder may apply to the High Court for an order under section 14(1) where he has reasonable ground for suspecting that the importation of an article that constitutes an infringing copy of the work or other subject matter in respect of which he is a right holder may take place.".

(c) in the proposed section 13(3) -

(i) by deleting "copyright owner" and substituting "right holder";

(ii) by deleting paragraph (b) and substituting -

"(b) states whether the deponent is the owner or the exclusive licensee of the copyright;

(ba) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;";

(iii) by deleting paragraph (d) and substituting -

"(d) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing copy;".

(d) in the proposed section 14(1), by deleting "on an application made under section 13, the High Court is satisfied that there is prima facie evidence that adequately demonstrates that the article in question is an infringing copy," and substituting "on the hearing of an application made under section 13, the right holder presents adequate evidence to satisfy the High Court that the article in question is prima facie an infringing copy,".

(e) in the proposed section 14(2) -

(i) by deleting "copyright owner" and substituting "right holder";

(ii) by deleting "consignor and consignee" and substituting

"consignee and the owner of the article".

(f) in the proposed sections 14(6) and 15(2), by deleting "copyright owner" and substituting "right holder".

(g) in the proposed section 15(3), by deleting "applicant" and substituting "right holder".

(h) in the proposed section 15(4) -

(i) by deleting "copyright owner" where it twice appears and substituting "right holder";

(ii) by deleting "or to vary the order" and "or vary the order in such manner".

(i) in the proposed section 15(5), by deleting everything after "the seizure or detention" and substituting -

"to -

(a) the right holder;

(b) the importer; and

(c) any other person to whom notice is required to be given by the terms of the order.".

(j) in the proposed section 15(6), by deleting "copyright owner" where it twice appears and substituting "right holder".

(k) in the proposed section 15(7), by deleting "copyright owner" and substituting "right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard".

(l) in the proposed section 15(8) and (9), by deleting "copyright owner" and substituting "right holder".

(m) by adding -

"**15A. Variation or setting aside of detention order**

(1) The Commissioner or the right holder may at any time apply to the High Court to vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) and (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the High Court may vary the order in such manner as it thinks fit.

(5) On the hearing of an application under subsection (2) to set aside the detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3) -

(a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section

15(5); and

(b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.".

(n) in the proposed section 16(1) and (2), by deleting "copyright owner" and substituting "right holder".

(o) in the proposed section 17(1) -

(i) in paragraph (a), by deleting "copyright owner" and substituting "right holder";

(ii) in paragraph (b), by deleting "copyright owner's" and substituting "right holder's".

(p) in the proposed section 17(2) -

(i) by deleting "copyright owner" where it twice appears and substituting "right holder";

(ii) by deleting "undertaking" and substituting "undertakings".

(q) in the proposed sections 17(4) and 18(1) and (2), by deleting "copyright owner" wherever it appears and substituting "right holder".

(r) by deleting the proposed section 20 and substituting -

"**20. Compensation payable to importer, etc.**

(1) Where an article is seized or detained pursuant to a detention order and the article is released pursuant to section 15(6), the importer, the consignee or the owner of the article

may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where -

(a) an article is seized or detained pursuant to a detention order;

(b) an action for infringement is brought under the Act in respect of the article within the period referred to in section 15(6), as may be extended under section 15(7); and

(c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.".

(s) in the proposed section 29(7)(a), by deleting "judicial proceedings," and substituting "judicial proceedings or".

(t) in the proposed section 30, by deleting "in respect of infringement" and substituting "in respect of infringements".

Clause 10

That clause 10(b) be amended, by deleting the proposed items 2A and 2B and substituting —

"2A. In section 2(5) there shall be added -

"(ee) in relation to a literary work being a computer program, renting the work;".

2B. In section 2(5)(g) for the words "paragraphs (a) to (e)" there shall be substituted the words "paragraphs (a) to (ee)".

2C. After section 2(6) there shall be inserted the following subsections -

"(7) For the purposes of paragraph (ee) of subsection (5) of this section, an arrangement, whatever its form, constitutes a rental of a literary work being a computer program if -

(a) it is in substance an arrangement under which a copy of the work is made available on terms that it will be or may be returned; and

(b) the arrangement provides for the copy to be made available -

(i) for payment in money or money's worth; or

(ii) in the course of a business, as part of services or amenities for which payment in money or money's worth is to be made.

(8) Paragraph (ee) of subsection (5) of this section does not extend to -

(a) the rental of a machine or device in which a computer program is embodied if the computer program is not able to be copied in the course of the ordinary use of the machine or device; or

(b) the rental of any other thing that embodies or includes a computer program if the computer program is not the essential object of the rental.

(9) The reference in subsection (8) of this section to a device does not include a device of a kind ordinarily used to store computer programs.".".

That clause 10(c) be amended, by deleting the proposed item 7A and substituting —

"7A. In section 12(5) there shall be added -

"(d) renting the recording.".

7B. After section 12(9) there shall be inserted the following subsections -

"(10) For the purposes of paragraph (d) of subsection (5) of this section, an arrangement, whatever its form, constitutes a rental of a sound recording if -

(a) it is in substance an arrangement under which a copy of the recording is made available on terms that it will be or may be returned; and

(b) the arrangement provides for the copy to be made available -

(i) for payment in money or money's worth; or

(ii) in the course of a business, as part of services or amenities for which payment in money or money's worth is to be made.

(11) Paragraph (d) of subsection (5) of this section does not extend to the rental of anything that embodies or includes a sound recording if the sound recording is not the essential object of the rental.".".

That clause 10 be amended, by deleting paragraph (d).

That clause 10(f) be amended —

(a) by deleting the heading to the proposed section 30A and substituting -

"Special provisions as to jurisdiction of tribunal in relation to rental of computer programs and sound recordings".

(b) in the proposed section 30B -

(i) in the heading, by deleting "**point**" and substituting "**question**";

(ii) in subsection (1), by deleting "point" and substituting "question".

That clause 10(g) be amended —

(a) in the proposed section 41A, by deleting the heading and substituting -

"Special provisions as to rental of computer programs and sound recordings".

(b) in the proposed section 41A(1), by deleting ", sound recordings or cinematograph films" and substituting "or sound recordings".

(c) in the proposed section 41A(4), by deleting ", sound recordings or cinematograph films" and substituting "or sound recordings".

(d) in the proposed section 41B, by deleting the heading and substituting -

"Application to settle royalty or other sum payable for rental of computer programs or sound recordings".

That clause 10 be amended, by deleting paragraph (h).

That clause 10(k) be amended —

(a) in the proposed item 28, by deleting "2A, 2B, 7A, 8A, 16A, 17A, 22A and 24A" and substituting "2A and 7A".

(b) in the proposed item 29 -

(i) by deleting "7A, 8A," and substituting "2C, 7A, 7B,";

(ii) by adding "or subject matter" after "work".

Clause 11

That clause 11 be amended —

(a) by deleting the proposed section 7D(1)(b) and substituting -

"(b) anything done for Government use to the order of a public officer by the person entitled under the certificate of registration to the privileges and rights conferred by the certificate,

so far as those provisions -

(i) restrict or regulate the working of the invention or the use of any model, document or information relating to it; or

(ii) provide for the making of payments in respect of, or calculated by reference to, such working or use.".

(b) by deleting the proposed section 7E(1)(b) and substituting -

"(b) if there is an exclusive licence in force in Hong Kong in respect of the patented invention, to the exclusive licensee,

compensation for any loss resulting from his not being awarded a contract to supply the patented invention or a thing made by means of the patented invention or otherwise providing for the use of the patented invention.".

Clause 17

That clause 17 be amended —

(a) in the proposed section 30A, in the definition of "detention order" by deleting "issued under section 30C" and substituting "made under section 30C(1)".

(b) by deleting the proposed section 30B(1) and substituting -

"(1) The proprietor of a trade mark may apply to the High Court for an order under section 30C(1) where he has reasonable ground for suspecting that the importation of goods that constitute infringing goods may take place.".

(c) in the proposed section 30B(3) -

(i) in paragraph (a) by deleting "the person named therein" and substituting "the deponent";

(ii) by deleting paragraph (c) and substituting -

"(c) states the grounds for the application, including the facts relied upon by the deponent as showing that the goods in question are prima facie infringing goods;".

(d) in the proposed section 30B, by adding -

"(3A) Where the trade mark in question is registered, the affidavit of the proprietor shall exhibit a certified copy of each entry in the register that relates to the trade mark or, where it is not practicable for the deponent to obtain such a certified copy, shall state the reasons why it is not practicable to do so.".

(e) in the proposed section 30C(1), by deleting "on an application made

under section 30B, the High Court is satisfied that there is prima facie evidence that adequately demonstrates that the goods in question are infringing goods" and substituting "on the hearing of an application made under section 30B, the proprietor presents adequate evidence to satisfy the High Court that the goods in question are prima facie infringing goods".

(f) in the proposed section 30D(3), by deleting "applicant" and substituting "proprietor of the trade mark".

(g) in the proposed section 30D(4), by deleting "or to vary the order" and "or vary the order in such manner".

(h) in the proposed section 30D(5), by deleting everything after "the seizure or detention" and substituting -

"to -

(a) the proprietor of the trade mark;

(b) the importer; and

(c) any other person to whom notice is required to be given by the terms of the order.".

(i) in the proposed section 30D(7), by adding "after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard," after "trade mark,".

(j) by adding -

"30DA. Variation or setting aside of detention order

(1) The Commissioner or the proprietor of the trade mark may at any time apply to the High Court to

vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary a detention order, the High Court may vary the order in such manner as it thinks just.

(5) On the hearing of an application under subsection (2) to set aside a detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3) -

(a) the parties to an application under subsection (1) are the Commissioner, the proprietor of the trade mark and, if the goods in question have been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 30D(5); and

(b) the parties to an application under subsection (2) are the Commissioner, the proprietor of

the trade mark, the applicant and the importer, if the importer is not the applicant.".

(k) by deleting the proposed section 30I and substituting -

"30I. Compensation payable to importer, etc.

(1) Where goods are seized or detained pursuant to a detention order and the goods are released pursuant to sections 30D(6), the importer, the consignee or the owner of the goods may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where -

(a) goods are seized or detained pursuant to a detention order;

(b) an action for infringement is brought under the Trade Marks Ordinance (Cap. 43) in respect of the goods within the period referred to in section 30D(6), as may be extended under section 30D(7); and

(c) the action is discontinued, the claim of infringement is withdrawn or the High Court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the goods may,

within 6 months after the date on which the action is discontinued, the claim is withdrawn or the High Court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.".

Clause 18

That clause 18 be amended, by deleting the clause and substituting —

"**18. Interpretation**

Section 2(1) of the Trade Marks Ordinance (Cap. 43) is amended by repealing the definition of "mark" and substituting -

""mark" means any sign that is visually perceptible and capable of being represented graphically and may, in particular, consist of words, personal names, letters, numerals, figurative elements or combination of colours, and includes any combination of such signs;".".

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 6, 9, 10, 11, 17 and 18, as amended, proposed, put and agreed to.

NOISE CONTROL (AMENDMENT) BILL 1995

Clause 1

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

Clause 1 of the Bill prescribes the short title and commencement of the Bill, originally scheduled for 31 March 1996. To tie in with the legislative timetable, we propose that clause 1(2) should be deleted so that the Bill will come into operation upon publication in the Gazette. This will enable the Noise Control (Motor Vehicles) Regulation to be made immediately after enactment of the Bill.

The amendment has been discussed and agreed by the Bills Committee to study the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995.

Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1 be amended —

(a) in the heading by deleting "**and commencement**".

(b) by deleting subclause (2).

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Clause 2 was agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

Clause 1

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

Clause 1 of the Bill prescribes the short title and commencement of the Bill, originally scheduled for 31 March 1996. To tie in with the legislative timetable, we propose to amend clause 1(2) to the effect that the Bill will come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette. We intend to bring the Bill into effect two months after approval of the Noise Control (Motor Vehicles) Regulation by this Council, which will be around August 1996.

The amendment has been discussed and agreed by the Bills Committee to study the Road Traffic (Amendment) (No. 2) Bill 1995 and the Noise Control (Amendment) Bill 1995.

Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting subclause (2) and substituting —

"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette.".

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Clauses 2 and 3 were agreed to.

TOWN PLANNING (AMENDMENT) BILL 1995

Clauses 1, 4 and 6 were agreed to.

Clause 2

CHAIRMAN: There are two proposed amendments to clause 2 of this Bill; one to be moved by the Honourable Albert CHAN and the other by the Secretary for Planning, Environment and Lands. However, the Secretary for Planning, Environment and Lands has just given instructions to the Clerk that he would withdraw his amendment to clause 2 of the Bill. Therefore the Committee needs to deal only with the Honourable Albert CHAN's amendment. I now call upon the Honourable Albert CHAN to move his amendment to clause 2.

委員陳偉業議員：主席先生，我要求在程序上澄清一點，因為你剛才告知本局，規劃環境地政司已經提出撤回第2條，而我動議修正條例草案第2條，基本上的目的是與規劃環境地政司撤回第2條相類似。我希望你能澄清，我是否仍然需要提出我這項修正案？

CHAIRMAN: The Secretary has a right to withdraw his proposed amendment prior to moving it. This is in accordance with Standing Order 26.

委員陳偉業議員：請問規劃環境地政司是撤回他原本提出的修正案，還是撤回條例草案第2條？因為我感到有些混亂。

7.59 pm

CHAIRMAN: Since the Secretary for Planning, Environment and Lands has given instructions to the Clerk, I have to suspend the sitting for a brief period — a very brief period, to check precisely what those instructions are.

8.05 pm

Committee then resumed.

CHAIRMAN: As I said earlier, the Secretary for Planning, Environment and Lands has withdrawn his amendment to clause 2, the effect of which would be that there is only one amendment to be moved by Mr Albert CHAN. I am not here to advise as to how best to vote, whether in support or against Mr Albert CHAN's proposed amendment, but the effect is, if Mr Albert CHAN's amendment is negatived, then the original clause will stand intact.

委員陳偉業議員致辭：主席先生，首先，對於剛才的混亂情❤，我謹向各位議員道歉，因為我剛剛才知道規劃環境地政司撤回他就第2條所提出的修正案。

主席先生，我動議修正草案第2條，修正內容已載於發給各議員參閱的文件之內。我剛才在本條例草案恢復二讀辯論發言時已講述這項修正的原因，我不打算在此重複有關的理由。我謹籲請各議員支持這項擬議修正案，並敦促當局從速檢討聆訊反對意見的安排，及提出適當的修正案，以盡快糾正現有制度下的缺點。

Proposed amendment

Clause 2

That clause 2 be amended, by deleting the clause.

Queston on the amendment proposed.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I would only like to say that in the resumption of the Second Reading debate, I have already given indication that the Administration will respect the decision of the Bills Committee and that is the reason why I have withdrawn my amendment.

Queston on the amendment put and agreed to.

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

Clause 3

委員陳偉業議員致辭：主席先生，本人動議修正草案第3條，修正內容已載於發給各議員參閱的文件之內。此項修正案是根據各位較早時同意刪除草案第2條而須作出的相應技術性修正。

Proposed amendment

Clause 3

That clause 3 be amended, by adding "of the Town Planning Ordinance (Cap. 131)" after "Section 17A".

Question on the amendment proposed, put and agreed to.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 3 be further amended as set out under my name in the paper circularized to Members. The amendment is to specify that the appointment of a judge to chair the Appeal Board should come from the High Court or below.

Thank you, Mr Chairman.

Proposed amendment

Clause 3

That clause 3 be amended, by deleting paragraph (a) and substituting —

"(a) by repealing subsection (2) and substituting -

"(2) The Governor shall not appoint -

(a) a member of the Board;

(b) a public officer;

(c) a Justice of Appeal,

to the Appeal Board panel.

(2A) For the avoidance of doubt, in subsection (2), "public officer" does not include a judge of the High Court of Justice, a recorder of the High Court of Justice, a deputy judge of the High Court of Justice or a District Judge.";".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

Clause 5

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circularized to Members. The Administration agrees to delete clause 5 to allay the concern expressed by the Bills Committee on the fairness of imposing a time limit on the right of interested parties to seek a judicial remedy against the Town Planning Appeal Board decision. Thank you, Mr Chairman.

Proposed amendment

Clause 5

That clause 5 be amended, by deleting the clause.

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

BETTING DUTY (AMENDMENT) BILL 1995

Clauses 1 and 3 were agreed to.

Clause 2

MR HOWARD YOUNG: Mr Chairman, I move that subclause (3) of clause 2 be amended as set out under my name in the paper circulated to Members.

As I have explained earlier, Members are of the opinion that an agreement between the Royal Hong Kong Jockey Club and its overseas partner for setting up an overseas betting venue should be subject to the approval of the Secretary for Home Affairs and propose to amend clause 2(3) of the Bill to this effect. The Administration has advised that it has no policy objection to this proposal.

Proposed amendment

Clause 2

That clause 2(3) be amended, in the proposed definition of "overseas bet" by adding "and approved by the Secretary for Home Affairs" after "authorized by the Club".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as stated in my speech during the Second Reading debate, I would just like to reiterate that the Government has no policy objection to this Committee stage amendment and that the Royal Hong Kong Jockey Club has also confirmed its agreement too.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

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

Mr Howard YOUNG claimed a division.

CHAIRMAN: The Committee shall proceed to a division.

CHAIRMAN: I would like to remind Members that they are called upon to vote on Mr Howard YOUNG's amendment to clause 2 of the Betting Duty (Amendment) Bill.

CHAIRMAN: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr Ronald ARCULLI, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Dr Philip WONG, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

THE CHAIRMAN announced that there were 39 votes in favour of the amendment and none against it. He therefore declared that the amendment was carried.

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

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

Clause 1 was agreed to.

Clause 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 2 of the Bill be amended as set out in the paper circularized to Members.

The amendment makes express provision for nominations to be included among the interests in property in respect of which the court may relax the legal rule of public policy known as the forfeiture rule. Nominations commonly arise in the context of insurance policies. Currently, where someone unlawfully kills another and is the nominated beneficiary of the deceased's life insurance policy, he or she cannot benefit from the insurance policy even if justice demands otherwise. The effect of the amendment is to give the Court the power to modify the application of the forfeiture rule where it is just to do so in order to allow the nominated beneficiary in such a case to take the benefit of the policy concerned. The amendment was agreed to by the relevant Bills Committee.

With these remarks, Mr Chairman, I commend the amendment to the Committee.

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 25B(4)(a), by adding —

"(ia) on the nomination of that deceased or on the failure of that deceased to make a nomination;".

Question on the amendment proposed, put and agreed to.

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

Council then resumed.

Third Reading of Bills

THE SECRETARY FOR HEALTH AND WELFARE reported that the

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

had passed through Committee with amendments. She 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.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

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.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

had passed through Committee with 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.

THE SECRETARY FOR SECURITY reported that the

REHABILITATION OF OFFENDERS (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.

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

had passed through Committee with amendments. She 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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

NOISE CONTROL (AMENDMENT) BILL 1995

had passed through Committee with 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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

had passed through Committee with 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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

TOWN PLANNING (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.

THE SECRETARY FOR HOME AFFAIRS reported that the

BETTING DUTY (AMENDMENT) BILL 1995

had passed through Committee with amendment. She moved the Third Reading of the Bill.

Question on Third Reading of the Bill proposed and put.

Voice vote taken.

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

Mr Howard YOUNG claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are called upon to vote on the motion that the Betting Duty (Amendment) Bill be read the Third time.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Dr Anthony CHEUNG, Mr LAW Chi-kwong, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the motion.

THE PRESIDENT announced that there were 28 votes in favour of the motion and 14 votes against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

THE SECRETARY FOR HOME AFFAIRS reported that the

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

had passed through Committee with amendment. She 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.

MEMBER'S MOTIONS

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on the speeches for the motion debates and Members were informed by circular on 22 April. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, if any. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

ACCESS TO EXECUTIVE COUNCIL PAPERS BY THE PUBLIC ACCOUNTS COMMITTEE

MR ERIC LI to move the following motion:

"That having regard to -

1) Government's acceptance of a paper presented by the Chairman of the Public Accounts Committee on 19 November 1986 in this Council that the Committee should make further inquiry in cases where it appears from the Director of Audit's report that in the setting of policy objectives there may have been a lack of sufficient relevant and reliable financial and other data available and that critical underlying assumptions may not have been made explicit;

2) the need in such cases for the Public Accounts Committee to have sight of documents evidencing what data were made available to Executive Council in its setting of the policy objectives in question and whether critical underlying assumptions had been made explicit in such documents; and

3) the fact that in attempting to make further inquiry into such a case arising out of the Director of Audit's Report No. 25 the Committee was refused sight of such documents by Government on the ground that they belonged to a class which Government wished to keep confidential;

this Council condemns the Administration for refusing to cooperate with the Committee in the performance of its duties by resorting to claims of class confidentiality for Executive Council documents, rather than considering the actual contents of such documents, in cases where the Public Accounts Committee is seeking to carry out its duty of further inquiry on the Director of Audit's reports."

李家祥議員致辭：主席先生，相信本局議員大體上都熟悉和了解今天由我提出的議案背景。為了不重複起見，我只會扼要地去複述此事的重點。

剛巧就如今天的第26號報告書一樣，核數署署長在一九九五年十一月八日向本局提交了他的第25號報告書，立法局政府帳目委員會（以下簡稱“帳委會”）隨即展開繁重的審議工作，過程中一直得到政府和有關人士的充分合作。直至處理“醫院管理局為其僱員提供房屋福利的檢討”問題時，帳委會察覺到現任和前任的政府官員在公開聆訊時所提供的證供，明顯地和核數署署長的意見出現差異，例如：

問題(1)： 雙方對行政局通過的所謂“成本相若”政策原則，在定義和執行上的理解明顯不同；

問題(2)： 政府承認對這項政策的長遠成本難以準確地加以估計，亦不否認在實施一段時間後有可能出現超支的情💔，但行政局在作出該項決策之前，是否已充分地掌握了所有財務上的分析資料，政府又究竟有沒有向行政局作出全面的交待，雙方亦有不同說法。

出席公開聆訊的官員，其實事前都有翻查行政局的紀錄，甚至乎在聆訊期間，亦不時有選擇性地引述該等文件。核數署署長亦曾審閱過所有有關的行政局會議紀綠。只有要面對各種不同證供的帳委會，雖然在職責上要作出獨立判斷，但卻單單缺乏這些有關重要資料。帳委會亦即時要求核數署署長提交審閱過的文件，對證其說法，但署長卻以無權向帳委會公開行政局文件為理由而加以拒絕。帳委會本[illegible]平常心，在聽取法律顧問意見之後，一致認為正當的途徑，是應向布政司提出要求，敦促政府當局向帳委會提交有關的決議文件，使帳委會能作出獨立而真實公平的判斷。

因此，本人首先以帳委會主席的名義在一九九五年十二月十二日發信給布政司提出要求，但卻遭婉言拒絕。布政司所持論據是“行政局的議事過程應保密，.....(帳委會)並無任何充分的理由，足以令當局為此事破例。”帳委會經過詳細商議後，決定在一九九六年一月十二日再次去信布政司，強調帳委會的立場包括：

1. 帳委會的基本憲制職能之一，是對核數署署長的報告書進行獨立評估。而政府替代帳委會去決定是否有需要參閱有關文件，此做法原則上已是不正確；

2. 一如其他議會，帳委會必然考慮接納政府以特別的保安或外交理由，即是以“內容”分類，同意不予公開行政局文件，但卻不能接受政府以文件所屬的“類別”作為保密理由，拒絕與帳委會合作；

3. 引述一九八六年十一月十九日，即議案原文第一段，當時帳委會主席、政府和核數署署長經三方同意後，向立法局提交了一份工作合作指引。按此指引落實執行任務，帳委會認為應就醫管局個案展開進一步的調查；

4. 帳委會並非要求行政局對外公開文件，只是在有理據和在保密的情[illegible]下，要求官員向帳委會作出有指定範圍的披露，而帳委會亦相信，所要求審閱的文件，只屬一般已過時的決策資料，並無政治敏感性。

帳委會的第二封信同樣不得要領。布政司在回信中重申“要確保行政局內自由交換和表達意見的傳統.....，更認為核數署署長獲准取閱行政局文件已充分保障了公眾利益。”有關函件全文，都已刊載於本人在一九九六年二月七日向本局提交的報告書附錄之中。

政府當局的決定，其實是將帳委會置於一個困難的境地，帳委會要在有限，甚至乎是少於政府和核數署署長所掌握的資料的情💔下，就雙方對立的意見作出判斷。姑勿論如何困難，報告書總算是完成了，結果亦已提交到本局。但報告書公布了之後，不一定是所有問題就有了答案。政府處理事件的態度，引申出四個懸疑未決而又具深遠影響的問題，我身為帳委會主席，更覺責無旁貸，不能不作進一步的探討。

(1) 政府違反了一九八六年在本局與帳委會和核數署署長達成的協議，共同遵守指引的精神。政府就今次事件的態度，應對本局作出更詳盡的解釋，否則協議就形同虛設；

(2) 帳委會代表立法局主席履行獨立監察公共帳目的權力，尤其是在審閱文件的權力如此之微，在制度上簡直是連作為公務員一分子的核數署署長都不如。政府可以單方面決定對帳委會的合理要求設限，是完全違背本局帳委會所要代表及維護的公眾利益；

(3) 從布政司向帳委會的一九九六年一月二日回信（倒數第二段）得悉，當局可以在以“文件類別”為反對予以公開的理由方面破例。倘政府不把現時情💔視作例外情💔處理，請問何種情💔才屬例外？

(4) 有部分公開的評論，更直指政府是在刻意地隱瞞其決策過程，面對這些認為前任官員瀆職的嚴重指控，政府必須作出完滿的回應。

布政司的決定，據理解應是代表了行政局的集體決定。行政局已是行政架構中的最高機關，所以再無上訴渠道。在本港行政、立法和司法三權分立的形勢下，帳委會亦只好試圖考慮從司法途徑或經本局“橫向”地尋找出路。

司法途徑就是引用《立法局（權力及特權）條例》。但其實該條例並非專為對付政府而設，所以雖然帳委會有權傳召個別官員帶同指定的文件出席聆訊，但既然行政局已下了不能提交文件的決定，有關官員也必定是空手而來，到時帳委會即使仍然有權力針對該官員，向他採取懲罰性行動，但其效果必然是將事件政治性地升級，而仍然不能幫助帳委會了解決策過程的真相，完成憲制上要履行的獨立“財務監察者”職責。

以這事件作為的先例，帳委會的成員都認同可以將監察帳目的職責先行完成，再由本人以個人名義提出此項議案，公開辯論，與本局同事共同探討可行的方法，亦容許政府有公平的申辯機會。

本人所提的議案，用詞是得到本局秘書處的協助，亦和帳委會的同事和法律顧問交換過意見，務求和帳委會就該事件達成一致的結論，並無刻意加重或減輕報告書中意見的份量，更刻意地保留“持平公正，對事不對人”的精神。

直至今天為止，除了帳委會的報告書外，本人是唯一在事件中有充分發言權的議員，議案對政府所提出的譴責，純屬個別事件，並無貶低政府尊嚴或是削弱動搖行政主導之意。政府“大權在握”，對本局的“言責”，更應擇善而從。本人期望辯論對帳委會如何履行職責提供清楚的訊息，政府亦應該對我剛才提出懸而未決的問題向公眾作出交待，讓整件事件可以有個完滿的總結及公開的最後裁決。

其實，布政司陳方安生女士明天便要為香港的事務訪京，此行是萬眾期待，亦是事關重大的。我不希望今天的辯論影響她的心情，而個人來說，我亦很誠心祝賀陳方安生女士有一個愉快和成功的旅程。

謹在此權充“原告”，提出陳辭，懇請本局同仁支持議案。

Question on the motion proposed.

DR LEONG CHE-HUNG: Mr President, I rise to support the motion. I am well aware that this motion moved by the Chairman of the Public Accounts Committee (PAC) is on a general displeasure of the Administration in refusing to release Executive Council documents by resolving to claims of class confidentiality, thereby hampering the work of the Committee.

We are all aware that the saga arose as a result of the PAC's scrutiny of the Director of Audit's report on the salary package of the Hospital Authority (HA).

I will, therefore, Mr President, have to seek your permission from time to time to use specific illustration of the HA to exemplify and perhaps strengthen the argument why full Executive Council papers are needed by the PAC, and that the lack of them will not only result in a less creditable report, but will also produce confusion to the public and a disservice to the hard working staff of the HA who have determined to make the system work.

It may be timely to declare my interest, Mr President, not only as a member of the HA, but more importantly, as a member of the Provisional Hospital Authority responsible for drafting of the pay package.

The gist of the report brought forward by the Director of Audit concerns the pay package of the HA staff which may well be comparable to that of the Civil Service today, yet if projected to 20 years might mean an estimated overspending of some $6.7 billion by the Government. The implication therefore was that this projection was not made aware to the Executive Council. The conclusion drawn by the PAC on the Director of Audit's report therefore was that "there were gross inadequacies in the process of formulating the HA remuneration package by the Administration and the Executive Council as evidenced by the fact that there was lack of a clear definition of the principle of cost comparability between the civil service and the HA package ..... consideration had not been given to fully appraising the Executive Council of the long-term financial implications and the need for a review mechanism to ensure cost comparability in future ....."

Public being kept in the dark over "secret"

But is this the case? Was the Executive Council actually kept in the dark or did the Executive Council gave the green light with other reasons in mind? This will and could never come to light unless the original papers are revealed. Is it fair therefore to expect the PAC to come to any intelligent conclusion? Is it fair for the PAC to come to this allegation in the absence of a centerfold piece of the jigsaw? All these beg the question of "what was the policy decision made then which is so secretive that the public must be kept in the dark?"

Let us look at it from another angle. Let us assume that the HA did pull a

fast one and have an one-up on the Administration and that the Administration was not aware, let alone alert the Executive Council, of the long-term effect that the package might bring. Surely the Administration should be wise after the event. Yet, two years down the line, through another government policy branch, the Executive Council is asked again to accept a same and similar package for clinical staff of the two medical schools. Did the Administration commit the same mistake twice, or were the Administration and the Executive Council fully aware of the situation and the decision was made with all these in mind on a long-term policy? Only a complete revelation of the Executive Council papers would show the true path. Looking at it from a sinister angle, was the Executive Council kept in the dark or did the Administration and the Executive Council act in collaboration?

The same could be said of the other storm in the teacup, viz the "double benefit" saga. Again what was in the Executive Council papers? How much did Executive Council know? How detailed was the Executive Council clearly explained to? Whilst I do not accept that there is a doubt benefit, it is even more difficult to accept that the Administration has not considered this point then or that the Executive Council was not briefed. We all remember what the then Secretary for the Civil Service said in this very Chamber in the eyes of the public to imply that the Administration went in with her eyes open knowing the problem. Yet the PAC was asked to come to a conclusion through a guessing game. Is it fair to the PAC? Is it fair to those who worked so hard to set up the HA? Is it fair to the staff who through no fault of theirs are now told that they are paid too much?

Need to dig out the real reason behind setting up HA

Mr President, in relation to the Executive Council papers relevant to HA, I would suggest that the PAC should go further and have a look at the Executive Council papers on why the idea of an independent HA was set in the first place. Why was a consultant from Australia secured to look at the issue? Is it really a management reform of the hospital services that the Government have in mind, or is it a means of hiving off hospital services to an independent body to take away an ever increasing public demand and to shed the responsibility of health care services by giving a fixed sum to the HA to do the job?

There are rumours that the Government— having successfully turned the public to align hospital service with the HA, that is, it has successfully taken itself away from any disgruntle of hospital service, and that the maximum number of staff have been lured to move over to the HA and cannot turn back — is moving into phase II — the HA is using too much money. Since 80% of the HA budget is for staff salaries and on-cost, if there is any way to lead the public into believing that HA staff are overpaid, public pressure could be used to the advantage of the Government to curb salary increase, if not a significant cut.

Are all these facts or fantasies? Are they the truth or are they just cock and bull stories? The clue, the missing link, Mr President, must be buried in those files that are stamped "For the Executive Council's eyes only"!

Responsible government must be accountable to the public

Without exposing the detail papers, regrettably, those who worked so hard to established the HA are now facing the accusation of being irresponsible. Staff morale are put to a litmus test.

Mr President, it is not a story of executive-led versus legislature-led government; it is not a story of power struggle between the legislators and the Administration. It is about a responsible government being accountable to the public through this elected legislature.

陳偉業議員致辭：主席先生，香港是一個極為特殊的地方，其經濟成就是舉世公認的，但令人奇怪的是，這個經濟成功的國際大都會的政治體系，卻異常封建和落後。

部分支持香港現時行政管治架構的人，美其名這是行政主導，其實，這不過是一個沒有人民授權、無民意基礎的獨裁政權。香港行政機構的決策和運作，在制度上是循英國對殖民地管治的模式，因而令香港的制度有濃厚的殖民地色彩。在整體運作上，行政機構受立法局的監管，其中較為重要的是對政府的財政監督。在一九八六年十一月十九日，政府帳目委員會主席提交立法局的文件，列明核數署署長是有職責就任何政府決策科、政策部門、專責機構、其他公共機構或帳目需受審核的機構，在履行職務時所達到的節

省程度、效率和效益，進行衡工量值的核數。

根據《立法局會議常規》第60A條：立法局設有一個名為政府帳目委員會的常務委員會，負責審閱核數署署長就受審核機構的節省程度、效率和效益所進行的調查而提交立法局的任何報告書。《立法局會議常規》第60A條同時列明，政府帳目委員會可傳召任何公務員，提供資料和解釋，或者呈交委員會認為其執行職務時應有的紀錄和文件。

主席先生，多年來，我們透過核數署這獨立的政府機構，對政府的運作進行了衡工量值的研究。本局的政府帳目委員會就報告的內容，多年來都舉行公開聆訊，讓受審核的機構有機會作公開答辯，表達自己的意見。這個是法治和文明社會極其重要的機制。因為委員會不會缺席審決任何的機構，也不會如一些獨裁極權的國家般黑箱作業。主席先生，我參與政府帳目委員會的工作已三年多，在這段日子中，我可以肯定說委員會多年來都是採取公平、合理和理性的態度處理有關問題。政府過去多年亦採取合作的態度向委員會提供所需的資料。雖然委員會和政府的意見未必相同，委員會所提的建議，政府亦未必一定會接受，但多年來，彼此間都維持互相尊重的關係。

最近核數署署長第25號報告書有關醫管局為其僱員提供房屋福利的檢討一事，委員會曾多次要求政府提交行政局當年的會議文件，但一直被政府拒絕。事實上，政府早年已向立法局承諾會與政府帳目委員會合作，就有關聆訊提供協助包括提交相關的資料和文件，這是政府當年的承諾。這次政府拒絕提交行政局的文件，明顯地破壞了委員會和政府多年來的和諧合作關係。雖然政府多次聲稱行政局討論的事項和運作必須要保密，但本人認為，如果有關的資料不影響本港的保安，亦不涉及一些政治敏感性的問題，應不會對政府帶來任何的震盪。政府並無任何理由拒絕提供行政局有關醫管局的文件。

主席先生，本人認為由於行政局在六年前已討論了醫管局員工的福利問題，至今已有一段頗長的時間，現時不少司級官員對當年的決定未必有清澈的了解，故當年的會議文件對委員會了解整件事的來龍去脈十分重要。同時，核數署署長已經看過這些文件，並且作出結論，將有關結果公布，文件的機密性可謂已經不存在，本人實在不明白為甚麼政府堅持拒絕向委員會提交這些文件。

行政局現時聲稱有兩項運作原則，即集體負責制和保密制。就集體負責制方面，於本年四月十八日本局的質詢大會上，彭定康總督表示會以容忍和

寬大的精神來行使。既然總督可以因為政治的利益，用彈性的理由和方法處理集體負責制，為甚麼我們的布政司以保密的理由拒絕提交這份文件？布政司這種精神與總督對集體負責制精神的演譯背道而馳，“只許州官放火，不許百姓點燈”，這是布政司採取雙重標準、自相矛盾的最佳寫照。

主席先生，我實在不能夠理解政府為甚麼不可以同時以寬容和寬大的精神來處理保密的原則。主席先生，本人認為政府實在有必要重新檢討處理這件事件的方法，以保障法定機構行使職權時不受干擾。此外，政府也不應濫用保密原則，以免剝削公眾了解事件的真理的權利或打擊法定機構的地位。

主席先生，剛才李家祥議員發言時多次提到我們的布政司，他以陳方安生女士稱呼我們的布政司，不知是不是因為布政司明天往北京訪問的身分問題。於我而言，明天我們的布政司去北京訪問，仍然是我們的“布政司”去北京而非僅是陳方安生女士。雖然我剛才批評我們的布政司，我仍希望我們的布政司明天去北京旅途愉快，一切順利。謝謝主席先生。

劉慧卿議員致辭：主席先生，我發言支持李家祥議員的議案，譴責政府拒絕將行政局的文件交給政府帳目委員會。政府此舉當然令到我們整個委員會（我亦是委員會的成員）感到很失望，亦因為政府拒絕合作，委員會不可以充分發揮監察政府帳目的功能，這是我自己感到非常遺憾的。

現在政府不肯將這些文件交出來，令行政與立法的關係出現緊張，但主席先生，無獨有偶，今天如果我們有閱讀報紙，會看到報道一宗法庭案件，亦是有關行政當局不肯將文件交給法庭、交給被告，但那件事情是由法官去判決，最終布政司不肯交出來，也要交。本局的情💔與那宗法庭案件當然不能有太多比較，但這亦反映出行政與司法機構、行政與立法機構，當大家想索取文件時，一定會出現關係緊張。

剛才委員會主席李家祥議員亦提及，我們是不想採取這司法途徑，引用《立法局（權力及特權）條例》與政府再次發生衝突。這是委員會經過詳細討論，亦與本局法律顧問討論過，才決定不打算採取這一步，所以，今天亦由委員會的主席提出議案辯論，譴責政府，但我們希望政府明白，立法局很多時候有充分原因，希望政府提交資料。我們亦希望政府聽完今天的議案辯論後，以後能抱💋更開放的態度與立法局合作。

主席先生，行政當局在拒絕提交文件給我們時，曾表示行政局的文件有

如一個政府內閣的文件一樣。當然我們也曾經從英國獲得資料，知道英國的內閣文件並沒有呈交國會政府帳目委員會，但我相信政府亦不會繼續說下去謂如果等同內閣的文件，就沒有人可以看到；可能議會是看不到，香港至今也未曾有人看過，英國也沒有，但我相信政府亦會承認，即使在英國，也有例子是市民打官司的時候，在法庭見過內閣的文件。因此，內閣的文件也好，行政局的文件也好，不是完全不可讓人看的。律政司正在搖頭否定，我們有文件在這裏，或者稍後我可以交一份給律政司看一看，他便知道在某些情💔下，是有人在法庭看過內閣的文件。

主席先生，剛才李家祥議員與陳偉業議員也提及一九八六年十一月十九日當時的政府帳目委員會主席向立法局提交那份文件的詳情，在此我不再贅述。但為何政府帳目委員會這樣執📢那一份八六年的文件呢？是因為當時說明了政府已接受，會與我們合作，尤其是當核數署署長報告指出在某些情💔下，制定政策的目標有欠清晰及提供資料也不足夠，而有些基本的假設沒有明確的顯示時，政府帳目委員會應該作進一步的調查，政府亦應予合作。所以，委員會覺得今次醫管局的事件是完全切合這項規定的，我們覺得在這情💔下，向政府索取文件是恰當的做法。但很可惜，在本年一月二日，布政司給我們一封覆函，內容大概說因為這些行政局文件所屬的類別是不可以發放的。但她當時又告知我們，政府帳目委員會並沒有提出充分的理由，足以令當局破例。當時給我們有一個幻想，覺得是可以破例的，於是我們便繼續寫信給布政司。她二月一日便回覆我們，但她改了口風。主席先生，她沒有再提“破例”，只直截了當地說，這些文件是不可以交出來的，而這個類別是完全不可以發放的。所以，主席先生，我相信我們的委員會有點像被政府帶📢“遊花園”的感覺，因為我們最初以為是可以破例，我相信剛才陳偉業議員、李家祥議員亦說過，我們亦都認為應該破例，因為這些文件沒有甚麼敏感資料，亦沒有甚麼商業秘密，問題是可能一如布政司所說，有關文件看了也沒用處。所以，她便促請我們相信她，無須再看有關文件。但問題是核數署署長看過該等文件，告訴我們關於醫管局整件事的討論，他覺得政府沒有把資料給行政局，讓行政局知道有長遠的財政影響，但布政司卻告訴我們是有。我們應相信誰呢？主席先生，既然沒有文件，難道要議員只得個“信”字嗎？我相信這是很難做的。

主席先生，我希望布政司聽完議員的發言後，能明白我們的擔心在那裏，然後考慮可否回心轉意，衷誠與立法局合作。我們並不希望大家有所衝突，我只希望布政司能明白這點。我自己自九一年起擔任政府帳目委員會的工作至今，我們一直都是與政府一起合作，但今次發展至這樣，是大家也不

想的。所以，我希望布政司回心轉意，讓我們有機會看看這些文件。

主席先生，布政司在二月一日給我們的覆函最後一段，令我更不開心，因為她提醒議員最好向前看，以往的事不要再理會。但政府帳目委員會就是要做“秋後算帳”的工作，下月六日又召開聆訊了，永遠都是看以往的事。當然，從以往的事汲取甚麼教訓，將來也可以加以避免，但要我們不看，倒不如叫我們關門大吉。我希望布政司想一想，給我們一個積極的回應。

我謹此陳辭，支持李家祥議員的議案。

MR DAVID CHU: Mr President, ordinarily I support any call for more open government. I cannot in this instance because the motion is inviting us to condemn when it should be requesting the Government for more information to help us become better policy monitors.

Nearly 10 years ago, the Government assured legislators that it would yield all reliable information to let them reach a sound decision on any given issue. So far the Administration has done that, though not to everyone's satisfaction. The Government, being a human institution, cannot resist presenting to us scenarios which fit its assumptions on what is good for the community. Everyone here does that — the selling of an idea through innocent buyers to a certain degree.

The focus of the debate today is really not about some documents, but about the co-operation and co-ordination between the executive branch and the legislature. Here our executive enjoys the right and the privilege to control access to classified information, a basic rule to which we must adhere. If confidentiality on classified information is violated on demand, it would surely hinder our executive-led Government without serving the public good.

The negative repercussions will come in four forms at least: Policy makers (1) would be constantly second-guessed; (2) would be intimidated by others looking over their shoulders; (3) would not give their frank opinions for fear of hurting their public image, and (4) sensitive information would be taken out of context and misused.

This is not to say that executive government is almighty. This Council has the inalienable right and duty to check, vet and deliberate on government work, but not to the extent that it becomes a ministerial set-up for the roles of the executive and the legislative cannot be blurred. If we delve too deeply without any hint of trust into each other's responsibility, we might disrupt the checks and balances we have put in place.

I empathize with Mr LI and share his sense of frustration with the Government's lack of total candour about extra fringe benefits for Hospital Authority staff. I cannot agree, however, with any attempt to force the Government to do anything that might compromise its executive authority. We have here an executive and a legislative system that is separate yet co-operative. This is the essence of our system's success. Legislative Council condemnation of the Government now would only harden our mutual positions, be counter-productive and also imply the need for structural change to our system.

I therefore oppose the motion's purpose and phrasing, but not its underlying principle of more voluntary transparency in the Government. Therefore, Mr President, I will vote against the motion. Thank you.

MRS ELIZABETH WONG: Mr President, I must first declare an interest. By that I mean community interest. And in the interest of the community, I think that the Government has committed three wrongs by not letting the Public Accounts Committee have sight of the relevant documents and available information pertinent to the Director of Audit's Report No. 25.

By "the three wrongs", it is meant that they have wronged: the Hospital Authority, the Auditor and the senior staff responsible for setting up the Hospital Authority. I shall explain why.

On 8 November 1995, the Director of Audit tabled his report in this Council.

This was a valuable report on results of value-for-money audits and the

Government's accountability was once more put under the microscopic keen scrutiny of Legislative Council Members. And so it should!

In the report, the Director of Audit charged that the principles for the formulation of the HA remuneration package were breached. One of the sacred principles was that the cost for the setting up of the HA must be comparable to that of the Civil Service.

The Director of Audit reiterated that whilst the package was broadly comparable with that of the Civil Service at the time, over time, the encashed housing benefit which is pegged to salary will, over a period of 20 years, be in excess of their counterparts in the Civil Service, by $6.7 billion at current prices! A huge excess indeed, if the estimates were true!

So, what went wrong?

Without the evidence to support the Director of Audit's report, the competence of the Director of Audit is not put beyond doubt and the good image of the HA is irrevocably damaged by the innuendo implicit in the report that there was little "value for money" gained on the HA.

Unless the audit report is substantiated, inevitably a host of questions needs to be legitimately asked by the community. For example: Who unleashed the Director of Audit on the Hospital Authority? Why now — five years after the setting up of the Hospital Authority? Who selects the agenda for the Director of Audit to enable him to select appropriate accounting policies and to apply them consistently? Indeed, how independent is the independent audit? What is the process of drafting the report? Who shapes the report? Is the published report materially different from the first draft? If not, why not?

Far be it from me to suggest or cherish any conspiracy theory, the community has a right to ask these questions and to know the answers; and these answers can only be provided by the Government through a revelation of relevant records. Alas, now we shall never know! All this is hidden in the dark labyrinth of power in the Government Secretariat.

Be that as it may, the Director of Audit claimed that not only was the

principle breached at the time, but that the senior officials in charged of the policy collectively and deliberately concealed it from both the Executive Council and this legislature! These were serious charges indeed.

Unless these charges can be substantiated, the validity of the Director of Audit's report is seriously challenged and his credibility further undermined. He is unlikely to escape the accusation of having quoted out of context; of gross incompetence and of inadequate research in the formulation of his report.

My understanding of an audit report is that it is free from material mis-statement and that it gives a true and fair view in all material respects of the state of affairs which forms the substance of his report. As the case stands, Report No. 25 can only be qualified through non-production of available evidence.

For the Administration to hold back and to resort to claims of class confidentiality is to dodge the facts and to confuse class confidentiality with content confidentiality.

The production of papers is unlikely to undermine the power of an executive-led Government, which is hopefully still there to lead.

But it is unconscionable to frustrate the deliberations of the Public Accounts Committee by refusing to produce the relevant papers. This must be condemned.

That notwithstanding, Mr President, I have also joined my honourable friend, Mr Eric LI, in wishing the Chief Secretary a successful visit to Beijing.

CHIEF SECRETARY: Mr President, I have to make it clear at the outset that the Administration strongly objects to the Honourable Eric LI's motion. The allegation that the Administration has refused to co-operate with the Public Accounts Committee (PAC) in the performance of its duties is simply not true. On the contrary, the Administration has always done its best to co-operate fully with the PAC and to assist it in its work, and we did so in the examination that the Committee carried out into the Director of Audit's report on the review of the housing benefits provided by the Hospital Authority to its staff.

The motion refers to the paper presented to this Council on 19 November 1986 by the then Chairman of the PAC, which set out the scope of the work of the Director of Audit in carrying out "value for money" studies. The Administration did indeed accept the proposals in this paper. But nothing in the paper suggested that the PAC should have access to Executive Council documents, as the motion implies. Whether or not this is necessary is a wholly subjective judgment, and it is wrong to suggest by juxtaposition that it was accepted, either explicitly or implicitly in 1986.

Let me remind Members of this Council of the extent of the Administration's co-operation with the PAC during its recent inquiry into the Director of Audit's report on the Hospital Authority staff's housing benefits. All officials involved, including the former Chief Secretary, the former Secretary for Health and Welfare, the former Secretary for the Civil Service, the present Secretary for the Treasury, the former Chairman of the Hospital Authority and the present Chief Executive of the Authority, attended the PAC's hearings several times to answer Members' queries. The Administration also provided the Committee with the relevant internal correspondence between the Hospital Authority and the Government. I myself gave detailed answers to the questions raised in a series of letters sent to me by the Chairman of the PAC, including full details of those parts of the relevant Executive Council memoranda and discussions which related to this issue. The record is clear. We did our best to give every assistance to the PAC in its deliberations. All relevant information was provided to the Committee and I reject any suggestion that the Administration deliberately misled the PAC.

The Administration's position on the confidentiality of Executive Council memoranda and records is well known and I have stated it many times in my letters to the Chairman of the PAC. We believe that it is essential to uphold the long-standing principle of keeping Executive Council proceedings confidential in order to ensure that there is no inhibition in the free exchange and presentation of views in the Executive Council. It would be against the public interest to compromise this principle. This view is not unique to Hong Kong. It is in line with the practice in the United Kingdom where the courts have, as a general rule, held that Cabinet papers are as a class immune from disclosure, and where I understand there is no precedent for Cabinet papers being made available to the United Kingdom PAC. As Executive Council papers are equivalent to United

Kingdom Cabinet papers, they should, by analogy, be immune from disclosure in Hong Kong. Indeed, this argument has been accepted on a number of occasions by the courts in Hong Kong. The suggestion that a claim of confidentiality for Executive Council papers should be based on the contents rather than the class of the documents concerned is clearly not in line with this principle. Furthermore, this approach would be likely to lead to endless disputes between the Government and this Council over whether the contents of particular documents were sensitive in nature. We believe that the public interest is fully protected by the fact that the Director of Audit is allowed access to Executive Council papers and can form his own independent judgment as a result of this.

The Honourable Albert CHAN has argued that the rule regarding confidentiality should be relaxed since the other cardinal rule regarding collective responsibility can be applied flexibly. I wish to clarify that whilst the rule of collective responsibility can be applied with flexibility, that in no way reduces Executive Council Members' commitment to collective responsibility. To ensure the proper functioning of the Executive Council, the confidentiality rule has to be maintained. We will continue to provide PAC with full details of the relevant part of Executive Council papers but not the paper themselves. That already reflects flexibility in the exercise of the confidentiality rule.

Let me reassure Members that the Administration fully recognizes the role of the PAC as a "watchdog" over public expenditure and that we will continue to co-operate with it fully in order to help it perform its duties efficiently and effectively. In the particular case of the Hospital Authority staff's housing benefits, the PAC has produced its Report and the Administration will soon complete its review of the Hospital Authority remuneration package. Although the Honourable Miss Emily LAU would not agree, I have to advise that in my view, we should now point the way forward rather than dwell on what has happened in the past. I hope Honourable Members will recognize the responsible and co-operative attitude that the Administration has taken in this case, and that you will reject the motion.

Finally, Mr President, although not germane to this motion, let me thank Honourable Members for the good wishes they have extended on my forthcoming trip to Beijing. Far from my spirits being affected, I can assure Mr Eric LI that I set off in good cheer and I look forward to good progress in my discussions with Mr LU Ping.

Thank you, Mr President.

PRESIDENT: Mr Eric LI, you are now entitled to reply and you have five minutes 18 seconds out of your original 15 minutes.

李家祥議員致辭：主席先生，我今天的議案假如改為祝賀陳方安生女士明天有一個成功旅程的話，似乎更容易通過。不過，我亦很感謝幾位議員的發言，例如梁智鴻議員提及報告書很多內容，但我覺得我們今天的辯論，不應討論報告書本身。但我亦很高興聽到他同意行政局的文件對帳委會來說是非常重要的，應該交出來。

但我想在此澄清一些事，我個人認為帳委會在處理整件事時，絕對沒有認為醫管局做過任何不公平的事，整份報告中也沒有說過。

陳偉業議員比我們委員會說得更有力，我完全贊同他呼籲政府在處理行政局文件保密的情❤下，應採取比較寬大和容忍的態度。事實上，這種精神亦和劉慧卿議員所說的一致。

我手邊亦有一份關於英國行政法例的權威性文件，我相信稍後會有途徑將這份權威性文件交予布政司。這份文件很清楚顯示英國的內閣，很多時是很主動的和法庭合作，未必一定在法庭判決後才交出文件。若他們覺得法庭是有需要時，對法庭的要求亦很寬鬆的處理。這種精神，我亦很希望印證於香港的法庭和立法局。說到立法局，為何英國國會不可以每次都取得這些文件？事實上，這是因為英國與香港的憲制不同，英國的國會，尤其是內閣，是由執政黨組成，既然由執政黨組成，在國會裏便自然地佔大多數，任何這類議案，或任何引用權力法案的要求，帳目委員會亦知道這是一定不成功的。這並非憲法上不容許像香港般引用權力法案，亦並非不能像香港般提出議案譴責政府，而是任何帳目委員會的主席都知道，在英國來說，是完全沒有機會成功的，所以才沒有先例，不是法制上不容許，而是根本的政治現實，令英國開不到先例。這是和香港根本完全不同的情❤。

黃錢其濂議員亦提及很多關於報告裏的內容，很多問題似乎應由核數署

署長答覆較為合適。但身為帳委會的主席，我可以告訴大家，今次我整個議案是對事不對人。我們審閱了核數署署長的報告後，只是針對那件事，希望找出證據才作判斷，完全是沒有偏私的。

通常我是很同意朱幼麟議員的說法，不過，今天我卻覺得較難同意。他似乎說要作出很多的猜測。第一，他說若行政局發表言論後，要別人猜測的話，便不大正確。他莫非認為帳委會去猜測才算正確嗎？作為立法局議員的一分子，我覺得他亦要從帳委會的角度看看。如果說純粹猜測，他亦低估了行政局，低估了立法局，亦低估了政府。

怎樣低估了行政局呢？很多外國的國會議員，尤其內閣議員，他們不單止不可以躲起來作決定，更要站出來公開辯論和公開去幫助執政黨辯護決定，他們根本沒可能擔心和恐怕別人知道他們在想甚麼。他又說恐怕立法局會誤用這項權力。這亦是低估了帳目委員會的能力。我們有很長久的紀錄讓他可以看到，我們是做得很好的。他亦低估了政府的權力。我今天亦說到政府根本是大權在握，我們只可做到譴責它，若連譴責也不可以，我覺得朱議員是太低估了政府的權力。

我完全同意布政司有很多地方是與我們合作的，我們只是就一宗事件，覺得是做得不夠，便是她不應為帳目委員會的工作設限，要求我們做到甚麼，不可做甚麼。我亦同意在某程度上，我們帳委會是要向前看的。因此，我亦會將今天辯論的內容和政府當局的答辭詳細加以研究。帳委會將來若遇到同樣的事情時，我相信今天所辯論的內容，對我們怎樣處理是有相當大的幫助。謝謝主席先生。

Question on the motion put.

Voice vote taken.

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

Mr Eric LI claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on Mr Eric LI's motion.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mrs Selina CHOW, Mr SZETO Wah, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr Howard YOUNG, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Dr Philip WONG and Mr David CHU voted against the motion.

Mr CHIM Pui-chung and Mr Paul CHENG abstained.

THE PRESIDENT announced that there were 37 votes in favour of the motion and two votes against it. He therefore declared that the motion was carried.

ASSISTANCE TO CHRONICALLY ILL PERSONS

MR MOK YING-FAN to move the following motion:

"本局促請政府增加對長期病患者的社區支援服務，包括增加長期病患者的就業機會、社區醫療康復服務及支援長期病患者自助組織發展的資源，藉此改善他們的生活質素。"

莫應帆議員致辭：主席先生，今次本人提出有關對長期病患者支援的辯論，一方面是希望喚起社會公眾對長期病患者這一群人士的關注，對他們在就業、經濟及心理方面有所理解；另一方面，當然是希望政府能夠考慮本人及局內其他議員今天所提的意見，盡快制定政策，在經濟、就業、復康等生活需要上對長期病患者提供適當的協助。

其實，對長期病患者的缺乏支援，在本港是一個存在已久的問題。現時按保守的估計，全港約有二十三萬三千多名長期病患者；另外，如果按政府的估計，本港的老人人口對全港總人口的比例，將會由九零年的13%增至二零零零年的15.4%。換句話說，本港長期病患者的人數，亦有可能會隨人口老化現象而有所增加。然而，在本港社會福利服務不斷得到改善之際，社會及港府似乎卻一直對長期病患者的支援有所忽略。長期病患者一方面在就業、住宿等方面受盡歧視及冷眼；另一方面，他們在經濟、精神及心理上亦得不到最基本的支援，令他們在日常生活上面對困難，但又難於啟齒。

首先，我想談談就業方面。按去年十二月病人互助組織聯盟進行的一項調查顯示，長期病患者失業率高達五成半，在就業者之中則有不少只找得兼職工作；另一方面，當中更有不少長期病患者因病發而遭僱主無理解僱。

就業本身對於一個長期病患者而言，有極大的重要性，無論在心理、精神和經濟上都相當重要。從社會理念上而言，就業本身是一種權利，亦是一種參與社會、貢獻社會的象徵，每個人都不應因身體殘缺、殘障等遭受歧視及隔離，或被剝削平等的就業機會。

從病患者的經濟角度而言，就業可減輕病患者因治病所造成的經濟負擔，協助病患者支付昂貴的醫療藥物及用品。舉例而言，腎病病人每星期均需支付補血針的費用，若病患者有固定的工作或收入，對他們的經濟負擔及健康均有直接關係。

再論工作對病患者心理及精神方面的影響。在中國傳統社會裏，沒有工作的長期病患者，在家庭中往往被視為一種負累。俗語有云：“久病床前無孝子”，尤其對於一些並非富裕的家庭而言，照顧一個長期病患者實在是相當吃力的。對長期病患者的壓力亦由此而來，病患者若因疾病而失去工作，終日逗留家中，自尊及自信均會受損。當病患者發覺自己不能再面對家人

時，更可能會走上絕路，企圖自毀生命。故此，工作對病患者來說，不單是經濟上的援助那麼簡單，也是病患者的精神支柱，令病患者能夠有自信及尊嚴來面對以後的生活，真正融入社會。

然而，綜觀現時情💔，長期病患者在就業方面，卻受到誤解及歧視。除了在僱主得知僱員患上某種疾病後而無理將其解僱的例子多不勝數外，病患者在尋找工作時，亦面對不少困難。舉例而言，現時許多政府機構、公營部門及大型公司，都會在員工入職前要求員工驗身，即使該機構或公司原本已承諾聘請某病患者為僱員，但一旦發現僱員患有某種長期疾病時，僱主往往帶有歧視眼光，將病患者拒諸門外，即使該工作崗位未必與病患者的疾病有任何關係。此等對病患者的歧視，極大可能是因為僱主根本對病患者的疾病存有誤解或不理解所致。因此，我與民協都認為僱主應將病患者的疾病及工作性質共同考慮，以實質需要及申請者的工作能力作為評審標準才算恰當。

另一方面，雖然現時已有僱員再培訓計劃及勞工處的展能就業服務兩方面去協助長期病患者找尋工作，但這些計劃及服務卻有其運作上的弊端。首先，在僱員再培訓計劃中，現時所設計的課程內容及性質，往往忽略了市場的需要，同時未有顧及病患者的實際情💔，導致病患者在接受培訓後仍在尋找工作上遇到相當的困難。其次，在展能就業服務方面，雖然已嘗試專門為長期病患者提供一些工作選配的安排，但由於負責工作人員可能對病患者的疾病未有充分認識，結果是介紹給病患者的工作，也不可以維持長久，又或工作性質根本並不合適。

鑑於長期病患者在就業上遇到種種問題，而相對來說，就業又對他們相當重要，所以本人及民協對政府有如下建議：

（一） 為願意聘請長期病患者的僱主提供稅項減免；

（二） 擴大現有“復康職業用具基金”的服務範圍及增加注資，以資助僱主增設輔助儀器或簡單設施，方便聘請或繼續僱用長期病患者；

（三） 增加及改善就業輔導與培訓服務。在就業培訓及市場需求上必須互相配合；至於替病患者尋找工作或轉介參加再培訓計劃前，必須先詳細了解病患者的能力及限制，使能有效地為病患者尋找合適的工作及培訓；

（四） 政府部門，如勞工處等，應採取主動向全港僱主及機構的管理人員推行教育工作，幫助他們了解長期病患者的需要及減少對他們的誤解。至於醫院或福利機構方面，亦可考慮以外展社工形式接觸僱主，一方面向他們進行教育，另一方面為僱主提供輔助，消除他們對聘用長期病患者的擔憂；

（五） 政府應為自助組織提供優惠，以鼓勵他們競投政府的服務招標，從而為長期病患者提供更多就業機會；

（六） 最後，政府應增撥資源，成立基金，資助自助組織及志願機構推行就業輔導服務及發展自僱計劃。

現在，讓我們轉談一談長期病患者的復康及心理輔導問題。長期病患者除了在經濟、就業上面對相當的困難外，其心理、精神及情緒上亦會因其所患疾病的變化及不便而受到許多沖擊。現時一般的 生護理機構所提供的服務，大都限於對患病者提供身體上的援助（即直接治療），而往往輕視患者在精神及心理上所受的壓力及需要，對於病患者的生活質素亦甚少理會。而復康服務方面，服務範圍主要集中在弱智及傷殘人士身上，長期病患者則常被摒出服務對象之列，結果導致許多長期病患者出現自殺傾向或失去面對社會、面對將來的勇氣。

其實，長期病患者受到心理及情緒上的困擾，其中一個很大的原因，是他們對自身疾病並沒有充分透徹的理解，醫生更沒有充足時間向病人解釋其所患疾病的醫療過程及影響。另一原因，是病患者缺乏家庭及社會的支持，從而對生命的看法及其他價值觀產生變化。

要協助長期病患者解決情緒、精神及心理問題，我們覺得須從兩方面下手。首先，我們要求政府增加醫務社工的人手。現時，醫務社工對病床的比例是1對90，實在極之不足。在人手及資源均不足的情況下，醫務社工現時只可處理一些緊急病人在經濟上的需要，而未能為病人提供心理輔導等方面的服務。事實上，病患者與病患者之間的互助、傾訴、分享對他們的生理及心理健康幫助很大，但礙於專業人員不足， 生福利機構內的工作人員根本

無法擔任主動組織的角色，協助及減輕長期病患者的情緒及精神壓力。

除了增加醫務社工及專業人員人手比例外，我同時要求政府增加對病人自助組織的資助。現時病人自助組織在社會上扮演相當重要的角色，就是補充政府的醫療及福利服務機構對長期病患者照顧不足之處。須知道，近年來無論家庭人口的結構、婦女的地位等都有所轉變。過往，婦女往往要扮演家庭照顧者的角色，負責照顧家庭中的老弱或有缺陷的家庭成員；而家庭人數方面，亦往往有五、六位成員，親屬關係相當密切。然而，在社會趨向繁榮、婦女地位日漸提高之際，以上兩項因素已有所改變。結果，老弱或帶病者往往缺乏家庭照顧。在此情💔下，自助組織及社會若能給予合理的支持，對加強病患者的自助能力發揮相當重要的作用。在現時大部分支援長期病患者的自助組織皆缺乏資源的情💔下，政府實有必要增加對這些組織的援助，特別是在經濟方面。

最後，我想談談現時政府在公眾教育方面的工作。正如本人剛才所提及，一般市民和僱主對長期病患者的了解不足，易於對病患者產生誤解或歧視。本人認為，政府有需要積極推廣社區及醫護知識的教育，鼓勵市民對長期病患者多加關注；透過增加市民對病患者的知識，使他們給予病患者多點關懷與精神上的支持，接受他們與普通人一樣，是社會的一分子。

礙於時間關係，有關對長期病患者經濟援助方面的問題，我會待民協的另一位成員，廖成利議員代本人講述。

本人謹此陳辭，提出議案。

Question on the motion proposed.

PRESIDENT: Mr LEE Cheuk-yan has given notice to move an amendment to this motion. Dr LEONG Che-hung has also given notice to move an amendment, not to the motion, but to Mr LEE Cheuk-yan's proposed amendment. The amendments have been printed on the Order Paper and Members have been advised by circulars issued on 19 April and 23 April respectively. I propose that the motion, the amendment, and the amendment to the amendment be debated together in a joint debate.

Council shall now debate the motion, the amendment, and the amendment to the amendment together in a joint debate. I will first call upon Mr LEE to speak and to move his amendment to the motion, and will then call upon Dr LEONG to speak and to move his amendment to Mr LEE's proposed amendment. After the joint debate, we will first vote on Dr LEONG's amendment to Mr LEE's amendment, then on Mr LEE's amendment, whether or not amended by Dr LEONG's amendment, and last on Mr MOK's original motion or his motion as amended by the previous amendments, as the case may be. I now call upon Mr LEE to speak and to move his amendment.

MR LEE CHEUK-YAN's amendment to MR MOK YING-FAN's motion:

"在“資源”後加上“，並應全面取消醫療逐項收費”及在“藉此”後加上“減輕長期病患者的經濟負擔和"

李卓人議員致辭：主席先生，我動議修正莫應帆議員的議案，修正案內容一如議事程序表內在我名下所載者。

今天我提出修正案，其實是抗議，也是提醒。修正案是希望重申要求政府全面取消醫療逐項收費政策。為何我說這是抗議呢？因為其實早在一年前，立法局已經通過了何敏嘉議員的一項議案，要求政府取消逐項收費政策，但政府只敷衍式地取消了三項，因此，我要抗議政府完全沒有尊重立法局大多數的意見。我這次重提舊事，是希望提醒政府完全撤銷逐項收費政策。

今天的辯論，我覺得是很重要的，因為每個人都會病。人其實是十分脆弱的，永遠不知道病魔何時會來臨自己身上。大家試想像，一個人不幸患病，進了醫院，已經是飽受病魔的煎熬，但他卻突然間發現原來他所接受的醫療服務是須逐項收費的。整個家庭在受到病魔困擾的同時，還要面對醫療費用的苛索。我們的社會不但對長期病患者沒有施以足夠的援手，還要加重他們的經濟負擔，我們又於心何忍呢？

我覺得簡單來說，逐項收費政策就是“趁他病，分他的身家”。難道這便是我們的醫療政策嗎？我相信　生福利司稍後發言時，會重提那句老口號，就是香港的醫療服務“會確保不應有人因為經濟原因而得不到適當的醫療服務”，即一個人不會因為窮而得不到診治。這看似十分合理，但如果我

在這句之後多加一個註腳，相信便可以反映出政府的苛刻之處。那註腳就是："不應有人因為經濟原因而得不到適當的醫療服務，但不排除有人要傾家蕩產來換取適當的醫療服務。"有議員可能說："阿人，你言重了，你是否誇大了呢？"我想先與大家一起看看現時的制度，特別是政府稍後可能會提及的援助制度。

撒瑪利亞基金說會幫助有需要的人，我們試看看這援助機制如何運作。這援助基金的申請條件是：第一，入息限額不可以超過家庭入息中位數。第二，家庭儲蓄不可以超過所需醫療用品的三倍，而家庭儲蓄的計算方法，是不理會是五人家庭、四人家庭，抑或一人家庭，標準都是一樣。我曾作出計算，發現其中有一個很荒謬的地方，就是原來這家庭儲蓄限額較綜援金的申請限制還要嚴還要緊。因此，大家可以想像到，這樣的援助機制並不容易成功申請。

我試舉一個例子，一個人如果要安裝一個心臟起駁器，價值15,000元，則只要他的家庭儲蓄超過45,000元，便不能獲得援助。如果他的儲蓄真的剛剛超過45,000元，他便要從45,000元的儲蓄割了15,000元出來。因此，這是否反映出我剛才所說的要他傾家蕩產呢？是否"趁他病，分他的身家"呢？一個人本身有數萬元儲蓄並不算多，政府不但不加以援助，還要在他患病時，取去了他的一大筆積蓄。因此，我覺得現時整個制度實在令長期病患者的負擔太過沉重。

此外，一個很大的問題是，剛才所說的撒瑪利亞基金，每年只可獲得200萬元撥款，以及加上利息收入，這是否代表政府在這200萬元用完後便停止對長期病患者的援助，不再理會他們，結果令有需要的病患者被拒諸門外？

政府經常強調的另一點是逐項收費能體現"能者自付"原則。驟聽起來，"能者自付"好像很合理，但問題是套用在甚麼事情上。如果是住在酒店式的醫療病房，要求那些人"能者自付"，我想沒有人會反對。但如果套用在九年免費教育上，要能者自付學費，我相信整個社會都會反對，因為這代表政府不再提供基本教育。同樣，"能者自付"套用在基本醫療服務的提供方面是不合理的，因為醫療是基本的社會服務。沒有人想生病，但病了就一定要得到診治，這是最基本的，而逐項收費卻違反了醫療是基本服務的這種精神。此外，市民也會問，我們一向有繳納稅款，為何在患病時卻不能得

到基本的醫療服務？還要我們“能者自付”？在現時這樣嚴苛的豁免制度下，其實大多數“打工仔”都會被視為所謂“能者”。他們會覺得他們已繳納了稅款，但患病時還要被政府苛索一筆金錢，是很不合理的。事實上，市民在繳交稅款，或努力貢獻社會後，應有權合理地期待政府提供最基本的社會服務。

最後，我們現時所說的有關收費只涉及1億元，基本上佔180億元的醫管局支出只是一個很少的數目，但對病者來說卻是一筆可觀的款項。因此，我希望大家關注到現時的整個制度，事實上會令長期病患者長期承受一個很沉重的經濟負擔。

我希望大家支持我的修正案。

Question on Mr LEE Cheuk-yan's amendment proposed.

PRESIDENT: I now call upon Dr LEONG Che-hung to speak and to move his amendment to Mr LEE Cheuk-yan's amendment.

DR LEONG CHE-HUNG's amendment to MR LEE CHEUK-YAN's amendment:

"刪去“全面取消”，代以“將各項”；及在“逐項收費”後加上“合理化，包括全面豁免經濟有困難人士的收費”。"

DR LEONG CHE-HUNG: Mr President, I rise to move my amendment to Mr LEE's amendment as printed in the Order Paper. As Mr LEE has just mentioned and Members will recall that an almost similar motion on abolishing all itemized charges with immediate effect was moved by the Honourable Michael HO last May when similarly I also moved a comparable amendment. My amendment then was defeated by two votes, thanks to the disappearance of the three voting government officials. Today, I presume my amendment will face similar fate. Yet, I would appeal to Members to look at the argument with *raison*.

Since the debate in May 1995, the Hospital Authority has already abolished the charges for nine privately-purchased medical items. Very specific guidelines were also given to facilitate application to the enlarged Samaritan Fund. I hope the Secretary for Health and Welfare would elaborate on this and also refute the argument put forward by Mr LEE just now. So I entirely agree that this is not enough. For many of those who have chronic illnesses, they will need further assistance. Yet, to abolish all irrespective of the situation and the financial assessment, either for the rich or the poor, does not stand to reason. Through a blanket abolition of itemized charges, it implies that a completely free public medical service will be given to all, the poor and the billionaire alike. It implies also that Hong Kong should be moving into a socialized medical service, a proven disaster in countries which have attempted to practise it. Mr President, through such a blanket abolition, more and more, even affordable patients, will be attracted into our public hospital services. The recent scenes of camp beds again in many public hospitals tell the story. It will not be long before we will return to the dark ages of long waiting list, cramped hospital wards and disgruntled staff. Furthermore, Mr President, experience has shown us and Mr LEE has just mentioned that also, that a call for total abolition is a call that the Government will not act on no matter what the voting result today may be. Let us therefore be pragmatic. I personally would like to call on the Government to further rationalize the itemized charges and to include complete waiving of such charges payable by those who have financial difficulties. For those of you who really want to support our chronically ill patients pragmatically, properly and expeditiously, you should support my amendment.

I would like to turn now to say a few words on the original motion which I fully support, in particular, community support services for the chronically ill and I will be stressing on the importance of self-help groups and the lack of commitment on the part of the Government to have these groups properly supported.

Mr President, as I have been involved in taking care of the sick and sometimes the chronically sick, I am well aware of their suffering — physically and mentally. Often times, they face discrimination socially and in seeking employment. Often times, they feel helpless as they have no way to share their feelings with anybody else.

Community support and self-help group are therefore vital because through coming together and through the concept of "同病相憐", they are able to seek solace from others with the same problem, often getting comfort from the fact that they are not alone and getting encouragement from those who have been suffering from the same problem for even longer.

Through bulk buying, for example, these self-help group patients often get cheaper rates for disposable medical appliances they frequently need. Their families too often benefit not only from comfort, but also understanding the problem of the disease much better.

Mr President, over the last decade, through the enthusiasm of the patients and their families and with the keen support from the medical profession, more than 60 such mutual help bodies have been established, all running on donations and their own expenses. With the establishment of the Hospital Authority, many hospitals have taken an interest and the lead to link their own patients. Again these are established and run not on government or Hospital Authority's funding, but through kind donations raised by the hospitals themselves. The announcement of the Financial Secretary that some eight Patients and Carers Resources Centres will be established with some $6 million is, therefore, welcomed and a step in the right direction. Yet, there are two areas that we should not overlook.

Firstly, the Government should not lose sight of the existing patients' self-help groups and hospital patients resources centres. Ways and means must be introduced to have these well-running bodies financially supported to encourage improvement. Just because they are in function and doing well is no excuse for the Government to shirk its responsibilities.

Secondly, the details of these new eight Patients and Carers Resources Centres should be clearly worked out through consultations with the existing groups. It would be a farce if these centres so established have low utilization rate simply because they are in less accessible locations or they are not providing services in line with the needs of the chronically ill. The embarrassment of the elderly health centres which are so poorly subscribed should never be repeated.

Mr President, in the *White Paper on Rehabilitation* released less than a year ago, the Government repeated its previous consent to set up five Community Rehabilitation Network centres by 1998-99. The first such centre opened in Sheung Wan in 1994 to the jubilation of many self-help groups. Yet, both the first and second ones are still running on lottery funds, rather than regular government subvention. The fate of the others are still to be determined. In short, the whole project appears to be stalled because of the lack of financial resources, not much — only some $5 million a year that would benefit more than 50 000 patients. Will the same apply to the promised eight new patients and carers resources centres?

I do hope that the Government will look into all these angles and I would appeal to Members to support my amendment to the amendment made by Mr LEE. Thank you.

Question on Dr LEONG Che-hung's amendment to Mr LEE Cheuk-yan's amendment proposed.

黃震遐議員致辭：主席先生，對健康的人來說，工作是很重要的；對慢性病患者，有一份工作更為重要。工作不但幫助他們的經濟，無須只依靠公援的微薄幫助，而且更重要的，工作使他們維持自尊和自信，使他們覺得仍然是正常人隊伍的一分子。可惜慢性病患者在就業方面一直都困難重重，而最近兩年來，在整個勞動市場不景氣的情💔下，失業率攀升，慢性病患者當然面對更多困難。

怎樣可以幫助慢性病患者就業？第一，我們需要幫助病人維持健康，減少脫產接受治療的時間。例如腎病病人如果能接受血液透析治療，即俗稱洗腎，脫產時間就會少於接受腹腔透析治療。可惜，目前香港政府提供血液透析的洗腎服務仍然不足。此外，如果有補血針，使他們沒有那麼貧血，他們就不會那麼疲倦，更有精力做工。目前，醫管局在逐項收費制度下，不願為病人免費提供增生紅血球激素服務，一定要病人自己支付，費用相當昂貴，其實會對病患者的復業增加阻礙。

第二，我們應改善病患者上下班的交通服務，讓他們方便上班。現時地鐵其實應改善服務，讓肢體傷殘人士更能使用。此外，復康巴士目前根本不足以照顧就業的需求。根據我們了解，現在復康巴士的固定路線經常“爆

棚”，可見病患者其實很需要這類交通服務。

第三，病患者不能依靠僱主同情來聘請他們。他們必須有一技之長，依靠這一技之長得到工作，而這種技術也必須是市場所需要的。因此，政府必須為病人開辦特別訓練課程，以適合他們身體的需求，幫助他們充分發揮潛能。目前，病患者通常投訴職業訓練局和勞工處未能在這方面提供足夠的服務。職業訓練局應該改善及增加課程及學位，以應付目前慢性病患者的需求。勞工處也應加強展能技術組的發展，使能真正可以切實幫助病患者，而非只是提供所謂一般性的職業介紹，因為這種服務未必最適合病患者的需求。同時，目前勞工處展能技術組的申請程序過分繁複，對病患者造成甚多不便，這方面亦應該盡量改善。

第四，僱主不聘用病者通常是因為對病人不了解，以為他們的疾病會傳染給其他人，或會使其他人有心理或各方面的影響。其實我們需要給予教導，令僱主無須有這方面的擔憂。僱主擔心病者麻煩，不能勝任，常需告病假而不能全職工作，又或行走不便容易受傷，所以不肯聘請這些病患者。這些擔憂也並非全無道理，但很多僱主亦是在聘用了病患者後才發現這些顧慮實在是過分誇大了。因此，勞工處應該加強宣傳，並幫助病患者適應新職位，令僱主不用有這方面的擔心。

其實不但私人勞動市場不聘請慢性病患者，實際上政府僱員中也只有2.2%是弱能人士，如果不計算色盲者就只有1.7%；而志願福利機構就竟然更落後，只有1.1%弱能僱員。由此可見，政府、志願機構、醫管局和其他公營機構都應該訂定清楚的目標及計劃，帶頭聘請慢性病患者，令他們可以真正參與工作，令更多人相信病患者其實是可以找到工作的。

我們希望政府知道病患者沒有工作其實是很多方面的問題，應設立一個委員會予以檢討，並訂立全盤政策，使病患者也可以像健康人一樣，享有工作，擁有自尊。

陳鑑林議員致辭：主席先生， 生福利科的官員，以及醫院管理局（“醫管局”）的負責人，經常會在面對傳媒、議員或請願人士時強調，“不應有人因缺乏金錢而不能獲得適當醫療”這一個美麗的承諾，而這亦是九零年通過的《醫院管理局條例》中的一項重要條文。

不過，對於全港現時為數超過26萬的長期病患者而言，這些全部都只是美麗的謊言。與其說“健康就是財富”，倒不如說“有財富才可以換取健康”更為貼切。

醫管局轄下的多間公立醫院過去幾年，一直都以經費不足為理由，向某類病人徵收昂貴的醫療用品成本，而這些病人中，又以長期病患者居多，其中主要包括心臟病、腎病及關節病等病人。這種做法，本身便已違背了憲報刊登的所謂：每天住院60元，檢驗、治療、膳食及手術均應免費的基本精神。本局議員亦多次對此表示不滿，但醫管局不但沒有順應民意，反而於去年十二月底公布十項醫療收費，於是名正言順地將過去一直不合理的收費變成所謂的“合法化”。但合法並不就等如合理，這些逐項收費的開支所牽涉的金額，由數百元至數萬元不等。由於絕大部分需要持續接受治療的長期病患者均沒有穩定的工作收入，單靠微薄的綜援金、或些微的兼職工作收入，這筆高昂的醫療費用，對他們來說就差不多是天文數字。

以末期腎衰竭的長期病患者為例，由於每天需要接受數次俗稱“洗肚”的治療，不能從事全職工作，加上因為缺乏血細胞生成素，以致大多出現貧血的現象，須每星期注射一至兩次“補血針”。以九三年的價格計算，每支補血針需500元，每月的開支便達到3,000元。不少病患者由於收入有限，寧願放棄打補血針，而被迫承受各種因貧血帶來的痛苦。

以上提到的，都只是芸芸長期病患者個案中的冰山一角。雖然醫管局同時於去年宣布取消人工骹、代關節及貧血病患者的過濾器的收費，但為何不同的病人，在醫院會遭遇到不同的醫療對待呢？是否除了上述三類病人外，其他例如腎病、癌症、心臟病等病人，就要遭醫管局不同對待呢？

其實，在醫管局公開要徵收的十項收費中，所收回的金額只有8,000萬至1億元左右，相對於醫管局每年接近200億元的撥款，所佔的比例根本不足0.5%。但為了這區區的款項，醫管局卻自打嘴巴，令人感覺到病人會因為經濟困難而得不到應有的治療。

生福利司可能會說，港府已經為經濟有困難的病人設立撒瑪利亞基金，並且於去年年底向基金撥款2,000萬元，又修訂及放寬了基金的評估準則。無疑，根據政府公布的數字，近年申請撒瑪利亞基金的人數有大幅上升的趨勢，其中九四至九五年度的受助人數就較九二至九三年度增加三倍以上，所牽涉的金額更上升達六倍。不過，由於基金的申請和核准條件不但苛刻，而且極之擾民，這是人所共知的，申請人即使過關斬將，符合家庭入息中位數和儲蓄上限，還要按每次醫療需要提出申請。對於長期病患者而言，除了要接受疾病的困擾外，還要每星期見社工，提交入息證明，所需承受的壓力和精神上的困擾，可能更甚於疾病的煎熬，而且更大大增加社工的工作負擔。

主席先生， 生福利科本來承諾於去年年底前決定醫療融資問題的長遠解決方案，但在公布十項收費後，又推說是短期措施，會在半年內制定長遠的政策。我切實希望港府能夠全面取消所有逐項收費，減輕所有病人，尤其是長期病患者的經濟負擔，真正做到不會有病人因經濟困難而得不到應有的治療。

主席先生，本人謹此陳辭，支持李卓人議員的修正案。

羅致光議員致辭：主席先生，我們可以用“縮骨”與“縮沙”來形容政府對於長期病患者的復康政策。“縮骨”的例子可見於政府對社區復康網絡的態度；“縮沙”的例子可見於政府對自助團體的立場。

政府對於社區復康網絡服務的態度，一直令人失望，剛才梁智鴻議員也有提及政府在復康白皮書內指出：“政府會考慮於一九九八至九九年度之前，為該所資訊服務中心及五間社區復康網絡中心提供資助。”不過，政府總是不想作出承諾，所以亦加上一句：“但須視乎評估結果及是否有資源可供運用而定”。這可說是政府一貫“縮骨”的說法。事實上，社區復康計劃已完成其評估研究。結果顯示，服務不但能協助長期病患者在生活上的適應，亦完全符合成本效益，減少長期病患者再入醫院的次數與日數，所省下來的醫療服務資源比用於社區復康網絡的資源還要多。政府現時只承諾資助兩間社區復康網絡中心，要待一九九七年才資助第三間，明顯地低於白皮書擬資助五間中心的目標。更令人失望的是，第三間中心本來預算於李鄭屋設立發展。在過程中，各方面的人士都盡力排除地區上歧視長期病患者的壓力，爭取中心能順利開展，但當已可以開始落實具體計劃時，才發覺政府一直都疏忽了資源的問題，現在才匆匆資助首兩間中心，要待九七年才能資助李鄭屋 中心。這不但白費了各方面人士與政府一同站在反歧視的立場所作的努力，更換來那些歧視長期病患者人士的冷笑與嘲弄。

在九二年復康綠皮書中，政府提出：“在成立自助團體時須給予資源和專業方面的協助。“種子基金”的提供是可能需要的。”可是政府到九五年卻“縮沙”，這個資助自助團體的建議在白皮書中消失得無影無蹤。長期病患者的自助團體藉 分享經驗和交換資訊以克服同類問題，不但促進了長期病患者的互助精神，更可以推進服務的改善。缺乏資助，特別是成立的初期，自助團體的發展便會受到極大的限制，政府實在不應逃避這方面的責任。

至於在就業問題上，因為黃震遐議員剛才也作討論，我不再重複。不過，我亦想強調一點，就是我們應為長期病患者在就業上提供適當的支援。現時長期病患者在就業上所面對的困難與歧視，不但影響了他們的復康與生活，更浪費了社會上的人力資源。

至於李卓人議員有關取消逐項收費的修正案，民主黨是十分支持的。在去年何敏嘉議員提出的議案辯論上，也曾進行辯論，獲得當時立法局的支持。這個立場亦是長期病患者在過往數年來主要爭取的目標之一。

本人謹此陳辭。

廖成利議員致辭：主席先生，我代表民協，就有關對長期病患者經濟援助的部分補充三點意見。

現時長期病患者所得的經濟援助，主要可從兩個途徑獲得：首先，是撒瑪利亞基金的資助；其次，是綜合援助類別對醫療用品的資助。以上兩種途徑，對長期病患者來說，申請手續都極為繁複，病患者往往要經過多重的審核過程才可領取很少的援助。

第一，有關撒瑪利亞基金，這個基金的申請手續及資格，剛在去年十二月一日作出了新修訂。然而，新修訂令病患者更難取得援助。按手續規定，申請人必須符合以下兩個條件：（一）申請人每月的家庭總收入要低於家庭入息中位數；（二）其家庭儲蓄不能超過所需購醫療物品的三倍；若申請人的家庭儲蓄不超過病人所需醫療用品費用的兩倍，則可申請豁免；若儲蓄多於兩倍，但又不超過三倍的話，則會交由醫務社工及病人共同制定分擔費用的比例。

對病患者來說，這些條件和限制都是不合理及不合時宜的。第一，現時一般的家庭即使家庭入息超過中位數，都並不代表那個家庭有能力負擔照顧長期病患家庭成員的醫療開支。

第二，現時病患者的家庭儲蓄設有上限的安排，其實沒有適當地將家庭

人數及個別家庭的特殊情💔也包括在內。以一家五口為例，即使其儲蓄有5萬元，其生活質素卻未必比一個家庭收入有4萬元的二人家庭過得富裕。政府在訂立儲蓄上限時顯然並沒有將家庭人數與生活質素的關係列入考慮範圍。民協建議政府檢討上限的安排，並作出適當的修改。

第三，在現時的制度下，病人若要獲得基金的支援，必須每次按醫療需要提出申請。舉例來說，若病患者患有腎病，需要每星期打補血針，那麼病患者便需要每星期約見醫務社工，提交入息證明。整個程序可能會令病患者知難而退，甚至延誤病人的治療過程。

第四，在審批基金的過程中，又沒有設立適當的上訴機制。一旦醫生及醫務社工不批准某些個案的申請，病患者並沒有途徑進行上訴，對病患者並不公平。

此外，有關綜援津貼方面，現時綜合援助計劃中，有一項屬於特別津貼的類別，包括每月發放的經常醫療費用及一次過發放的醫療、復康及手術用品津貼。然而，這些津貼的申請手續同樣繁複，病人又要先墊支有關款項，在申請時再提交如報價單等的證明文件。換言之，由病人開始自己掏腰包接受藥物或醫療物品協助的治療，直至真正獲得資助，需要花上冗長的時間。這對迫切需要經濟援助的病患者來說，實在是費時失事。民協建議政府盡量簡化申請、批准及發放津貼的手續，令長期病患者得到及時的津貼和幫助。

有關醫療逐項收費，民協支持李卓人議員的修正案。我們看到長期病患者除了在申請援助上遇到不少困難外，醫療逐項收費令病患者的負擔更為沉重。雖然政府較早前已公布只會就十項醫療用品及藥物徵收費用，但這種訂定收費方式，一方面有歧視某類病人之嫌；另一方面，收費名義雖為十項，但醫院可隨時在十項中引申數十項出來。加上釐定這些收費的準則一直備受社會人士質疑，病人的“荷包”實在是任由宰割，無從申訴。

總括而言，現時為長期病患者提供的援助，在運作上出現許多弊端，繁複的程序又往往對申請者多方留難。民協要求政府重新檢討現有援助金的申請資格，使有需要人士能真正獲得援助，並要求政府立即取消醫療逐項收費。

本人謹此陳辭，支持莫應帆議員的議案。

梁耀忠議員致辭：主席先生，我覺得政府從來沒有將復康服務當作是責任，

而復康政策仍停留在救濟的觀念，即是說哪裏起火，就去救火，有時甚至有火也詐看不見，只要火勢不很猛烈，就不救也罷。令人反感的地方是，政府為了敷衍一些問題，竟然即使答應了實行，卻仍一直沒有履行承諾。對長期病患者，目前政府就是對他們“視而不見，聽而不聞”。

去年五月，政府發表的《康復政策及服務白皮書》就沒有將長期病患者列為服務對象，使長期病患者一直以來面對沉重的醫療負擔和就業困難，以及缺乏社區服務，以協助他們重返社區、參與社會。

很多病患者都是一生一世地拖腎病、癌病、糖尿病、地中海貧血症、哮喘及肺積塵病等長期病，對病者及家人來說，都是極其沉重的打擊。他們既是十分無辜，但又無法逃避，政府實在有責任幫助他們接受事實，認識病，在心理上協助他們，讓他們肯定自己的價值；另一方面，幫助他們重投社會。我認為當前急務是盡快增設社區復康網絡中心。可惜香港現時只有兩間並非由政府直接資助的社區復康網絡中心，二十多萬長期病患者只能望門興嘆。

去年《康復政策及服務白皮書》提到，政府會考慮在九八至九九年度前，為五間社區復康網絡中心提供資助，但同時卻說明“須視乎評估結果及是否有資源可供運用而定”。政府往往就是喜歡留有一手，即可以沒有資源為藉口而不給予任何援助。我們看到現時的社區復康網絡中心仍要逐年申請基金支下去，由此便可料到政府對設立社區復康網絡的誠意有多少了。

主席先生，我希望透過今天的辯論，讓政府有所醒悟：錢是要用的，不是要來放在一旁欣賞的。政府庫房目前有大量盈餘，便應用來發展一個健康、合理的社會。資助設立社區康復網絡中心是絕對重要及合理的。毫無疑問，政府醫院設有病人資源中心，也有醫務社工，可在病人住院期間，提供即時協助，但是，病人很快便要離開醫院，面對漫長的生活。社區復康網絡中心可給離開醫院後的長期病患者提供協助，促進自我照顧和表達意見及需要，例如可以提供訓練，幫助他們重新投入社會。只有在長期病患者獲得適當的身心輔助及就業幫助後，社會才可以減輕負擔，並可促進他們對社會的貢獻。這樣政府才算完成對長期病患者的責任。

一直以來，在沒有政府的協助下，很多長期病患者只好自己組織起來，互相支持。這些自助組織的活動包括到醫院探訪長期病患者、集體購買醫療

器材及藥品、舉辦健康教育講座及進行康樂活動等。這些針對不同病症而組成的自助組織，對開解長期病患者，促使病者及家人減輕心理壓力，是非常有幫助的，而得到的效果亦非常良好。但很可惜，由於資源缺乏，自助組織在艱難的處境下提供服務。因此，我希望政府能重新評估其責任和角色，資助這些自助組織，給他們提供更多支援。它們現時最迫切需要的是更多會址及必需的運作經費。因此，如果要這些自助組織繼續運作，我希望政府不要再吝嗇，應撥款予以協助，讓它們能夠為更多長期病患者提供服務，以解決他們現時所面對的需要。

根據16個長期病患者自助組織進行的調查顯示，長期病患者在經濟援助、住屋、社區支援服務、交通、社交及情緒輔導方面，都遭受政府的長期忽略。對長期病患者服務及資助不足已是不爭的事實，從速增設社區復康網絡中心也是長期病患者現時的急需和實在的要求。我們很希望政府能夠誠意聆聽、提供援助、盡速補償過去對長期病患者的虧欠；更希望政府坐言起行，幫助長期病患者，使他們不用再長期受痛苦。

楊孝華議員致辭：主席先生，香港的公共醫療服務，近年有了長足的發展，其中尤以住院照顧，在醫院管理局的努力改善下，無論在量和質兩方面，成績是值得稱許的。不過，自由黨認為，由於政府的醫療政策定位模糊，在醫療收費制度上的改革更顯得畏首畏尾，結果出現不合理現象。因此，自由黨對梁智鴻議員提出的關於合理化的修正，我們是認同的。

“沒有人因經濟理由而不獲治療”，這是港府一貫向外宣稱的醫療政策，也正正是政府為公共醫療收費制度設下的底線。

香港歷年來的醫療制度是，有能力的，求診於私營醫療；無能力的，政府設下安全網。

但近年來，公共醫療服務經費大增，質素驟然攀升，但收費未有相應提高，令本來有經濟效益的安全網，轉眼變了舒適的吊床，迅即吸引了大批本來有自顧能力的人，由私營醫療轉投公營體系。

安全網制度原本是福利概念，由納稅人支付窮苦人的基本生命要求。廉價公共醫療一旦變了全民共享的基本權利時，很容易出現貧窮線以上的大部分人，理直氣壯地分用了提供予貧窮線以下少數人的資源。最可行的解決方法，是為不同經濟條件的病人，訂定不同的津貼幅度。而政府劃出的安全網

底線如果是合理的話，我們相信公眾人士是可以支持的。

更大程度的改革考慮或合理的考慮，可以是把公共醫療服務劃分成緊急與非緊急、性命攸關與非性命攸關，以及富人與非富人等六大類。政府就不同組合訂下不同的資助機制。例如緊急而為拯救生命的，即如發生意外事故的傷者，不問貧富，一律免費救人；非緊急而為拯救生命的，即很多長期病患者也屬這類，如癌症，我們認為貧苦的維持高津貼，有錢的只作基本津貼；而如果是非緊急而且與生命安全沒有迫切關係的，例如白內障等，則採取貧窮的高津貼，有錢的，則不予津貼，而且把優先權讓給貧苦病人。這些構思，當中還有很多細節要廣泛討論。

自由黨在今天的辯論中，會支持原議案。對於梁智鴻議員有關把收費合理化的修正，我們也會支持和認同。不過，我們並不支持另一項“一刀切”要求全面取消收費的修正。我們希望政府就長期病患者的問題，研究一套長遠可行的公共醫療支援政策。

謝永齡議員致辭：主席先生，長期以來，政府都忽略了長期病患者的需要，但病患者的人數卻不少。單看因長期病而需要入院接受治療的人次，在九三年就有26萬；再加上其他需要長期覆診的人士，估計長期病患者佔香港總人口約十分之一。可是，政府漠視了為數眾多的長期病患者，實在是由“後知唔覺”，變成“長期唔覺者”。

由於長期病患者有其特別的困難，故需要特別的服務，而互助網絡正是他／她們的需要。除了實質的藥物治療外，心理上的支援對病人及其家人非常重要，甚至可對其病情發揮影響作用。病人互助網絡可以讓“同病相憐”的病人及其家人聯繫起來，以互助的形式交流經驗及彼此支持。例如，喉癌病人往往需要以手術來控制癌細胞的擴散，但卻需要其他同樣病例的病人給予支持及信心去接受手術；又例如患有地中海貧血病的兒童，每晚都要進行十小時的皮下注射，而家長在照顧上也非常吃力。在透過眾多家長的分享與交流，才能共同面對問題及尋求更佳的解決方法。同時，亦可協助新症兒童的家長適應困境，而醫護人員往往不及有經驗的家長，知道如何令患病孩子減低痛苦。因此，病人互助網絡實在有存在的價值及發展的必要。

其實，政府的社會福利政策，本來也認同社區互助組織的成效，但卻一直不予資助，病人想尋求協助，卻被“綁手綁腳”。政府這樣“識講唔識做”，難道就是“長期唔覺者”的徵狀？

假若政府不想再做“長期唔覺者”，應以實際行動，制定長期病患者社區互助組織的政策，包括資助開設社區網絡會址，及其運作與發展，並以妥善的職員編制提供服務，即最少包括各種專業人員，如社會工作者、物理治療師、護士和心理學家等。

長期病患者往往因其病💔而遭受歧視，很多僱主都拒絕聘請長期病患者，或是一經發現便立即“炒魷魚”。莫說日常醫藥費，連生計也成問題。雖然有保障長期病患者的《殘疾歧視條例》已獲通過，但卻因政府未成立平等機會委員會而不能執行，長期病患者依然被剝削就業機會。此外，勞工處的就業服務亦沒有因應長期病患者的需要，而提供適當的就業輔導。

因此，要解決長期病患者所面對的困難，多個政府部門都有責任。社會福利署應改變其保守的作風，切實發展長期病患者社區互助網絡及組織；政務科應加速成立平等機會委員會，落實《殘疾歧視條例》；而勞工處則應改善其就業輔導，關顧長期病患者的就業情💔。

主席先生，本人謹此陳辭。

陳榮燦議員致辭：主席先生，根據政府的資料顯示，需長期依靠藥物治療的長期病患者有26萬人，包括一般患有癌症、腎病、肝病等病患者。從九五年的一項調查顯示，被訪者中只有28.9%從事全日制工作，41.6%病患者完全沒收入，只有6.4%領取綜援。

長期病患者在就業問題上，一向面對一定的困難。目前，再培訓局已撥款百多萬元，自去年六月起提供非定期性的再培訓計劃，與醫院的職業治療部合作，為長期病患者提供心理輔導，並考慮個別情💔安排接受再培訓計劃。這個計劃是否真正能幫助長期病患者呢？這需要看這項課程的進展。目前在香港失業率高企的情💔下，如果缺乏僱主的支持，學員經再培訓後絕不容易找到工作。本人要求政府針對這個問題，增加再培訓的資助，為聘用經再培訓職員的僱主提供補貼及稅務優惠。政府也應以身作則，聘用長期病患者。

香港現時有八十多萬老人，人口逐漸老化，老人的數量不斷增多。隨🔔社會的繁榮和醫學的發達，人的平均壽命得以延長。就🔔今天的辯論，我還想談談老年人長期面對的困境。

一直以來，香港並沒有一整套的老人政策，對老人的服務只見於不同的政府部門。由於沒有退休保障制度，老人在退休後大部分立即失去收入。在缺乏經濟能力後，隨時會出現困難，生活陷入困境。雖然中國人素來推崇養老敬老的觀念，但基於香港各種現實情❤的限制，致令很多老人獨居在環境極度惡劣的住所中，包括籠屋、板間房、舊型屋 單位等。有些高齡老人為了維持最基本的生活，被迫繼續工作，賺取微薄得可憐的薪金，這種情❤屢見不鮮。我們常常見到一些老人拖🔊病弱的身軀，沿街執拾空汽水罐、紙皮箱。我不禁要問，香港社會的良知和責任感去了哪裏？我們就是這樣對待辛勤勞動數十年的老人嗎？

主席先生，老人患病的機會較大，而且往往延遲就醫，因為他們對疾病的認識不足，加上經濟條件欠佳，認為看病很麻煩。香港沒有足夠的保健服務，以預防或延緩老人疾病的發生。目前，患有慢性疾病和長期患病的老人亦得不到一套具延續性或妥善的醫療護理。據有關團體的調查，老人平均要用上半日的時間去輪候政府門診，私家醫生的昂貴收費使老人望之卻步。政府醫療對老人照顧不足，老人未能享受應有的醫療服務。在引入“用者自付”的原則進行醫療逐項收費後，老人的生活更是百上加斤，甚至“因噎廢食”，減少看醫生的次數，或小病就不看醫生，情❤令人關注。本人認為，醫療服務應為老人提供特別優惠，照顧老人的經濟負擔能力及方便。

此外，以一九九五年的估計，療養床位的輪候名單達四千多人，護理安老院的輪候名單超過1萬人。設於藍田及石硤尾的兩間老人健康中心，實不能滿足80萬老人的需要。據資料顯示，上述兩間健康中心的使用人數卻又只及原來規劃的一半，原因是宣傳及推廣不足，加上老人往返需時及行動不便所致。收取年費，只進行表面的身體檢查等，令人懷疑資源運用的確切性。本人要求政府檢討老人健康中心的具體運作，使資源用得其所。

香港的照顧老人政策，一向以社區照顧為主。誠然，大多數老人希望留在熟悉的環境當中，因此，要協助老人留在區內，必須設立各類社區支援服務，例如社康護士、社區中心等，否則，只會使老人繼續獨居陋室及孤立無助。政府應在不同區域設立健康中心。

主席先生，本人謹此陳辭。

何敏嘉議員致辭：主席先生，我支持李卓人議員的修正案。我希望在九五選

舉後，李卓人議員無須待三位官方議員離座的運氣，他的修正案就可以贏出。

民主黨認為，政府應該提供所有必需的醫療服務，因此，我們不能接受逐項收費的安排。我們不可以歧視某一些特別的病例和病人。如果病人因患上不同病症而須付出不同費用，這是不公平的。舉例來說，在現行的十項收費中，政府說要收取一些較為昂貴的用品的費用，例如通心臟的血管。不過，如果與八仙嶺火災為那些小孩子進行的數十次手術，以及他們住在深切治療部數十天相比，這些用品便不是太貴，簡直完全不能相提並論。主席先生，這便是我們的原則，如果一名病人入院，無論他患了甚麼病，只要他支付了60元住院費，便應包括所有支出。如果因患了某一種病症而須額外繳費，這樣實際上已改變了我們的收費原則和政策，民主黨絕不同意政府提供一些非必要的服務，例如矯形外科的隆胸便是一個好例子，我們不同意政府提供這種服務。

至於撒瑪利亞基金，剛才很多議員已就此發表意見，立法局 生事務委員也會在五月六日討論有關事項，我希望大家出席詳加討論。事實上，眾多有關收費的問題，主要都是與醫療的融資和政策有關的。如果政府一日未能夠清晰說出醫療融資的安排，我們便一直只能照現在這樣，就醫療政策的每一個部分進行辯論，而不能整體研究我們的醫療融資安排和收費政策。我希望政府可以盡快進行醫療融資和收費政策的檢討。

最後，我想回應梁智鴻議員的修正案，他提到“合理化”的問題。其實，我覺得討論“合理化”這問題，說了等於白說。甚麼是“合理化”？即我們以前所說的有能力支付的人便要支付費用，結果最終大家都不知道辯論些甚麼。如果我們一向的收費政策是，一名市民拿 身分證進院便只須支付60元，那麼在未有新政策前，就不應作出改變。

主席先生，本人支持李卓人議員的修正案，反對梁智鴻議員的修正案。

PRESIDENT: I now invite Mr LEE Cheuk-yan to speak for the second time on the amendment moved by Dr LEONG only. This is in keeping with the spirit in which the House Committee recommends speaking time for Members, since after the joint debate Mr LEE will not have the opportunity to speak on Dr LEONG's amendment to his amendment.

李卓人議員致辭：我想作很簡單的回應。第一，正如剛才何敏嘉議員所說，我看完梁智鴻議員的修正案後，或聽罷梁議員的發言後，也未明白何謂“合理化”。他是否認為現時的收費不合理，所以要把它變為合理一些？我本身的意見很簡單，就是逐項收費這政策根本就不合理，所以不能合理化。

第二，我覺得有一點很有趣，就是梁議員說，如果取消了逐項收費，會令那些有能力的人全都去了公立醫院求診，出現更多帆布床。我不知道他是否暗示現時私家醫院，即他的選民“生意”開始欠佳。不過，我卻覺得這反而是一件好事，因為取消了逐項收費後，可能會迫使一些私家醫院將收費降低。我相信對於全港的消費者，甚至是那些有能力的消費者，都是一件好事。競爭變得劇烈後，收費真的可能會“合理化”，是私家醫院的收費“合理化”。

最後，我覺得如果實行逐項收費政策，會破壞了政府在收稅後本身對市民的承諾。我認為有能力的人應該有資格和權利使用公立醫院的服務，而不應該因為他們有能力而不准他們使用。

PRESIDENT: I now invite Mr MOK Ying-fan to speak on the two amendments. You have five minutes to speak on the amendments, Mr MOK.

莫應帆議員致辭：主席先生，首先，我想向兩位就我的議案提出修正案的議員致謝，因為基本上他們對我的議案是一字不改的。李卓人議員只是加上了應該全面取消逐項收費政策，而梁智鴻議員則提出了“合理化”的問題。

有關全面取消逐項收費這問題，我相信大家都記得，本局在九五年曾經就此進行辯論，並通過議案，要求取消這政策。 生福利科實在應該按照立法局所通過的方向實施政策。然而，剛才多位議員都已清楚表示，政府不但沒有隨這方向施政，還多加了數項收費項目。這種倒行逆施的方式，民協是完全不能支持的。因此，我們會支持李卓人議員的修正案。

至於梁智鴻議員的修正案，正如我剛才所說，我們是不會支持逐項收費政策的。不過，我相信如果李卓人議員沒有在原議案中加上取消逐項收費政策，梁智鴻議員會支持我的議案。

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am grateful

to Members for offering their valuable insight and ideas on possible ways in which we can improve the quality of life for chronically ill patients. A number of points covered in this debate touch upon employment, to which my colleague, the Secretary for Education and Manpower, will respond separately.

Let me first of all refer to medical care. Chronically ill patients are a special group requiring regular medical assessment and treatment from the private or the public sectors. In the public sector, all our general clinics operated by the Department of Health are providing these patients with a full range of preventive and curative services, referring them for specialist treatment as and when necessary. Our new Unit Medical Records System, which allows for the systematic storage and retrieval of clinical information complemented by an appointment system providing for the advance booking or follow-up consultation, has also served in many ways to enhance the continuity of care for our chronically ill patients.

In addition to investigations and medication, chronically ill patients receive health education and counselling through group health talks and video shows on a variety of different topics. Those suffering from the same illness are encouraged to form patient groups to facilitate experience-sharing and mutual support.

With the same spirit in mind, the Hospital Authority (HA) has set out in its annual plan, 1996 to 1997, a number of new initiatives to strengthen the medical care for chronically ill patients and to improve the support for community carers. These initiatives include two additional rehabilitation co-ordinating teams and four additional specialist medical teams to provide outreaching services as well as eight Patients and Carers Resource Centres to promote the concept of self-help. Additional facilities will be available in the Hospital Authority Head Office building currently under construction for use by community organizations and patients' groups.

Apart from infrastructure support, self-help groups may also apply for grants from the Health Services Research Fund or the Health Care and Promotion Fund to implement projects aimed at promoting the welfare of chronically ill patients. We believe this is the best way to achieve the greatest impact in promoting the interests of chronically ill patients.

The increased popularity of self-help groups and the rapport developed among patients will provide a very useful forum from which medical needs of chronically ill patients could be gauged in shaping our policy in the provision of medical services.

On community services, some Members have urged us to provide and improve the level and scope of supporting services for chronically ill patients. The Community Rehabilitation Network of the Hong Kong Society for Rehabilitation is a successful example to show how voluntary agencies can complement the services provided by the Government through group work, by social gatherings and educational programmes for patients and their families. The Network comprises two centres in East Kowloon and Hong Kong Island at the moment, with a third centre being planned for West Kowloon. It would be prudent for us to evaluate the effectiveness of this new service in the light of experience to assess future demand and to minimize the potential duplication with other community services before contemplating any expansion through an injection of public funds.

As part and parcel of our efforts to safeguard the interests of chronically ill patients, those who are in a position broadly equivalent to 100% loss of earning capacity due to total disablement will be eligible to receive a disability allowance of $1,125 each month, or a higher rate of $2,250 each month if in need of constant attendance. The disability allowance is a non-contributory and non-means-tested allowance, aiming to assist families caring for a disabled member. For those chronically ill patients in financial need, they will be eligible for the means-tested Comprehensive Social Security Assistance at a standard rate of up to $3,545 a month to meet basic needs such as food and clothing. In addition, special grants are paid to meet other needs such as accommodation and medical appliances. They will also receive treatment free of charge at public hospitals and clinics. Others in need may apply to the Samaritan Fund for partial or full assistance.

Several Members referred to the need to examine the procedures involved in application for grants from the Samaritan Fund. I can assure Members that we will keep the procedures under close review and propose suitable improvements where necessary.

Some Members have raised the need to provide an equal social status for

chronically ill patients. This spirit is enshrined in the Disability Discrimination Ordinance which provides a comprehensive redress system in areas of life where people with a disability may face discrimination, harassment or vilification. These cover employment, education, transport, access to buildings and services, participation in professional organizations, clubs and sports. Anyone who is facing discrimination may take their complaint to the Equal Opportunities Commission or direct to the courts in the event that conciliation fails. The law will in itself perform a public education function to complement our other efforts to educate the public to understand the needs of people with a disability and to accept them warmly into our community.

Regarding medical examinations, it is unlawful under the Disability Discrimination Ordinance to impose special information requirements on people with a disability. In other words, employers cannot ask such people for information they would not ask of people without a disability. As for information of a medical nature specifically, an employer cannot ask a prospective employee to provide such information unless it is necessary to determine if the candidate would be unable to carry out the requirements of the job concerned or would require special services or facilities to take up the job.

Medical fees and charges has often been the subject of debate in this Council, and I do not intend to rehearse all the relevant arguments except to reassure Members that we are examining carefully this complex issue in the context of our health care financing strategies. In doing so, the Government is conscious of the need to safeguard our established principle that no person should be prevented from obtaining adequate medical treatment through lack of means, to focus available resources on those in genuine need for subsidized medical care, and to ensure that the private sector can continue to play an effective role.

Before closing, however, I should clarify one point which a number of Members have mentioned, and that is the point concerning itemized charges. Members have referred to itemized charges on many occasions. These are in fact items required by patients for their different medical conditions which they have to purchase themselves. This has been the practice for quite a long time, and certainly before the HA was set up. These should not be confused with the itemized charges put forward in the public consultation document in 1993.

Those are my remarks, thank you, Mr President.

教育統籌司致辭：主席先生，政府一直關注長期病患者的就業需要，並做了不少工作。我們會繼續努力，為長期病患者提供更多就業機會。

有幾位議員提及勞工處的展能就業服務，我想在此詳細解釋一下。勞工處展能就業科為那些能夠擔任公開招聘職位的殘疾人士，包括長期病患者，安排工作。展能就業科設立資料庫，儲存適合長期病患者工作的就業資料，以提高就業選配和安排就業服務的成效。

為使社會人士明白長期病患者具備工作能力，展能就業科剛剛完成一份名為“傷健就業工作指南—長期病患者”的指引，解釋各種長期疾病，強調長期病患者依然有工作能力和提醒僱主要注意的事項，使長期病患者僱員能夠增加信心，發揮所長。

長期病患者是展能就業科負責的其中一個殘疾組別，因此，為增加殘疾人士就業機會而進行的宣傳和教育活動，都會顧及長期病患者的就業需要。這些教育活動包括為僱主舉辦研討會、訪問可能僱用殘疾人士的僱主、印製就業簡訊，以及為表揚殘疾僱員和他們的僱主舉行頒獎禮。此外，該科已經製備集中介紹長期病患者工作能力的新展板，並會在舉行流動展覽時，與介紹殘疾人士工作能力的展板，一同展出。

剛才我提到的“傷健就業工作指南 — 長期病患者”指引現正送予各個僱主協會和僱主。我們也樂意把這份指引送給關注這問題的議員。

一直以來，展能就業科與致力促進長期病患者福利和權益的自助組織緊密合作，設法增加長期病患者的就業機會。

有議員認為僱員再培訓局在協助長期病患者找尋工作方面，在運作上存有弊端。我想在此澄清，僱員再培訓局在這方面有良好的成績，例如伊利沙伯醫院是僱員再培訓局其中一間培訓機構，該局為伊利沙伯醫院提供經費，開辦一項專為長期病患者而設的僱員再培訓課程，這項課程是有關中文文字處理和文書工作。到現時為止，共有 44 名學員接受再培訓，其中 28 名已找到工作，大多是文書性質。僱員再培訓局現正考慮把這項課程擴展至其他醫院。此外，除了特別設計的課程外，長期病患者當然亦可和其他殘疾人士一樣，報讀其他再培訓課程，例如電腦、英語、普通話和轉業錦囊課程。

政府現正開始全面檢討僱員再培訓計劃。我們會在檢討時探討長期病患者在再培訓方面的需要。

謝謝主席先生。

Question on Dr LEONG Che-hung's amendment to Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Dr LEONG Che-hung claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Dr LEONG be made to Mr LEE Cheuk-yan's proposed amendment.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: One short of the head count. Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Howard YOUNG, Miss Christine LOH and Mr Ambrose LAU voted for the amendment.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the amendment.

Mr YUM Sin-ling abstained.

THE PRESIDENT announced that there were 10 votes in favour of the amendment and 27 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Now that Dr LEONG's amendment has been negatived, we will take a vote on Mr LEE Cheuk-yan's amendment.

Question on Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Mr Fred LI claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to

vote on the question that the amendment moved by Mr LEE Cheuk-yan be made to Mr MOK Ying-fan's motion.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.
Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Howard YOUNG and Miss Christine LOH voted against the amendment.

Mr Ambrose LAU abstained.

THE PRESIDENT announced that there were 28 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Mr MOK Ying-fan, although your original motion has been amended by Mr LEE Cheuk-yan's amendment, you are still entitled to reply and you have three minutes 28 seconds out of your original 15 minutes.

莫應帆議員致辭：主席先生，中國人有一句說話：“小病是福”，但如果對於長期病患者來說，便不是福了，而是很慘痛的遭遇。剛才 生福利司和教育統籌司都異口同聲地說，他們為長期病患者做了很多事，可謂貢獻良多。不過，我很希望他們今天在這裏所說的話均能夠在未來一一兌現。

我希望政府會特別留意對長期病患者互助組織的資助問題。現時政府給予互助委員會900元的資助，甚至會向一些互助委員會在屋 提供會址。我覺得政府應該考慮到長期病患者利用自己的私人時間，以帶病之身為其他病人服務，這種精神更值得政府給他們資助，使他們能有一個互助組織。我很希望政府能在這方面切實考慮，在經濟上向他們提供一些津貼，使他們能有一個可供活動的會址，以及一些適當的職員，協助他們進行有關的工作。

Question on the motion as amended by Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Dr LEONG Che-hung and Mr MOK Ying-fan claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I am sure that Members all know that they are now called upon to vote on the question that Mr MOK Ying-fan's motion as amended by Mr LEE Cheuk-yan's amendment be approved.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Still one short of the head count. Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI and Mr Howard YOUNG voted against the motion.

Miss Christine LOH abstained.

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

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 1 May 1996.

Adjourned accordingly at fifteen minutes past Eleven o'clock.