第四,《基本法》第四十條規定: "新界原居民的合法傳統權益受香港特別行政區的保護。" "小型屋宇政策"下的建屋權利是新界原居民最重要的合法傳統權益,毫無疑問受到特別行政區《基本法》的保護。

主席,"小型屋宇政策"實施至今已有二十多年,近期一些參政人士不斷對該項政策提出意見,新界鄉議局同意特區政府成立後,有關部門對該項政策作出檢討,並向鄉議局進行諮詢,當然檢討的目的是要更好地解決鄉民的住屋需求。陸恭蕙議員提出的條例草案完全無視"小型屋宇政策"制訂的歷史背景,以及其實際效用,只求取消該項政策,而不考慮其後果,正是有破壞,無建設。倘若"小型屋宇政策"被取消,為數眾多的鄉民在不能自行建屋的情況下,自然誓要當局作出安排,令鄉民同樣可以申請公屋、居屋,變成要與廣大市民共同爭奪已經緊拙的資源的局面,這樣必然嚴重影響香港的房屋政策,大大加長香港市民輪候公屋、居屋的時間。

主席,我謹此陳辭,反對陸議員的議案。

MISS MARGARET NG: Mr President, I should like to state for the record that I support the Bill. Once we have decided to promote equal opportunity by legislation, we should press ahead and not drag our feet. The performance of the EOC so far has not given us the confidence that no further legislation such as the present one is necessary.

However, I do make one exception and that is, of clauses 12 and 24, with relation to the notorious small house policy. I say it is a notorious policy and I will not defend it. Indeed I doubt if it is defensible. It was brought in over 20 years ago as a pragmatic solution in the eyes of both the Administration and indigenous villagers. In the eyes of the villagers then, it was one side of a two-sided bargain. By now a complicated network of rights, expectations and obligations has arisen. The policy cannot be abruptly terminated within a fixed period of one or two years without some clear idea of how problems which may be generated may be dealt with. An injustice might be done.

I fear my stance will please neither the Honourable LAU Wong-fat nor the Honourable Miss Christine LOH. Nevertheless, my view remains that the small house policy must be scrapped and the Administration should carry out the review with that in mind with expedition. But I would not go so far as what

clauses 12 and 24 propose. I would, therefore, vote against these clauses while supporting the rest of the Bill.

Thank you, Mr President.

馮檢基議員致辭:主席,我今天代表民協就陸恭蕙議員所提出的男女平等的 修訂發表我們的意見。在陸恭蕙議員的修訂中,我認為男女平等基本上是沒 有人反對的,沒有人認為這個世代還可以男高於女或女高於男,應該大家都 一樣。

問題是應如何去執行,執行的方法如何,怎樣去立法?可能不同的地方或不同的國家會有不同標準或時間表。因此,我對陸恭蕙議員所提出的有關修訂,有部分我們是會支持的,尤其是那些與民生有直接關係的;有部分我們則會提出反對。至於哪些部分會被支持和反對,我們民協的廖成利議員會提出。

我會集中討論小型屋宇政策及民協對這政策的意見。就小型屋宇政策而言,民協自從成立以來,在其政綱上及以往提交予政府的文件內,特別有關房屋的文件,已清楚表明我們希望在九七後小型屋宇政策(或者我稱它為"丁屋政策")應該予以取消。理由是雖然我們尊重中國的傳統,尤其是數百年以來新界的原居民也有男丁可獲配屋的政策。這個政策之所以能存在至今,是由於英國政府取得香港作為殖民地,又以新界作為租借地後而產生的外國人管治中國,使中國的傳統可能受影響而制訂出來的其中之一項政策。在這政策的發展過程中,我相信劉議員和張議員會較我熟悉,剛才已提過,我這裏不再重複。從整個發展過程中,我們可見直到現在,整個社會開始都市化,如原居民其實跟其他市民基本上分別不大的話,我預期在一九九七年的來臨,這丁屋政策應該予以取消。

按陸恭蕙議員有關小型屋宇政策的修訂,我認為那是與民協的政策方向有異。不同之處在於她以男女平等的問題去處理小型屋宇的政策,而不是直接去面對小型屋宇政策。

所謂以男女平等的方法去處理丁屋政策的意思 — 主席,我想申明丁屋政策的意思相等於我剛才所指的小型屋宇政策,不過,我使用了一個通俗的說法而已 — 不同之處是指如根據陸恭蕙議員的修訂,而這修訂又獲通過的話,便會產生兩個可能性。其中一個可能性是為了男女平等,在新界不論男或女都不能再擁有丁屋。另一個可能性是無論男或女都可擁有丁屋。不

論如何作修訂,這個丁屋政策仍然繼續存在。丁屋政策若仍然存在,則與我們民協一向所談的在一九九七年七月一日以後不應該有丁屋政策論調是不相符的,甚至可說是"有"與"沒有"的矛盾。因此,我們認為在爭取及作出取捨時,我們應爭取的是"沒有"丁屋政策。若然真的沒有了丁屋政策,其實也返回了男女平等的境地,因為這樣東西已不再存在,"有"與"沒有"根本已無分別。因此就丁屋政策的問題,我們認為應更進一步去爭取如何取消丁屋政策,而不是透過丁屋政策去顯示原居民中住屋問題上的男女平等。如男女都獲配丁屋,另一種不平等的情況便會出現。為何每個男或女的原居民都有一間屋,而住在九龍或香港島的市民卻沒有?這又會造成另一種不平等情況。

我們認為在這問題上,我們與陸恭蕙議員最主要的核心矛盾是,我們要 "斬纜",我們要取消原居民的丁屋政策。這是我們之間最大的分歧。在處 理這項問題上,我們希望能達到一個最終的目的,看到政府真的將丁屋政策 或小型屋宇政策作出一個"斬纜"的方向,我們感到這做法是值得支持,否 則陸恭蕙議員的修訂會令法律上仍然保留小型屋宇政策,即這法律一天沒有 被取消,這政策仍要繼續。故我們認為這政策與民協的政綱是不相符,甚至 有矛盾。

究竟面對這情況,我們應如何處理?我們明白矛盾之處是這個小型屋宇政策並非在今天才出現,而是已存在有數百年之久。如果我們在今天將它"斬纜",即是對目前原本登記了有丁屋的人(但他們在十多二十年來還沒有獲政府批准)說他們應該是沒有這項權利的,這便會引致政策上出現另一個問題,即有否"追溯"的效力。

據我從資料中了解,要申請丁屋須先符合某些條件。但從政府的資料所顯示,直到目前為止已有 13 300 個原居民是完全符合政府所規定的條件。如他們擁有土地的話,是可以獲准建丁屋。但由於有這批人仍未獲准興建丁屋,在我們"斬纜"時不批給他們的話,便會有人質疑政府在行政上是否故意不批准,因為其實他們在 20 年前、10 年前或 5 年前已可以獲准建屋,只是政府一直不批准而導致他們今天沒法擁有,這是否一個公平或有追溯力的政策呢?這裏又產生了另一種不公平現象。

讓我學個我自己熟悉的例子。當普通居民申請公屋,以 4 人家庭為例,入息限額不超過 14,700元,家庭人口超過半數居港 7 年或以上,即 3 人或以上居港 7 年,加上其他方面的調查都能符合才可獲配公屋。這裏會出現的情況是,輪候人士中 — 政府每年調查 3 萬個家庭 — 有 13 300 個家庭都獲政府書面通知已符合資格及可獲配公屋,但要等候有單位才能分配。可是,到了第二天,政府抱歉地表示一個單位也不能編配。那麼,那 13 300

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個家庭的反應會如何?作為服務公屋的我們,我相信其他同事,尤其那些直選同事,都會為那些家庭爭取到底。假設還有更需要公屋的人,他們比輪候人士較為急切,政府是否應先配給他們而不是配給在輪候的人呢?因而會出現的情況是,當政府確實曾以書面同意批准編配公屋,後來變成沒有,問題便會產生。

我們認為直到目前為止,最重要是達到目的,即政府清楚地顯示其最終會取締或替代丁屋政策。這過程是要有時間上的"斬纜",即是說我們先定下日期,在此日期前能符合條件的可截為定數,而政府日後須設法處理這個數目的丁屋申請人數,或以另外的方法去取締或以另一個方式去替代這丁屋政策。至於在這日期後,無論他們生育多少兒女都不能再獲配任何丁屋,我認為這才是作為政府所應考慮的方向。

在今天的辯論問題上,我感到煩惱。如我們投反對票的話,似乎我們是 反對男女平等,反對陸恭蕙議員一大套有關我剛才提過那些沒有人能反對的 男女平等政策。如我們投贊成票便會產生我剛才所說的種種問題,怎樣才好 呢?這並沒有達到我們取締丁屋政策的目的。

如我們投贊成票的話,便會出現另一個矛盾。我們民協的目的不能達到,即最後要取締丁屋政策,使在法律取消了丁屋政策。如我們投反對票的話,可能會遭人誤會或出現矛盾或明天遭人指罵,說民協也反對男女平等。這幾天以來,民協就丁屋政策問題已開過 4 次會議,長達十多小時的會議來辯論及討論究竟民協應如何處理這問題。

最後,我們達成了一個共識,我們希望這做法能成功。我們透過今天下午進行了這工作,請容許我在此說一些話,談及我們今天所做過的事。我們首先與劉皇發議員清楚說明民協的立場,我們希望能達到這樣的目的。第二,我們與香港政府的官員,包括在座的政務司,提出我們的見解及希望政府能對我們作出承諾,政府是否願意將來有日見到丁屋政策被"斬纜","斬纜"後再沒有丁屋這東西。當然,將來採用甚麼政策或法例來處理這個問題,政府可能須要考慮。當時我們提出一個意見予香港政府,最後(我不欲在這裏討論整個過程)我認為我們已能達成一個共識,即香港政府同意在今年的第三季內,成立一個專案委員會,研究如何處理替代現行的丁屋政策。有人會懷疑政府會否研究10年至20年,50年不變還要研究下去呢?其次,"如何"可能是另一個變數,使同意與不同意或繼續下去還可以呢?無疑,我相信稍後政務司會清楚答辯,所指的研究是1年還是50年。當然,我認為整個共識最重要的幾個字是"如何處理替代",即設法去替代或調換丁

屋政策,丁屋政策不應再存在,據我所理解,這是委員會的方向。如我這個理解不遭政府反對,我認為這個理解應值得支持。其實,我也憂慮到與政府說完後,香港政府會否稍後又指九七年七月一日前是香港的英國政府有效管治;很抱歉,七月一日後是由特區政府管治,與他們無關,因為法統不同。

此外,今天下午,我曾親自往特首辦跟特區首長會面,向他談及以下的一句話,也獲特區首長董先生親自同意,即政務司在今天的辯論中所說的,他表示七月一日後的特區政府會將今天所說的話作出承擔。我希望特區首長能"說得出,做得到"。

正因時間只剩餘三、四分鐘,我原打算談如何代替現行丁屋政策的方案。不過,稍後我還有時間可在第 12 條再辯論這方案,我今天只集中提出剛才所說的丁屋政策原則、處理過程及現時無論現任政府或特區首長董先生所達成的共識,即政府在第三季內成立專案委員會,研究如何處理替代現行的丁屋政策。我希望一些支持這做法的人都能聽到,我更希望劉皇發議員及一些在座原居民都聽到,我期望你們了解,時代已改變,我們需要將一些舊政策也改變過來。但我同意如政府曾書面批地予他們的話,我也希望他們同意以另一個方法處理問題。當然,我希望他們的下一代"仔大仔世界",讓他們自己作打算吧!

謝謝主席。

蔡根培議員致辭:主席,陸恭蕙議員的條例草案內提到現行的"新界小型屋宇政策"。如此條例通過成為法例後,該項"丁屋政策"一至兩年將終走生效,為此,本人反對這項條例草案。當我們審議此項政策時,不能只從表面情況去看,必須先了解其歷史背景及政治原因。尊重男女平等人的印象是更明之化。"丁屋政策"給人的印象是是一個錯誤概念。要真正了解問題是是一個錯誤概念。要真正了解問題是是一個錯誤概念。等是是一個錯誤概念。等是是一個錯誤不可解問題,有是是有權利人有權的人士四人等與人主之後,他們對土地的擁有權被剝奪了,變成英國皇室所有,他們原有建定的權利因殖民統治而受侵蝕。現在一些人士四口聲聲說丁屋是殖民統治權則是因為他們不了解過去歷史,實際是因殖民統治可以是是殖民統治權利受到剝奪。如果口口聲聲說重視人權,為甚麼不提出這點呢?正如在美洲的印第安人遭受白人殖民統治者掠奪土地後的今天,恢復給予他們一些權益,便被視為特權嗎?

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至於"新界小型屋宇政策"是港府於一九七二年訂立的。當時,香港人口越來越多,政府需要發展新界及制訂"居住政策",惜未能惠及新界居民。鑑於新界本身亦同樣存在環境改善及居住的需求,從而確立此項政策,令鄉民可以在自己鄉村300呎範圍內申請在自己擁有的土地上自費建屋。最初,不論男女,不論是否原居民都可以申請,其後才逐漸收緊政策,改為以男性原居民一生只可申請一次,而且在物業轉讓時,需補地價予政府,這並不是免費和平白得來的。此外,目前亦只局限於有其實際需要及傳統背景的男性原居民。傳統上,女性嫁夫後會離開本村入住夫家,沒有在原村居住的需要,相反,男性原居民結婚後便會留在本村開枝散葉,故有居住建屋的需要。另一方面,怎樣確定新界原居民,是按父姓追溯,才有根據,這與歧視婦女無關。

主席,《基本法》第四十條列明: "新界原居民的合法傳統權益受香港特別行政區的保護";傳統上,新界原居民在其擁有的土地上建屋自住,應視為其合法傳統權益,應受到《基本法》的保障。陸議員提出的條例草案,是違反《基本法》的。

主席,本人謹此陳辭,反對陸議員提出的條例草案。

劉健儀議員致辭:主席,今天辯論的目的,並非在討論應否制定法例把性別及殘疾歧視列為違法行為,而是要討論應否現在便修訂《性別歧視條例》和《殘疾歧視條例》,而不顧我們在實施該兩條條例所得的實際經驗。

坦白說,我十分欣賞陸議員要盡快徹底消除性別及殘疾歧視那份熱誠, 然而,空有熱誠,而未能配合適當時機,最終是欲速不達。

很多在座的議員當會記得,該兩條條例是立法局在一九九五年經過冗長 而全面的辯論後,才告敲定,並於一九九六年(即去年)十二月全面實施。 平等機會委員會在去年九月才正式運作,而該委員會就這兩條條例制訂的僱 傭實務守則,亦剛剛於去年十二月才獲立法局正式通過予以推行。由於法例 全面實施不足半年,而平等機會委員會的運作亦只是剛剛起步,在現階段最 重要的還是給予市民充分時間了解新法例所賦予他們的法定權利和義務,讓 平等機會委員會累積一些實踐經驗而作出檢討,考慮是否需要修訂有關條 例。自由黨認為在現階段倉卒地修訂法例,不僅會令公眾感到混淆,而且亦 會影響平等機會委員會在協助市民了解和遵守該兩條條例方面所做的推廣工 作。 不過,我的論據對陸議員來說可能完全沒有意思,完全聽不進耳,因為 陸議員去年七月刊登憲報,提出修訂《性別歧視條例》及《殘疾歧視條例》 時,兩條條例草案仍未完全生效和未實施,可見陸議員根本沒有考慮是否有 實際需要提出修訂,亦沒有顧及平等機會委員會的實際運作,只是為"修訂 而修訂"。當然陸議員的條例草案大部分條款是曾經在九五年時由胡紅玉議 員提出,而沒有被本局接納的修訂,現時陸議員要求推翻本局不足兩年前所 作出的決定,肯定會損害立法局的公信力,更令廣大市民感到混淆,繼而無 所適從。

外國的經驗告訴我們,在修訂反歧視條例方面,實在不應操之過急。舉例來說,香港的《性別歧視條例》是以英國的《性別歧視法令》為藍本,但英國在一九七五年通過該法令後,直至一九八八年,即《性別歧視法令》實施十多年之後,才提出正式的修訂建議;即使這樣,據我所知,一九八八年所提出的建議修訂當中,很多並不為英國政府所採納。因此,現時英國的《性別歧視法令》條文,大體上仍與一九七五年最初制定時的條文相同。既然其他國家能給予其公民充裕的時間熟習及適應,為何我們要急於修訂《性別歧視條例》及《殘疾歧視條例》,以至市民在短期內難以了解並接納該兩條條例呢?

自由黨認為政府應給予市民充裕的時間去消化和吸收該兩條反歧視法例。我們當務之急是增強市民對該兩條法例的認知及接受程度,而公眾教育是需要假以時日才能收效的。從法律觀點來看,對法律的無知並不構成辯護理由;但從社會和道德角度來看,某人若因未有機會熟習某法例以致觸犯該法例而被罰,則似乎有欠公允;因此,倉卒和操之過急去修訂《性別歧視條例》及《殘疾歧視條例》,只會令平等機會委員會為使市民熟悉該兩條條例而推行的公眾教育及宣傳活動受到打擊。

據我所知,平等機會委員會已積極推廣有關僱傭實務守則。我相信香港僱主一般都支持在僱傭方面,人人享有平等機會,以及在工作間實施一視同仁的做法。在守則推出後,很多僱主其實已花了不少人力、物力,聘請律師及人事顧問研究守則內指引,為其公司制訂及推行新的人事政策,確保條例的規定得以遵行。一旦通過陸議員的條例草案,這些僱主過去的努力可能白費,需要再投資重新再做,對這些僱主來說,這種朝令夕改的施政,對他們公平嗎?

陸議員建議重新界定"間接歧視"一詞的定義。禁止"間接歧視"的條 文在任何反歧視法例中均屬重要的條文,現時的定義是否非這麼快修改不 可?建議的定義在哪方面較現有的定義可取?在新的定義下,僱主應怎樣做才可免被檢控?這新定義對現行人事政策和做法有何影響?這些問題都是倡議或支持條例草案的人應該向僱主逐一清楚解答的問題。

自由黨注意到平等機會委員會承諾在該兩條條例實施 1 年後,即在今年十二月,即數月之後,便會對該兩條條例進行全面檢討。試問在檢討該兩條條例方面,還有誰比委員會更勝任呢?陸議員的條例草案所建議的修訂有何迫切性,以致我們需要在委員會檢討前搶先作出決定?任何法例的修訂,均需事實、數據和有力的論據來支持,在現階段這些資料是欠奉的。作為審慎的立法者,我們是絕對不應該草率地、只憑感性去修訂法例。

對於陸議員就平等機會委員會的職能所建議的修訂,我認為值得商権; 陸議員要求委員會執行推廣與兩條反歧視條例有關的國際公約,我們應該明 白平等機會委員會的成立是執行及推廣我們這兩條反歧視條例,若委員會同 時在另一邊廂推廣國際公約,這樣只會混淆視聽,令市民無所適從。

至於陸議員建議平等機會委員會可在法院許可下,處理申訴人在法院撤回的訴訟,我認為既然其申訴人已放棄在法院討回權利,委員會是不應該有責任將訴訟延續。陸議員所建議的,可能令香港成為一個像美國一樣鼓吹訴訟的社會;另一方面亦會增加委員會額外的工作量。

陸議員可能認為將兩條反歧視條例中對小型企業的豁免期由3年縮短至18個月,以及取消部分豁免項目,例如:小型屋宇政策、保安措施等,便更能保障市民免受性別及殘疾歧視。我認為陸議員是只顧理想,而沒有充分考慮這樣做會帶來負面影響。

在九五年辯論《性別歧視條例》時,部分議員曾指出反歧視條例沒有要求小型企業作出重大的投資或改變,故此,沒有需要長達3年的豁免期;但事實上,少於5人的小型企業,尤其是那些家庭式企業,由於本身沒有一套清晰及有系統的準則,處理招聘及晉陞,.....

PRESIDENT: Miss LOH, do you have a point of order?

MISS CHRISTINE LOH: Mr President, as regards some of the amendments that the Honourable Mrs Miriam LAU said I am making, I am intending to move Committee stage amendments to close them. So I think she might like to read

the Committee stage amendments first.

主席:如果你要求澄清的話,若劉議員願意讓你提出,你便可以提出。劉議員,你願不願意?

劉健儀議員:主席,我會澄清陸議員所提及的一點。

在九五年辯論《性別歧視條例》時,部分議員曾指出反歧視條例沒有要求小型企業作出重大的投資或改變,故此,沒有需要長達3年的豁免期;但事實上,少於5人的小型企業,尤其是那些家庭式企業,由於本身沒有一套清晰及有系統的準則,處理招聘及晉陞,強行在短期實施反歧視條例,對小型企業將造成困難;部分僱主更可能因害怕觸犯反歧視條例而結束行業,最終受害的仍是小僱員。當然陸議員剛才說得對,她將會於委員會階段提出一些修正去刪除其原先的一些建議,但我現在說的論點,始終是基於陸議員原先的條例草案內容。當然,陸議員稍後在全體委員會審議階段提出修正,當然完全是陸議員的權利,會否獲得通過則是本局議員的決定。我覺得對陸議員原先條例草案提出的論點,需要作出一些回應,以記錄在案,以便陸議員稍後或將來的日子再提出時,我可以有所依循。

回看我的講稿,有說到條例草案亦建議取消豁免小型屋宇政策,並建議當局應在條例通過1年後撤銷小型屋宇政策。小型屋宇政策影響數以萬計的新界原居民,社會人士對這項政策意見不一致。純粹基於兩性平等理由而要廢除小型屋宇政策,等於說女性由於未能受惠,所以應撤銷男性享有的優惠。女性沒有,男性也不該享有,這可能被人批評是妒忌而非要求平等。況且,將市民的一些既有權益取消,尤其是強行透過立法程序來將它取消,這又會否造成另類不公平呢?政府現正檢討小型屋宇政策,今天亦有更多承諾:會於數月後再成立一個特別委員會去處理等,政府正積極處理。我認為政府應盡快進行檢討,並廣泛諮詢受影響的人士,徹底解決丁屋政策帶來的複雜問題。我不能夠贊成在檢討有結果之前,倉卒地由議員提出"一刀切"廢除小型屋宇政策的修訂。

保安措施本質是屬於緊急措施,基於緊急措施很多時是難以預測的,因此,即使政府未有列擧這些措施的例子,我認為亦有其道理,不應作為刪除這些豁免條文的理由。

立法局 一 一九九七年六月十一日

主席,反歧視條例是需要時間實踐,而教育市民消除歧視並非一朝一夕 能做到;陸議員的條例草案無疑會對已實施的兩條反歧視條例,以及平等機 會委員會的運作造成重大的沖擊;因此,本人謹此陳辭,反對《1996年性別 及殘疾(雜項規定)條例草案》。

顏錦全議員致辭:主席,由陸恭蕙議員提出的《1996年性別及殘疾歧視(雜項規定)條例草案》,目的是加強及改善《性別歧視條例》和《殘疾歧視條例》。但這兩條例實施至今還不到1年的時間,市民實在需要時間去了解有關條例的條文,如果現時貿然對有關條例作出修改,只會令市民無所適從,根本無助改善歧視問題。

再者,負責實施這兩條條例的平等機會委員會在去年九月才開始運作,尚未累積足夠實施兩條條例的實際經驗,現時提出修訂未免言之過早,而且平等機會委員會已承諾在今年年底就這兩條條例進行全面檢討,議員似乎應待委員會完成檢討後,再行決定應否作出修訂,而不應現時倉卒行事。

至於陸議員提出要取消現行《性別歧視條例》內一些例外條文,更是 "只懂提意見而不顧後果的做法"。以撤銷小型屋宇政策為例,陸議員重 申,她不是要取消小型屋宇政策,而是希望令女性不再受到性別歧視。她指 出,其實條例草案獲通過後,女性原居民也可向政府申建丁屋,但政府是否 批准,則由政府決定。至於政府因此而要多批出多少土地,或因土地不足而 取消小型屋宇政策,則不在其討論範圍。這種不顧後果的言論似乎不應出自 本局議員之口,香港距離回歸不足 20 日,任何重大的變故亦會影響平穩過 渡,故此議員的立法更須審慎行事。

我想在此強調,民建聯並非反對男女平等,但小型屋宇政策與性別歧視無關,而且當局現正檢討小型屋宇政策,在未有結果之前,實不宜妄下結論,應暫時保持現狀。即使政府日後的檢討結果是決定撤銷小型屋宇政策,亦應切實考慮目前男性原居民因基於擁有祖堂物業而無法申請公屋和居屋的問題。

至於將在紀律部隊中分配宿舍列為例外情況的問題,當局已解釋如果不保留這些條文,政府為了應付單身紀律部隊人員的申請,將須興建更多宿舍,或令已婚人員需輪候更長時間才可獲分配宿舍,在有關當局尚未找到解決辦法,陸議員即強行作出修訂,只會令事情惡化。

主席,立法是一件嚴肅的事情,立法者在立法時除應考慮是否切合社會大多數人的需要之外,亦應顧及政府的承受能力及市民的長遠利益,在這個大前提下,民建聯決定反對陸恭薫議員的議案。

本人謹此陳辭。

謝永齡議員致辭:主席,民主黨支持《1996年性別及殘疾歧視(雜項規定)條例草案》。民主黨會分幾個部分來討論這條例草案,我會集中討論殘疾歧視,而黃偉腎議員會集中討論性別歧視。

在殘疾歧視方面,陸恭蕙議員提出的修訂主要是有關平等機會委員會的職能及權力。其實,平等機會委員會近一年的工作大家都有目共睹,就是令人失望。我會給它不及格的,特別是在殘疾歧視方面,有很多個案可表示到它並不稱職,特別是在"黃金海岸酒店"這件事件中,拒絕弱智人士的服務是不能獲得寬恕的。很多婦女團體都形容平等機會委員會的能力不足,我便會用"先天不足,後天失調"來形容平等機會委員會。

何謂"先天不足"?平等機會委員會是由《性別歧視條例》及《殘疾歧視條例》所產生的,而"後天失調"是指現時的領導人才實在差勁。就目前的平等機會委員會而言,它的職權狹窄,權力少,工作差,工作往往是被動的,我只能用一個字 — "弱" — 來形容平等機會委員會的辦事能力,很多時候,平等機會委員會都會從一個研究的角度出發,缺乏主動,因而所辯理的個案數目非常少。若歧視是錯的話,為甚麼我們要容忍它的存在呢?無論今晚條例草案通過與否,民主黨都希望政府和平等機會委員會日後更主動,若然有錯的話,應該加以改正,特別是在保障人人享受平等機會,免被歧視這方面要做多些工夫。

其實,在審議陸恭蕙議員的條例草案過程中,我們花了很大部分時間討論究竟是教育重要還是立法重要呢?很多反對這項條例草案的團體都持着既然教育可以達到平等機會這個目標,我們便無須要立法了!但是,假如沒有法例作為底綫,沒有清晰的條文的話,怎樣去教育呢?民主黨當然是支持教育及立法應是並重的,特別是談及平等機會委員會,我們是支持陸恭蕙議員的建議,即平等機會委員會可以其名義提出法律程序,以增加其獲取資料的權力。民主黨支持加強平等機會委員會的權力及落實"人人平等"這個精神。

以下我想簡單地回應民協剛才的發言。民協認為他們會滿意政府在今年第三季才研究取締丁屋的政策,其重點是今年才開始研究取締丁屋的政策。其實,民主黨聽過這所謂"共識"後,感到非常失望,為甚麼呢?因為一九九五年七月,當《性別歧視條例》及《殘疾歧視條例》通過時,政府已經白紙黑字寫明在立法局會議紀錄上,說明答應開始檢討,但是在一九九七年中,還未開始,那麼其誠意的程度是在哪一水平呢?我們不能不懷疑政府一向採取一個迴避態度去面對丁屋問題。在此,我想提醒民協的朋友,政府並沒有保證會廢除這個不公道、不公平、存在着歧視的丁屋政策,它是沒有保證會執行那方面的替代,它只是說會研究。

第二點,我希望民協不應以一貫的作風,看見一些假仁假義的作風,便找藉口來不支持兩性平等。民主黨只會支持有時限的檢討,因為現時政府答應民協的,是沒有提及時限,我們不介意有兩、三年,甚至是5年,但要說出一個時限以表示有誠意,作出檢討,但是兩年已過去,檢討還未開始,我們怎樣可以相信政府是有誠意去檢討呢?因為研究可以是10年,甚至20年、30年,研究的結果會是怎麼樣呢?可能未研究之前,我們一定要有一個不單止時限方面的原則,而是說檢討也需要有一個原則,這個原則便是不歧視及在公平的原則下,才開始研究,因為研究並不代表替代,因為可能研究三、五、七年後,返回立法會,研究結果都是不替代。我認為對於社會,甚至對於原居民也不公道。無論政府怎樣游說民協,如果沒有時限,或沒有平等原則的檢討,民主黨是絕對不會支持的。

謝謝主席。

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

代理主席梁智鴻議員暫時代為主持會議。

MR JAMES TIEN: Mr Deputy, the business community supports the principle of equal opportunity for all. However, we have always stressed that the way to achieve this is by expanding the economy, by creating more, better-paid jobs for every man and woman. Also, we have stressed that we can achieve this by public promotion and education on the concept of equal opportunity and not by legislation.

However, we note that legislation has already been put in place to guarantee equal opportunity in these areas against the views expressed by the business community, and this was enacted in this Council in 1995.

What is the change in circumstances since 1995 to justify any amendment to these Ordinances? Has there been any incident to show that the amendments proposed in the Bill are necessary? Why are these amendments so urgent that they must be made now, that is, only after six months of full operation of these Ordinances? These are questions that the Honourable Miss Christine LOH will probably address and answer later.

To ensure public respect for the law, any legislative amendment should not be proposed lightly, but must be introduced after serious and careful thought. Christine has proposed some 30 Committee stage amendments to the Bill which contains only 40 clauses. Is this a measure of the care she had exercised in preparing the Bill? If the Bill itself can be so easily amended what faith can we have that the Committee stage amendments she now proposes will not be further amended totally again next year?

Mr Deputy, equal opportunity is a new concept in Hong Kong. The SDO and DDO commenced full operation only in December last year after the two Codes of Practice prepared by the EOC to give guidelines to employers on compliance with the Ordinances were approved by this Council.

Since the full operation of the two Ordinances, the business community had just less than half a year to adapt to this new concept and the new legislation. Employers in particular have to understand and get familiarized with the provisions of the Ordinances so as to ensure compliance with them. While employers and the public at large are still finding their way through the relatively new Ordinances, amendment at this juncture of time will do nothing but to cause confusion to them.

Employers have made it clear that they have support for equal opportunity for all in employment. They have in the past few months worked extremely hard to understand and shoulder the new obligations placed upon them as a result of the full operation of the SDO and the DDO.

The Code of Practice on Employment under the two Ordinances, which contain practical guidance to help facilitate employers' and employees'

understanding of and compliance with the provisions of the two Ordinances were approved by this Council only a few months ago. Since then many employers have just started developing new personnel policy and administrative procedures to deal with them. For example, we have learnt not to specify "female" in advertising for a female secretary. We will simply advertise for a secretary, although at the end we will only offer a secretary job to a female. For example, we have learnt that when we decided not to promote a female employee but a male employee, we should not tell the female employee that she is not promoted because she is a female, just tell her she is less qualified.

We have also started to establish guidelines on good office practices and provide training for all employees. All these require considerable effort, time, manpower and resources. Not only employers of large companies which have comparatively more manpower and resources have strived hard to ensure that they are ready to fulfil their new obligation. Employers of medium and small enterprises have also done the same to achieve the same aim. To them, this means even more difficulties and greater efforts.

The majority of these proprietors of small and medium businesses are not wealthy people but just ordinary citizens trying to make a better living. When employers, large, small and medium, have made so much effort to understand the two Ordinances and to prepare themselves for complying with their provisions, is it fair and reasonable to introduce amendments to the legislation at this time and tell them, sorry, the law has changed now? Go and understand it again. They will need to make further efforts to understand the proposed changes and the new obligations brought to them by such change.

Since the Bill, if enacted, will take immediate effect, it simply leaves no time for them to prepare themselves. Therefore, in the meantime, despite all their will and effort to be good, law-abiding citizens, they stand exposed to claims made against them under the Bill if enacted.

Employees too will be confused. What are their rights? When to claim, complain, and when not to claim and not to complain? There is no doubt that employers support fair practices in the workplace without any discrimination. Indeed, they have been working hard to educate, promote and to comply with the provisions of the SDO and the DDO. It is only fair and reasonable that they should be given the chance to get accustomed to the obligations provided for

under the existing legislation before any new obligations are thrust upon them.

With these remarks, Mr Deputy, I urge Members to vote against the Honourable Mr Christine LOH's proposed amendments. The Liberal Party will vote against it.

黃偉賢議員致辭:代理主席,我沒有擧手,你也知道我想發言。代理主席,我是沒有準備今天發言的演辭,因為在九五年六月二十八日,在本局辯論《性別歧視條例草案》時 一 而《殘疾歧視條例》是在七月的會議提出的一 已很詳細將有關的原則、修訂說出,我相信局內的上一屆同事,都很清楚該次辯論是相當激烈的,所以我不在此重複兩年前的論點了。不過,現在並非有如劉健儀議員所說的,是較早之前在本局進行辯論,她所說的較早前,原來是兩年前了,兩年前應不算為較早前,因為兩年前是很長很長的時間,假如有關的條例經過了兩年,切實在社會上施行後,我們看到歧視條例仍然不完善時,我們作為立法局議員,自然是有責任進一步修訂它,進一步將有關的條例變得更完善,這才能進一步和較全面保障一些受歧視者。

代理主席,今天的二讀好像變成一個丁屋政策的辯論,是略為抽離了這兩條反歧視條例。事實上,在一些同事的發言裏,亦隱約的說了這個丁屋政策 一 尤其是剛才馮檢基議員一開始已說到,他覺得陸恭蕙議員這項修訂 一 只是單從男女平等的角度出發,沒有從實際的解決方面去考慮;我很奇怪,因為我們這一條條例草案,正正就是怎樣去促進男女平等,我們的修訂、條文的寫法和措辭自然是怎樣去促進男女平等,這正是現在陸議員修訂條例的精神。所以,稍後我會詳細的回應馮檢基議員的這些說法。

代理主席,我沒有準備講辭,主要是因為,正如我剛才所說,我的論點在兩年前已經很詳細的講述了。所以我今天主要是坐在這裏聆聽我們的同事有否一些新的論點,因為我們這一屆有一些新同事加入,可能會有一些新的論點。但是我很詳細亦很仔細的聆聽各位同事的發言後,卻聽不到新的論點,反而有的新說法是和一些同事兩年前在本局所說的似乎有點差異。我稍後會作一個比較。

代理主席,張漢忠議員和劉皇發議員都特別強調小型屋宇政策,即俗稱的丁屋政策。他們說這是一個歷史問題,亦是受到《基本法》第四十條的保障,他們特別強調第四十條提到新界原居民的合法傳統利益是受到保障,但我無論怎樣也不能被說服這個小型屋宇政策是一個傳統。究竟我們所認為的傳統是以多少年為準則呢?10 年形成一個傳統?20 年形成一個傳統?還是

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100 年、200 年形成一個傳統呢?小型屋宇政策是七二年才開始有的,七二年到現在只有二十多年,若二十多年便形成一個傳統的話,那麼很多原居民的合法傳統權益便將可以陸續的加進去而受到保障了。所以,我是從未能被說服,認為這個政策只是推行了二十多年,便可看作是一個傳統,受到所謂《基本法》第四十條的保障。

其次,原居民這個概念,是在英國殖民地政策統治下才會產生的。但大家剛才也說到,只有十多二十天便回歸了,不要再弄出多個火頭了,要平穩過渡,但有否想到十多二十天回歸之後,為何香港還有新界原居民這種如此特別的稱號存在?如果在中國定居了,又可以算是原居民,如果我沒有記錯的話,在一八四二年前於新界定居,很多村民都算是原居民了。事實上,除了新界有所謂原居民,市區也有所謂原居民,怎樣去界定原居民呢?究竟回歸祖國後,應否還有原居民呢?其實,沒有理由還有原居民這個概念的,大家也是平等的中國人。

此外,劉皇發議員特別強調,他剛才列擧了很多例子,指出我們很多女性的司級、署長級的官員來證明香港男女是很平等的。我相信男女平等並非一個量化的問題,不是有一個男士做了司級官員,便應有一位女士做司級官員,這樣才是一個平等精神的概念。如以量化為準則,一個男一個女,便算是平等,那基本上並不是我們現在這兩條法例的精神。我很肯定這不是的。我們不是用量化,而是我們要有平等這個概念,平等這個精神,是否在我們一不要只說在香港 一 的世界裏受到尊重呢?

代理主席,接着我想回應的是馮檢基議員和劉健儀議員兩位所說的話。 在我未回應之前,我首先撮錄九五年六月二十八日上一屆立法局辯論《性別 歧視條例草案》時,他們兩位有一段發言。馮檢基議員當時說:"維護人權 平等的原則,本身應該被視為社會的兩大綱領,有力、有權凌駕於其他的社 會習俗及政府過往推行的政策,當一個社會不斷進步的同時,一直實施的條 例亦有需要隨着時代的轉變而作出適當而合理的配合。"代理主席,我再撮 錄馮檢基議員另外的一段,他說:"小型屋宇政策(即丁屋政策)實際上是 完全牴觸平等的精神,亦與《人權法》本身有所違背,本人認為政府不應該 以未對丁屋政策進行檢討及維護舊有傳統為理由,而將丁屋政策列於條例的 豁免範圍以外,將歷來已久的問題不予解決。若政府堅持將丁屋政策豁免於 條例以外,即反映其缺乏促進男女平等的誠意,是本人所不能接受的。"

另外,劉健儀議員在兩年前談到丁屋政策時,亦這樣說,我亦是節錄: "政府現行的丁屋政策只容許新界男性原居民擁有建屋的權利,我們認為這 是違反男女平等的原則。"雖然她後來也說到不應該立即"一刀切"的立即 撤銷,但是,她跟着說: "自由黨雖認為現行的丁屋政策不應該繼續維持,政府應盡快取締。" 她要求促請政府盡快進行檢討,千萬不要敷衍了事。

很明顯,我們的同事都認為這個小型屋宇政策("丁屋政策")是牴觸 了、違反了男女平等這個原則,只不過大家現在可能基於某些的政治考慮或 某些政治利益的因素,學了政府的一些招數,便是"拖"。當時他們已經警 告了政府要盡快進行檢討,不要敷衍了事,兩年來,我們不斷追問政府,究 竟兩年前政務司承諾說規劃環境地政司會進行一個全面的檢討,現在檢討至 甚麼程度呢?政府答覆的是,仍然在檢討當中。檢討到甚麼程度,沒有一個 中期的進展,兩年了,究竟政府檢討了些甚麼呢?所以我回看過去議員,尤 其是馮檢基議員,兩年前所說的和剛才所說的話,我自己覺得,他似乎說他 現在的說法,較陸恭蕙議員的修訂更進步,即是說陸恭蕙議員的修訂即使通 過了,還有一個政策存在,他的方法是這政策不應存在,要徹底取消這個政 策,似乎他覺得陸恭蕙議員的修訂對這政策還未夠強烈,民協似乎要更強烈 些。但是,他卻接受了政府、鄉議局,甚至特首"研究"的字眼,似乎說是 說得很勇敢,但實際上民協是否在這裏想自圓其說,或找一些不支持陸恭蕙 議員的修訂的藉口呢?現在說研究,研究多久?沒有交代。還有,除了時間 性之外,究竟研究出來的取代小型屋宇政策的一個新政策,會否同樣繼續帶 有歧視性呢?這才是我們今天辯論最重要的一點。我們為甚麼要撤銷這個小 型屋宇政策?正因為它牴觸男女平等的精神和原則,牴觸有關的條例,所以 才要撤銷。很多同事都這樣說,無論兩年前或今天也這樣說,但是政府沒有 承諾過將來的新政策會怎樣,即使新政策可在兩年、3 年後檢討完成,新政 策未必是沒有歧視性存在的,我不禁要問:究竟民協為何要反對丁屋政策 呢?便是因為它有歧視性,所以才反對,既然它有歧視性,便應該盡快撤銷 這一個有歧視的政策。

研究自然就是採取拖延的手段,政府已經拖延過一次,再拖一次,自然是十分熟練,拖至下一屆後,或以後的立法會,我便很擔心,因為將來我們議員要提出私人法案去進行修訂,也會是難於登天,不是像現在若不涉及財政開支便可以提出,大家也知道,《基本法》將來是怎樣限制議員提出私人法案的。我不敢期望將來我們可以提出有關的私人法案。

其實,民協的 4 票是非常之重要的,為甚麼政府、鄉議局,及其他反對陸恭蕙議員的修訂的人一定答應你的要求呢?其實他們的 4 票是可以主宰今天決定究竟支持還是反對法案的通過。所以民協其實是有足夠的本錢要求把研究的字眼取消,而應該定出一個時限,決定要撤銷有關小型屋宇政策,並訂立一個新的、不能帶有歧視性的政策。如果民協提出這個字眼,我不相信政府或鄉議局或甚至其他同事不接受,因為若他們不接受新的修訂,民協便支持陸恭蕙議員,我相信他們一定會接受民協這項建議。所以我覺得民協似乎沒有運用到他們有如此重要功能的這 4 票去推動男女平等的原則和概念。

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所以,我很希望馮檢基議員和民協的同事再想一想,他們這個協議,不論是 跟政府訂立也好,跟誰訂立也好,是達不到他們所想得到的東西,除非他們 不是想得到那樣東西,而只不過是想找一個下台階,來支持他們不可支持陸 恭蕙議員的修訂,亦可藉此不違背男女平等這個原則。我知道走這樣的鋼綫 是十分困難的。

代理主席,本人謹此陳辭,支持陸恭蕙議員的修訂。

THE PRESIDENT resumed the Chair.

主席恢復主持會議。

李卓人議員致辭:主席,我代表職工會聯盟表示支持《1996 年性別及殘疾歧視(雜項規定)條例草案》。在此條文中,有數項是較具爭議性的。第一是關於撤銷 15 萬元賠償方面的。剛才我聽到劉健儀議員所說,立法時是要有數據的。那麼,這 15 萬元數據是從何處得來的呢?重溫歷史,原來是九五年林貝聿嘉女士不知從何抽出來的,不過,其實政府方面並沒有儲存數據。因此,大家也要記得這個歷史,根本這 15 萬元上限是沒有數據的,只不過是從天上抽出來的,結果令女性如果受到歧視時,她的賠償突然間多了一個上限。

其實這 15 萬元上限,是完全違反了整個民事補救的觀念。民事補救是指使受歧視者受到某一程度的損失便須予以抵銷,而民事補救的觀念是針對不應有的歧視,而倘若僱主歧視一名女性僱員,便要補救她的損失。如果設了一個上限,其實就是等如任由歧視造成損害,而這損害是不能獲補償的。所以我希望大家記住這段歷史,這個 15 萬元的上限是沒有數據的。因此我希望大家支持撤銷這個 15 萬元的上限。

第二個比較具爭議性的,是每次在條例草案委員會會議上都會談到的 復職問題。其實,政府一向都說不應該要僱主一定僱用那位受害者,但我想 提醒各位議員,第一,若說補救的話,喪失了一份工作是不可以用金錢來補 救的;而另一方面,現在所說的,就是讓法庭審查所有證據之後,作出裁 決;但現在反而令法庭不能作出這個裁決,使法庭被約束,令補救有缺憾。

政府在另一些勞工法例說要由勞資雙方同意之下才可復職,那麼,若 要由勞資雙方同意之下才可復職,那其實等於不可復職。因為如果勞資雙方 同意的話,根本就不用法庭頒令,已經能夠復職。所以,大家都要留意這 點,復職對受歧視者是一種十分重要的補救,亦是一種最徹底的補救,因為從而可令受害者可以得回一份工作。

第三,剛才亦提到的,就是小型企業問題。有關此方面,其實不應誇 張地說通過了法例便會令那些小型企業倒閉,其實現在所說的,並不是要加 薪,完全沒有成本的因素在內,只不過是一個完善的管理方法,可能會令那 些小型企業更興旺,因為他們已經擺脫舊時所有的錯誤觀念,於是便會按能 力來決定聘請應徵人與否,而不是按他的性別或他是否殘疾人士作標準。所 以,我想這方面大家不要那麼誇張,其實這件事只不過是要令管理更完善而 已。

此外,亦有很多人說平等機會委員會亦會作出監察,不應該由立法局或陸恭蕙議員提出修訂。但大家也知道,其實平等機會委員會本身最終得出的結果會怎樣,而它對這問題的了解難道會比在座各位多一些嗎?為何大家不想想,是否應該使法例更完善,最終使平等機會委員會的工作變得更容易?所以我希望大家不要被平等機會委員會的檢討影響,其實這只不過是一本支票簿,不知它會寫上了甚麼。今天有機會可以轉變,那麼希望大家能作出轉變。

最後,我想提一提就是丁屋問題。很多時大家都會說支持男女平等,但我想問一問有關新界原居民的權益;新界原居民當然包括女性的,但在整個討論中似乎也沒有被提及過,始終,有兄弟亦有姊妹,所以,其實大家都應該緊記一點是,當大家討論時,不要以為新界居民只得男性,其實還有女性的,但現在只不過希望有男女平等,當然,最終整個丁屋政策其實是絕對有需要撤銷的。

謝謝主席。

廖成利議員致辭:主席,我想代表民協補充數點意見。

第一,丁屋政策應該盡早取消,我在條例草案委員會會議時,已提出了這個意見,其實不是今天才提出。但我們要看看為何要提出這項建議。九七年之後,香港回歸中國,所有香港人皆坐在同一艘船上,以前有原居民或稱"阿丁",這是沒有貶義的意思,所以有丁屋政策,但將來特區的所有香港人,香港的特區所有居民皆是特區的"阿丁",大家均有相同的權益。所以,如果我們各位議員是為香港人爭取權益的話,站於這點來說,我們的目標應該是特區的居民人人也有丁權,即人人平等,人人也有屋住,如果只是原居民繼續保留有丁屋權的話,又怎能說得上是人人平等?這是很難回答

的。

第二,我們要用合法的程序去解決丁屋權的問題,而這個合法途徑並不會違反《基本法》第四十條。據我理解,丁屋權並非法律賦予的權利,這純粹是一個政策,剛才有議員說大概是 25 年前,也是以一個行政方法去解決歷史的問題,這裏我不擬重複。由於它不是一個法律的權利,因此可通過一個法律程序將它改變,甚至取消。所以,這種做法在香港這個法治社會是完全符合香港的法律制度,它並不違反《基本法》第四十是條,而《基本法》第四十條是說:"保障原居民的合法傳統權益。"所以,我們要經一個法律程序,如它到時不合乎法律,它便沒有合法的傳統權益。此程序也可容許我們更改或甚至取消丁屋權。

第三,我想說要取消這個丁屋政策或丁屋權,即先要提出解決方案,然後再取消它,也即所謂的"斬纜方案"。我記得本局的議員於一至兩個月前,討論觀龍樓重建的時候,即於房屋事務委員會上,大家通過了一項決議,就是說在政府未找到足夠的重建資源安置居民、解決其重建問題之前,政府要凍結觀龍樓的重建計劃,這項決議背後的精神是:政府如要提出一個方案,未有一個好的解決方法前,便不能推行。這是我們一貫的處理方法。類似的要求,其實在立法局經常提出,對於丁屋政策亦應如是,我們今天們暫時未有方案取締丁屋政策,所以我們便要政府提出一套方案把它解決;我們暫時未有方案取締丁屋政策,所以我們便要政府提出方案。反過來說,我們不具有任何方案,便要把它取消的話,政府也很難做,它也很難回應別人的一個問題,就是:政府怎可以如此不負責任,甚至做所謂的"秋後算帳",或訂立一些有追溯力的政策,令原有的權益受損。作為議員,每逢有任何居民現有的權益受損,我們皆應站於其方面替他捍衞。

第四,我很希望鄉議局能夠面對新時代,面對香港的新改變。隨着香港的現代化、進一步國際化及各方面的進步,男女平等和要求大家平等這些訴求是逐漸高漲,這個潮流是不可抗拒的。因此,要求取消丁屋權,替代丁屋政策這個訴求,也是無可抗拒的。其實大家也想其早日發生,所以我希望鄉議局能在這個大改變之下,與政府充分合作,稍後於第三季會有一個檢討,提出一個方案去替代丁屋政策,令其在香港這個歷史轉接期下解決這個問題。我希望鄉議局能充分合作,想出一個解決方案。

第五,我想回應黃偉賢議員的批評。他說民協口口聲聲說要取締丁屋政策,不過又投票反對陸恭蕙議員,實際是找下台階,不是真正支持男女平等。主席,我們民協不需要下台階,因為下台階是給下台的人用的,我們今天仍然在台上做議員,民協只不過是盡我們的力量,在今天這個重要的投票

前夕,盡量爭取政府要作出承諾,也希望鄉議局 — 剛才劉皇發議員也作出一些承諾 — 亦向前踏出一大步,要在這個時候解決這個問題。我們這個爭取方法,可以說大家目標一致,大家用的手法不同,殊途同歸,但到今天我仍未聽到民主黨或黃偉賢議員或其他民主黨成員,提出一個解決丁屋政策取締後的方案,我希望稍後討論第 12 條時,他們可以提出他們認為可以怎樣解決,大家想出一個可行的方案去解決這個問題,不過,天我仍未聽到任何方案,他們只提及要取消。

最後,我想說說稍後投票時,我們的取向和我們如何支持陸恭蕙議員的 一些修訂。

陸議員提出的很多修訂,我們原則上很支持,但可歸類為兩種修訂。第一類是無論檢討與否,那些都應該作出修訂,我們會支持二讀,其中有6點。我和陸恭蕙議員在會前也有一個君子協定,我覺得她這些修訂很適當,包括:將法庭判決的15萬元上限取消,過去未有一宗如此的案件,我們要信任香港的法律制度,訴訟時上限多少該由法庭來判決,無論任何人如要"獅子開大口",法庭是絕不會悉數判給他的。正如疏忽等民事案件,我們訴訟要求賠償時,不可以"獅子開大口",基本上要有一個合理的決定,那前的估計。又例如陸議員要求在性別歧視案件中,法庭有權頒布復職令,是規定現時已載於《殘疾歧視條例》,兩項條例為何有不同?這是以前的歷史規定現時已載於《殘疾歧視條例》,超過某一個票數通過了,但在香港的法律中 沒有理由在一條條例內法院有如此的權力,而另一條條例沒有,這樣的不一致實在應該作出改變,因為這套法律不單止是讓數人看,而是讓全世界看,因此這點即使不作檢討,政府也該主動去做。在這方面,我們會支持。

不過,有幾項修訂是我們不支持的,主要是我們並非徹底不支持,而是 現階段我們擔心會製造混亂,原因是陸議員提出"間接歧視"等觀念,這些 適宜在將來檢討中作出詳細的檢討,而不應像我們現時這般快的作出一個判 決。就香港而言,要作出一些如此的法例改變,我相信由平等機會委員會提 出會較為適合,因為我們最近有太多的法案要審議,很多時候也沒法細心的 詳細研究,同時,陸議員自己在草擬條例草案的過程中,也作出了很多更 改,為何改這麼多?因為在審議過程中發覺很多問題未有想清楚,所以政府 說遲些(約十二月)會檢討這些方面,明年三月便會有一個初步結果,我們 適宜稍等一會,同時亦可避免一些混亂。我想在座的議員也覺得,倘若我們 不是參與這條例草案委員會,也不太清楚情況;我作為一個律師,有時候也 會加以細讀,如果有人要用這些法例控告政府,我也要從頭看一遍這些法 例,並加以對照,因為內裏的部分常作修改、更新,社會上也需就此多作推 廣。

我希望政府待會作出承諾,在檢討過程中,將陸恭蕙議員提出的好意見,全部拿出來作檢討。除了陸議員提出的檢討,其實我發覺現行的法例中也有很多漏洞、很多問題須作檢討,我希望屆時不要只檢討那麼少,而可以作更詳盡的檢討。

主席,我只有這少少的發言,若稍後對於怎樣替代丁屋政策方面,大家 能夠提出其他意見,我十分歡迎,稍後馮檢基議員也會說一說我們的一些看 法。

謝謝主席。

SECRETARY FOR HOME AFFAIRS: Mr President, first of all, I would like to pay tribute to the Honourable Miss Christine LOH and members of the Bills Committee for their hard work on this Bill and also their patience in carefully considering the Administration's views. It is unfortunate that, despite the goodwill on both sides and the genuine attempt made to arrive at some consensus, the only agreement we can reach with Miss LOH is to disagree.

While appreciating Miss LOH's good intention behind the Bill, I am afraid that the Administration objects to it. The Government fully subscribes to the principle of equal opportunities for all. Our main concern is whether the two Ordinances, which were enacted following lengthy and comprehensive debates by the Council, should be amended after less than a year's operation during which there has been no change in circumstances to suggest that any of the provisions inthe Ordinances is inappropriate or that any of the amendments proposed in Miss LOH's Bill is necessary on ground of operational experience.

As Members are aware, Miss LOH's Bill was introduced into this Council even before the Ordinances came into operation. The Bill was not well thought out. This is evident from the fact that she has now proposed about 30 Committee stage amendments when there are only about 40 clauses in the Bill. Moreover, some of the Committee stage amendments are proposed to delete the clauses in the Bill so as to retain the original provisions in the Ordinances. The Bill, if enacted, will only cause confusion to the public and perhaps even unrest to certain sectors of the community. It will only serve to undermine people's

respect for and confidence in equal opportunities legislation.

The Administration also objects to the Bill because its enactment would adversely affect the smooth implementation of the Ordinances and the work of the EOC. As Members are aware, the SDO and the DDO, which were modelled on the corresponding legislation in the United Kingdom, were enacted in 1995. The EOC established in May 1996 has been doing its utmost to explain the contents of the Ordinances to the public and to promote compliance. In accordance with the Ordinances, the Commission prepared two Codes of Practice to guide employers in complying with the ordinances. It was only after these Codes were ready and were approved by the Legislative Council in December 1996 that the two Ordinances were brought into full operation on 20 December 1996.

One of the statutory functions of the EOC is to keep under review the working of the two Ordinances and recommend changes as and when appropriate. In fact, the EOC has undertaken to do a comprehensive review of the Ordinances towards the end of 1997, that is, one year after the Ordinances have been in full operation. By then, there will be sufficient operational experience to enable an informed and rational decision to be taken on what improvements to be made to the two Ordinances. The EOC has also undertaken to take into account in the forthcoming review all the proposals contained in the Bill and views expressed by Legislative Council Members. For certain matters of particular concern to Members, the EOC will give them priority attention in the review and will make their recommendation in time for the Administration to make an announcement by March 1998.

One of Miss LOH's purposes of the Bill, I believe, is to facilitate the work of the EOC by giving it more powers. In fact, those supposedly new powers which the Bill seeks to confer on the EOC are powers which the EOC already has under the existing Ordinances. These are the powers to bring proceedings for judicial review and the powers to bring proceedings as if the EOC were the individuals affected by discrimination or harassment. Contrary to Miss LOH's intention to help the EOC, I am afraid that the Bill, if enacted now, would be counterproductive.

The extensive amendments proposed in the Bill, if enacted at the time when the public is still trying to come to grips with the two Ordinances, will throw a spanner into the work of the EOC and obstruct the smooth implementation of the two Ordinances. The public will be puzzled why the EOC told them one thing a few months ago and then tells them something quite different now. The EOC's credibility will be at stake. The credibility of the equal opportunities legislation will also be at stake for the public may gain the impression that such legislation is subject to changes from year to year, if not from month to month. This is why the EOC is not in favour of any amendment to the Ordinances at this stage.

The proposals in the Bill are not only premature. Some of them will present a real practical problem. Let me elaborate. First, clauses 3, 13, 26 and 30 and the relevant Committee stage amendments proposed by Miss LOH seek to impose additional functions on the EOC, including the promotion of standards in certain international instruments which have not been accepted for implementation in Hong Kong. Such promotional work would mislead members of the public into thinking that the standards are legally binding. On the other hand, for the EOC to be seen to be pushing for the adoption of standards not yet applicable to Hong Kong will not be conducive to the EOC's political neutrality.

Second, clauses 4, 5, 6 and 27 and the relevant Committee stage amendments proposed by Miss LOH seek to redefine what constitutes indirect discrimination under the SDO and DDO. The proposed amendments amounts to reversing the ruling made by the United Kingdom Court of Appeal. While the United Kingdom EOC recommended such a reversal in 1988, the United Kingdom Government has not adopted it. Such an important operative provision in the Ordinances should not be changed without an in-depth research and detailed assessment of the implications. Such a major change so soon after the operation of the Ordinances will be a serious blow to those persons, especially small employers, who have worked hard to comply with the law. example, the Bill seeks to change the definition "indirect discrimination". employer who has taken pains in recent months to revise his personnel policy and practice in order to ensure compliance with the law as it is may, if the Bill is passed, all of a sudden find himself falling foul of the new law. undermine his respect for the law.

Third, clause 11 seeks to delete the exception in respect of acts to safeguard the security of Hong Kong. We have to strike a balance between the individual's rights and the community's interest. We need the exception provision in order to avoid any unforeseen emergency measures taken to safeguard security being ruled as unlawful on the grounds that they afford different treatments to the two genders.

Fourth, if clauses 12 and 24 of the Bill were enacted, the small house policy will have to discontinue after a defined period. We have to carefully consider the feelings of the indigenous villagers about setting an expiry date for the policy, and no one has yet come up with any concrete proposals as to what, if any, changes should be made to the policy.

This policy is presently under review by the Administration. To facilitate the review, we will set up a committee in the third quarter of this year to examine how best to replace the existing small house policy.

Fifth, clauses 12 and 24 also seek to discontinue our long-established policy to allocate departmental quarters to the married but not single members of the disciplined services. The policy takes account of the relative housing needs of the married and single officers. However, if the Bill were enacted, the policy would have to discontinue. The consequence is that either more quarters have to be constructed or the married officers will have to wait longer before being allocated quarters.

Sixth, yet another effect of clauses 12 and 24 is that in future the height and weight requirements for recruitment to our disciplined services will be open to challenge in court for allegedly being discriminatory to either the male or the female gender.

Mr President, as the proposals in the Bill, including the Committee stage amendments proposed by Miss LOH, are unnecessary and undesirable at this stage, I appeal for Honourable Members' support to wait until the Equal Opportunities Commission's comprehensive review of the Ordinances in December 1997 before deciding whether any amendment is really needed. I appeal to Members not to hastily amend the law without knowing the full impact of its consequences. I appeal to Members to vote against the Bill.

Thank you.

MISS CHRISTINE LOH: Mr President, my Bill makes urgently-needed amendments to the SDO and the DDO. These Ordinances came into force late last year more than a year after they were enacted. The Administration and some Members argue that it is too early to amend these Ordinances. They have it backwards. Surely, now that the Ordinances have finally come into force, we must make sure that they do not fail the people whom they are supposed to protect.

Our long-suffering Chair, Dr the Honourable LEONG Che-hung, and also the Honourable James TIEN both ask "why so many Committee stage amendments"? The Government also just now says so many Committee stage amendments must mean this is not well thought out. Well, frankly, if any of you bothered to read the Committee stage amendments you will see that many of them were to split up the clauses for voting purposes because I wanted to make sure that clauses that people do support are not going to be voted down because they might be voted together with clauses that they do not support. Surely you recognize this as a very pragmatic and practical move.

Some of the amendments have been amended after due discussion with the Administration, and I think this is part of the legislative process that we go through with every bill. A few more of the amendments arose out of passage of time. It has already been pointed out by other Members, Mr President, that the time that I gazetted this Bill, and now, time has passed and since the two Ordinances have come into force, obviously I need to make amendments to my original Bill. Again, nothing out of the ordinary.

Moreover, the number of Committee stage amendments is not a sign that the substance of the Bill is at fault. I think I can list quite a long list of Bills moved by the Government to which, after discussion in the Bills Committee, substantial amendments were moved. One that many of you will recall is the Organized and Serious Crimes Bill. Another one is the MPF. Surely the Government is not saying that just because these bills have been substantially amended by the Government itself after the Bills Committee that they were never well thought out in the first place.

The Honourable James TIEN will recall that not many Members in this

Council have tried to move substantial bills. With us today in the guest gallery is our former colleague, Ms Anna WU. She is the first and I believe the only Member in our legislative history who has succeeded successfully, who has successfully, to table in legislation an entire area of policy to force the Government to acknowledge a vital area of policy that Hong Kong needs to address. I willingly inherited her work in this Council as she chose not to stand for election in 1995.

I am conscious that we are pioneering in this area. I do not see our efforts as irresponsible, but I know we have had to drag the Government and many Members of this Council screaming and kicking into dealing with the area of equal opportunities. As such, that is why we have so much resistance.

Right now, if I can go back to the substance of parts of my amendments, a victim of work-related sex discrimination or of sexual harassment in the workplace cannot obtain more than \$150,000 in compensation. A victim of any form of disability discrimination cannot claim more than \$120,000. These damages caps deter any recourse to litigation at all. Contrary to the usual practice in civil proceedings, an award of costs is not normally available under either Ordinance. A victim of discrimination must therefore plan on paying litigation costs out of the damages he or she is awarded. But no one can stay in court for long on either \$150,000, still less, \$120,000. The stark reality, Mr President, is that right now many victims of discrimination are best advised to swallow their hurt and humiliation while any discriminator with even moderately deep pockets may rest assured in the Ordinances' defects.

The two Ordinances make discrimination unlawful but so long as these caps on damages remain in effect they simply do not provide a remedy for it. Even a victorious plaintiff in a case of unlawful dismissal may have suffered lost pay and benefits exceeding these amounts. Sexual harassment, Mr President, can have a devastating impact on the victim and in serious cases, expenses for medical bills and counselling alone may exceed these figures.

Meanwhile, some victims of disability discrimination and harassment are cut off from whole realms of activity that other people take for granted. Is \$120,000 just compensation for a person who has endured such sufferings?

But the actual damages suffered by a victim of discrimination and proven

in court, Mr President, I repeat, proven in court do not matter under the Ordinances as they stand. The very law that is supposed to uphold the equality of people has put a special low price tag on their victimization. I think on these two points alone Members should allow me to move the Second Reading debate so that we can move on to the Committee stage amendments and let us get rid of these damages caps.

These caps are so destructive to the purposes of these two Ordinances that their removal alone justifies the enactment of this Bill, of those parts of this Bill if you cannot bring yourself to agree to anything else. But there are also other defects in the legislation that demand immediate action. An order for reinstatement can be obtained under the DDO but not under the SDO, even though everyone agrees it may often be the right remedy for discrimination in a large organisation. Death and retirement benefits are simply exempt from the SDO, and will likely remain so unless the Bill is passed. Both Ordinances are replete with other ill-conceived limitations and exemptions. As long as we continue to dither over these loopholes, real people will keep on falling through them.

Nevertheless, the Administration as well as some Members argue that we should wait in order to gain more experience with the operation of these This is an exceptionally threadbare excuse for inaction. discrimination is an ancient and truly international phenomenon and we are not breaking new ground in Hong Kong with the methods we have chosen to deal The SDO, which the Administration treats as the model for all equal with it. opportunity legislation in Hong Kong, is essentially copied from the United Kingdom Sex Discrimination Act. Virtually all of the amendments contained in this Bill are based on recommendations based on the United Kingdom Equal Opportunities Commission after more than a dozen years' experience The Administration's obstinate insistence that Members administering that law. behave like ostriches and stick their heads in the sand when lessons may be learned from experience in the United Kingdom and elsewhere is, frankly, foolish.

Second, it is nae to believe that a vote against this Bill is a vote merely to defer reform for a short time, perhaps for a year or so. If this Bill fails, it is likely that we condemn this community to live with the defects of the existing ordinances until the distant future. I am aware that the EOD has undertaken to

study the Ordinances and make recommendations within a very short time. The experience in the United Kingdom in this respect, as in so many others, is instructive. The Honourable Mrs Miriam LAU has interpreted the events in the United Kingdom in one way. Mr President, allow me to give you another interpretation.

The United Kingdom Equal Opportunities Commission made its comprehensive proposal for reform to the Sex Discrimination Act in 1988. five long years thereafter, the United Kingdom Government responded with ungracious silence. It did not reply until 1993 when it issued a short paper rejecting virtually every major recommendation. In regard to the few recommendations that it accepted four years later, it still has taken no action, citing excuses such as an inability to secure a legislative time slot. the amendments that have been made in the United Kingdom were forced on the United Kingdom Government by judgments of the European Court of Justice requiring it to comply with European human rights standards. The Honourable Mrs Miriam Lau seems to think that the United Kingdom Government's example is something Hong Kong should take on board. This is regrettable since it is one of the less enlightened ones. No equivalent mechanism to force compliance with international standards applies to Hong Kong. Let me remind Members of this.

So, can we expect the Hong Kong Government to treat equal opportunity law with more respect than the United Kingdom Government has treated it? Nothing in this short history suggests that we should place a lot of our confidence on the Hong Kong Government so far. On the contrary, the over riding purpose that has consistently driven the Administration's policy on equal opportunity legislation has not been to secure equality rights, but to control and contain public pressure to do so.

To be fair, Mr President, I believe the DDO was put forward in good faith by the Administration, but in the details of even that Ordinance the interests of people with disabilities are sacrificed whenever a right enjoyed by them threatens to spill over in other legislation. Meanwhile, where sex discrimination is concerned, the Administration has done exactly as much as it has been forced to do, and it has seized every politically viable opportunity to undermine what is done. The damages cap in both Ordinances may be cited as examples.

One in the SDO was a last-minute proposal by individual Member which the Administration enthusiastically endorsed despite its devastating impact and continues to defend. The other in the DDO was a drafting error which the Administration today does not acknowledge as such and also defends. The policy seems to be one of opportunistic hostility. The Administration rarely passes by a chance to hobble the legislation. Experience, therefore, suggests that to entrust the task of progressive law reform to the Administration is almost to give up the struggle.

Finally, I note that the EOC has essentially endorsed the dilatory policy of the Administration. I feel embarrassed for the Commission that it has done so. The Commission failed to offer any views on the substance of my Bill and failed to endorse even the removal of the damages cap. Such timidity on matters of fundamental importance suggests a truly abject fear of official displeasure, and I fear it has seriously damaged the Commission's credibility. For the sake of the many people whose rights the Commission is entrusted to protect, I can only hope that it will show more backbone in the future.

I do wish to touch upon the issue of the small house policy since so many Members have spoken up on this as if I have devised this Bill solely to attack the issue of the small house policy. Mr President, as you well know, this bill is about sex and disability discrimination. In the area of sex, it would be strange if I did not include the small house policy since, during the Bills Committee discussion, official Members told the Bills Committee quite clearly that it recognizes that it is a discriminatory practice.

I cannot solve the problem of the small house policy with this Bill. I recognize along with everybody else in this Council that the small house policy needs direct policy addressing. But to the extent that I could do anything in this Bill, and to the extent that I should do something because this Bill is about discrimination, I have, Mr President. I also recognized the efforts contributed to this process in opening up the very difficult area of small house policy by Members of this Council. I wish to thank Mrs Miriam LAU for asking a very difficult question when distinguished members of the Heung Yee Kuk came before the Bills Committee. She urged them to go back and consider whether this policy could continue *ad infinitum*. The members of the Heung Yee Kuk

graciously also said they would go back and think about it. So, this is one way of opening up a difficult issue for public debate.

I also wish to thank the Association for Democracy and People's Livelihood (ADPL) for making their efforts to do what they are trying to do today. The Government has given some undertaking, although I do not know whether ADPL members consider what has been said by the Secretary as sufficient for them to vote against this particular amendment, but I recognize their efforts. If indeed the office of the Chief Executive has agreed to look into this, it is a step in the right direction.

So, all I can say is to the extent that I could do something, Mr President, I have. Thank you.

Question on the Second Reading of the Bill put. 條例草案二讀之議題經付諸表決。

Voice vote taken. 聽取聲音表決。

主席:本局現進行點名表決。

主席: 謹提醒各位議員,現付諸點名表決之議題為:《1996 年性別及殘疾歧視(雜項規定)條例草案》予以二讀。

請各位議員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

主席:在本席宣布結果之前,請各位議員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr

YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 29 votes in favour of the motion and 26 against it. He therefore declared that the motion was carried.

主席宣布贊成議案者 29 人,反對者 26 人。他於是宣布議案獲通過。

Bill read the Second time.

條例草案經過二讀。

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

依據《會議常規》第 43 條第(1)款的規定,將條例草案付委予全體委員會審議。

EMPLOYMENT (AMENDMENT) (NO. 4) BILL 1996

《1996年僱傭(修訂)(第4號)條例草案》

Resumption of debate on Second Reading which was moved on 23 Ocotober 1996

恢復於一九九六年十月二十三日動議二讀辯論

李卓人議員致辭:主席,本局曾就《1996年僱傭(修訂)(第4號)條例草案》成立條例草案委員會,現本人以主席身分報告這項條例草案。

這項由梁耀忠議員提出的條例草案,旨在縮減僱員因僱主未有提供工作 而有權獲得遣散費的規定日數,藉以修訂《僱傭條例》(第57章)("該條 例")關於僱員被僱主停工的條文。

根據該條例第 31E條,任何依靠僱主提供工作獲取報酬的僱員(例如日薪或按件計酬的工人),若其被僱主停薪停工超過 —

- (a) 在任何 4 個星期的期間內正常工作天總數的一半;或
- (b) 在任何 26 個星期的期間內正常工作天總數的三分之一,

該僱員便可向其僱主申索遣散費。

此條例草案現建議把該條例有關停工的規定日數分別縮減至:

- (a) 在任何 4 個星期的期間內正常工作天總數的三分之一;或
- (b) 在任何 26 個星期的期間內正常工作天總數的四分之一。

然而,有關停工的日數規定只是給予僱員申索遣散費的權利。有關僱員可選擇不行使此項權利,在此情況下,儘管該僱員已被停工,他仍可繼續 與僱主維持僱傭關係。

在條例草案的商議過程中,政府當局表示不支持此條例草案,原因如下:

第一,該條例現行有關停工的條文可給予因種種原因而暫時未能為僱員 提供工作的僱主一定的靈活性。此等條文亦確保僱員有合理收入。當局認為 這樣的保障屬恰當之擧,且在僱員利益與僱主的真正運作需要之間取得適當 平衡。

第二,此條例草案將會增加僱主在工資方面的負擔,尤其是所從事的業務較受季節性波動影響的僱主。此等額外開支可能加重僱主在經濟衰退時的財政困難,部分僱主可能選擇或被迫縮減業務規模或甚至結束營業。這樣將會產生反效果,並損害工人的整體就業機會。

第三,相對於僱員申索及勞資糾紛的個案總數而言,勞工處接獲投訴長期停工的個案甚少。並無跡象顯示,長期停工的個案不斷增加或此方面已構成嚴重問題。

至於僱主團體的意見方面,僱主團體強烈反對此條例草案的條文。僱主團體,尤其是來自紡織及製衣業的僱主團體,批評提出此條例草案的議員未有在事前諮詢他們。他們認為,提出此條例草案的行動違反勞工顧問委員會("勞顧會")內旨在達致共識的三方協商制度的精神,而此項制度可令勞資雙方的利益獲得充分考慮。

僱主團體一致認為,現行有關停工的條文給予僱主一定程度的靈活性,並保證僱員因僱主的生意清淡,業務的季節性波動或天氣惡劣而暫時停工時可獲得最低收入,從而為他們提供一種保障。

此條例草案若獲得通過,將對規模較小的製造行業在財政上的穩建性帶來不利影響,並迫使它們把業務遷離本港或結束營業。如此一來,目前開工不足的工人將會陷入失業的困境。

勞工團體方面卻非常支持此條例草案。他們認為,此條例草案將為工人帶來更佳的保障,同時亦能處理開工不足的問題。此條例草案可令工人獲得最少相等於月薪三分之二的工資,並令他們有權獲得遣散費。

工人聲稱,過去數年,由於大部分工序已遷往生產成本較低的中國大陸,因此出現工人長期開工不足的情況,這情況在紡織業及製衣業尤為明顯。不過,為遵從美國紡織品配額的規定,製造業被迫在本港維持最起碼的工序,以符合產地來源的規則,結果導致大批按件計酬的工人長期開工不足,因而無法應付生活開支。根據現行法例,此等工人在1個月內只要獲支付工作日數一半(通常為12天)的薪酬,便不能申請遣散費。而此條例草案的擬議條文則訂明,工人每月將最少獲提供16天的有薪工作。倘若他們未獲發最低工資,他們可選擇申請遣散費或繼續受僱於同一僱主。此條例草案

亦可防止僱主試圖透過長期不為工人提供足夠工作的方法,迫使工人自行離職,因而可逃避支付遣散費。

在條例草案審議期間,政府也曾派員到訪勞顧會。而在條例草案審議過程中,我們曾討論過關於勞顧會的問題。議員在一九九六年十一月一日立法局人力事務委員會的會議席上,已要求當局就此條例草案諮詢勞顧會,但勞顧會並無就此條例草案獲得諮詢,以致引起極大的關注。當局認為,由於這是一項議員條例草案,因此,應由提出此條例草案的議員決定應否諮詢勞顧會。經梁耀忠議員同意,條例草案委員會在一九九七年三月十八日的會議上決定,在勞顧會於一九九七年四月二十一日舉行的下次會議上商議此條例草案前,暫緩進一步討論此條例草案。條例草案委員會自此之後會停止審議工作。

勞顧會在一九九七年四月二十一日的會議上決定,勞工處應嘗試搜集可能出現的停工個案的統計數字,以便作進一步分析。有關的建議應先交由勞顧會轄下的勞資關係委員會詳細研究。

當局表示,由於勞工處搜集統計資料時,勞顧會轄下的委員會實在不可能在一九九七年五月之內舉行會議。就此方面,主席就日後的工作徵求議員的意見。除田北俊議員外,條例草案委員會其他委員均同意,由於缺乏新資料,有關各方所表達的不同意見將無法獲得解決,因此,條例草案委員會無需重新展開工作。

剛才我是以條例草案委員會主席身分發言,現在我代表職工會聯盟表達 我自己的意見。

其實,自一九八五年我開始擔任成衣製造業職工會總幹事後,我相信我處理了全港最多有關停工、開工不足的問題。我一直爭取,希望長期開工不足的情況,能夠透過立法得到改善。我記得我曾於一九八八年扮成"吊鹽水"的工人在布政司署躺下,抗議政府一直沒有就"吊鹽水"的法例作出改善。

政府隨後做了甚麼?我已經忘記了是哪一年,政府除了4個星期的原來 12天的規定以外,再增加一項26星期的期間內正常工作天總數的三分之二 的規定,那便是現行的法例了。

我認為最大的問題是政府說要研究數據,又說要看看現時長期開工不足

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的情況是否嚴重。我認為這些數據是沒有意義的,我們考慮"吊鹽水"的問題時,只需問自己一個問題:一半的工資能否養家?尤其是對低薪的件薪工人而言,一半的工資能否養家?問題就是這麼簡單。其實,我們根本在說究竟最少的工作日數應是多少?換句話說,僱主1個月最少應給一個件薪工人多少工資?如果他付少了工資或計少了工作日數,僱員便可以追討遣散費。

其實,不是很多工作兩年以上的僱員都可以成功追討遣散費,僱員可能 最後只能討回解僱通知金。因此,我們要問自己:到底一半的工作日數保證 是否太苛刻,和如何增加工作日數呢?如果大家覺得一半的工資不能夠養家 的話,便應該支持梁耀忠議員今天的條例草案。梁議員其實曾就該條例草案 作出修正,他已說肯接受一半工資,即開始的4個星期付一半工資,只不過 不可以長期接受"吊鹽水",希望在 10 個星期內可以有三分之二的工作保 證。這項修正其實已給予僱主靈活性,因為僱主曾到條例草案委員會說條例 草案缺乏靈活性。簡單來說,靈活性便是"吊短不吊長",僱主可以令工人 吊鹽水 4 個星期而只給予僱員一半工資,以致他那個月不能夠養家。然而, 僱主不可以長期令僱員"吊鹽水",那就是說,如果 10 個星期內可有三分 之二的工作保證,他可以吊4個星期剛好一半的工作天後,然後第二個4個 星期差不多最少要付三分之二的工作日數,然後最後的兩個星期,便要給足 夠的工作日數。換句話說,兩個月內仍然可以出現 "開工不足"的情況,即 第一個月計算一半的工作日數,第二個月計算三分之二的工作日數。其實, 現在我們所討論的只是一個很少的數目,大家應該問問自己,這個數目是否 足以令別人養活家人。我想說的便是這回事。

因此,我希望大家支持梁耀忠議員提出的這個議員條例草案,大家可能不知道"吊鹽水"的痛苦。根據現有的法例,即 26 個星期的三分之二工作天總數,僱員可能要"吊鹽水"4 個月。在這 4 個月中,僱員應否工作下去,如果不繼續工作,便可能失去多年來的年資,以及領取遣散費的權利。如果繼續工作,便要連續 4 個月賺取一半工資,不過,這樣又是否捱得住呢?如何抵受家人的壓力呢?一半工資又怎可以養活家人呢?有時候,僱員被迫辭職和放棄遣散費,以便另尋工作,這又變成了工人自動辭職,因而喪失了索取遣散費的權利。所以,我十分希望大家可以支持本條例草案。我聽說政府方面也會作出檢討,如果本條例草案今天不能獲得通過,政府也一定會處理這個問題。我希望政府能在這件事中真正考慮"吊鹽水"工人的苦況。

田北俊議員致辭:主席,這些對《僱傭條例》進行的修訂其實對香港大部分的僱主和工人都扯不上關係。時至今天,我想只有製衣業的工人和僱主與這項法例可以扯上關係。數年前,聰明的我想到,有那麼多勞工法例會進行修改,工廠遲早會越賠越多,所以,大約在一九九三年,我賠了數千萬元,遣散了 500 個工人,今天如果要遣散這批工人,恐怕一億元也不足夠。所以,很多業內人士都稱讚我懂得"三十六着,走為上着"。

我以往經營製衣的時候,還有十多二十萬人從事製衣業,現在卻只剩下三、四萬人,其中大部分是比較難以轉往別處工作的工人,而比較聰明和年輕的工人都轉往例如電子或服務性等行業。說得難聽一點,現在剩下的數萬名製衣工人,都是很難接受再培訓的,他們也很難轉工。

李卓人議員說,這些工人4個星期的工作日數只有一半,工資也只得一 半,他們如何維生呢?事實上,這情形並不是只維持一整年。為甚麼製衣廠 出現這個情形而電子廠沒有這情形呢?那是因為電子業和塑膠業並沒有季節 性的限制。製衣業方面,各位議員也可以想像到,顧客當然會在冬天才購買 毛衣和皮樓。反過來說,冬季時做 T-恤,夏季才賣。1 年來計,便有幾個月 是全日工作,剛才我們所說那數萬名工人,甚至可能要每周工作 60 小時。 他們有時候需要"加班",有的時候開工不足,即所謂"吊鹽水"。不過, 整年來看,情況並不像李議員說得那麼惡劣。有關建議根本只是針對遣散 費,而結論是工人應否繼續工作。工人取了遣散費,便不可以保留他原來的 工作。不領取遣散費,才可以繼續該份工作,希望在 26 個星期內,開工不 足的日數只是三分之一,4個星期便是一半日數。但在這個情形下,很多僱 員仍可以繼續從事製衣工作。很多廠家都說現在適逢淡季,工人根本兼職其 他工作,例如在快餐店或其他行業工作。如果這樣做,他們還可以保持尊 嚴,說自己是製衣工人,屬於技術性工人。如果沒有這些後路,工人不能轉 往一些較好的工作,而要從事例如在餐廳洗碗碟的工作,這對他們的自尊心 來說,將會造成很大的打擊。他們本來屬於技術工人,現在卻要洗碗碟,可 能每個月只有三、四千元工資,不但工作時間長,工作環境還要比製衣廠惡 劣,這是否議員所希望的呢?

我經常覺得李議員、劉議員和梁議員從勞方方面來說,好心未必做到好事。雖然那些工人可以取得遣散費,但問題是他們會因此而失去工作。換句話說,取了幾萬元之後,每個月便沒有了幾千元,而且不是全年都只有三、四千元,工作足夠的時候會有五、六千元。總而言之,因為工廠存在季節性問題,害怕沒有訂單,這是沒有辦法的。製衣業是沒可能不看潮流的,例如閉上眼睛一口氣做 10 萬件黑色毛衣,這是不可能的。製衣廠一定要多做有銷路的貨式,交貨期也因此變得很短。所以如果條例草案獲得通過,很

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多從事季節性行業的製衣廠便乾脆結業好了。

李議員亦曾提到產地來源證的問題,如果不繼續生產,便等如浪費了配額。其實,大部分廠家都覺得香港現時的配額不值錢,這和十幾年前的情況相差很遠。現時其他國家同樣可以設廠,同樣可以獲得配額。所以,設廠不一定要在香港。很多廠家在香港設廠幾十年,設計人才和管理人才都在這裏,即使到別處設廠,仍會在香港繼續維持小型工廠,聘用數十至 100 名工人,這也是好辦法。

接着我想討論的問題,也曾經在勞工顧問委員會討論過,那就是如果要達到勞方的要求,便要由現在的 26 星期的三分之一的工作日數,改為 10 個星期的三分之一的工作日數。26 個星期已長達半年,控制半年的三分之一日數,當然比 10 個星期的三分之一容易。就生產毛衣來說,如果在二、三、四月沒有工作,而要在這麼短時間內達致三分之一的工作日數,很多廠家都會辦不到。在這個情況下,廠家惟有遣散工人,給多一些錢。當然工人可以說,這便可以得到數萬元,但他們從此便失去了工作。這是否議員所希望的呢?

我希望各位議員再三思量,讓工人繼續維持工作還是他們領取遣散費 後去洗碗碟好呢?抑或維持製衣廠的工作,有時候需要加班趕工,有時候開 工不足,但或許可以讓他們兼職。

主席,我已經就本條例草案給予詳盡的解釋,全部都是和製衣業有關的。製衣業的業內人士請我提醒梁耀忠議員,他代表的是紡織、製衣界,並非單單是紡織、製衣界的工人。

謝謝主席。

何敏嘉議員致辭:主席,民主黨支持本條例草案。近年來,開工不足或"吊鹽水"的問題確實減少了,然而,對某些工人來說,這仍然構成問題。本條例草案進行討論的時候,我們收到許多僱主的意見。經過考慮後,我們今天會支持修正案,因為修正案較原來的條例草案更為中立或許有些人會形容為中間偏左。總括來說,我們的方向是會為工人在領取遣散費方面爭取改善。其實,這項改變可能只會令僱主多付出數天工資,未必須要遣散僱員。此外,即使僱主如此決定,僱員仍可選擇是否接受遣散。今天的辯論開始前,政府官員承諾即使今晚的條例草案不獲通過,他們仍然承諾會進行檢討,以及作出改善。不過,為何今天政府才這樣說呢?

剛才李卓人議員提到,在條例草案委員會進行討論時,大家收到的信息是全面反對,那時候並沒有一個強而清晰的信息,顯示政府承諾會進行檢討。大家可以翻查會議記錄,甚至聆聽錄音帶。該條例草案應是在去年年在 在憲報刊登,距離現在已經有一段很長的時間。條例草案委員會審議期間 我們發現政府基於這項是梁耀忠議員提出的議員條例草案,所以在未得到梁議員同意前,不敢遞交勞工顧問委員會("勞顧會")進行諮詢。表已是勞顧會主席,當立法局發生事情而又有議員條例草案在憲報刊登時,政府是有責任向勞顧會進行諮詢的。不論討論結果如何,政府也有責任提出來討論這所要留至今年四月成立條例草案委員會時才說,還要留待梁耀忠議員同等的話,才將條例草案交到勞顧會進行諮詢。這樣其實白白浪費了整年時間,如果可以提早半年交到勞顧會進行諮詢。這樣其實白白浪費了整年時間,如果可以提早半年交到勞顧會進行諮詢。這樣其實白白浪費不產至如時失資的話,才將條例草案交到勞顧會進行諮詢。這樣其實白白浪費不產至如此步?政府今年才告訴我們,勞顧會趕不及進行討論和搜集資料,這是政府失責。政府今天才告訴我們,希望在今年暑假搜集資料後再與勞顧會討論。

主席,我知道今次這條例草案應該不夠票數獲得通過,可是,我希望提 醒政府在勞顧會所扮演的角色,而且政府是兼當主席一職的。就勞資問題來 說,如果政府認為勞顧會這麼重要,每項事情也要聽取勞顧會的意見,我則 希望政府能夠增強敏感度,不用梁耀忠議員提出才去做。照目前的表現看 來,我們的行政機關實在缺乏效率。

主席,民主黨稍後會支持梁耀忠議員提出的修正案。本人謹此陳辭。

教育統籌司致辭:主席,政府反對梁耀忠議員提出的《1996 年僱傭(修訂)(第4號)條例草案》,現在就讓我解釋箇中原因。

《僱傭條例》現時有關停工的條文,給予僱主一定的靈活性,容許他們在淡季、原料付運延誤或其他無法預知的情況,以及任何非他們所能控制的情況下,可暫時不向工人提供足夠工作,但同時亦保障僱員有合理的入息。這些保障條文應已適當地兼顧僱員的利益和僱主在經營方面的實際需要。

梁耀忠議員提出的條例草案,旨在修訂停工的定義,大幅度縮減僱員不 獲提供工作或給予薪酬而有資格領取遣散費的日數。

梁議員其後發出預告,準備在全體委員會審議階段提出新建議,取代他原先提出的條例草案。建議修正案提出,如僱主在連續 10 個星期(即取代現時的 26 個星期)的期間內,未有向僱員提供超過正常工作天總數三分之一的

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工作,或給予等值薪酬,該名僱員即可視為停工,並且有權申索遣散費。

我們反對梁議員的條例草案的主要理由,是他並沒有提出任何數據支持他的原來建議和修正建議,除了大幅減低僱主在淡季或其他無法預知情況下經營方面的靈活性外,究竟對僱員是否有實質的幫助。更重要的是,梁議員的最新修正的建議內容,完全沒有諮詢勞顧會勞資雙方代表或個別行業的僱主和僱員。這並非改善勞工權益的負責任做法。

政府非常重視保障僱員的就業機會,但是我們要小心在維護僱員就業機會和導致僱主遣散工人之間取得平衡。況且現在的就業情況持續改善,自一九九五年第四季起,就業不足率由一九九五年七月至九月的 2.5%,下降至一九九七年二月至四月的 1.2%。製造業同期的開工不足率亦由 2.4%下降至 1.7%。

在這情況下,與其他僱員索償個案和勞資糾紛的總數比較,勞工處接獲 有關投訴停工個案並不多。在一九九六年,勞工處接獲投訴停工的個案共 125 宗,只佔投訴個案總數的 0.6%。

勞顧會在一九九七年四月二十一日的會議中詳細討論梁議員的條例草案。僱主委員在會上強烈反對條例草案的建議,並強調建議對就業機會所帶來的負面影響。部分僱員委員原則上不反對修改現行法例,但一名僱員委員質疑,長遠來說,梁議員的建議是否對製造業工人有利。由於梁議員未能提出足夠證據支持他的條例草案,與會者同意,勞工處應搜集更多可能導致停工的個案的統計資料,供勞顧會轄下的勞資關係委員會詳細審議,然後交由勞顧會進一步研究。

有些議員關注可否改善現行法例有關停工的定義。我向各位議員作出承諾,政府原則上願意修改有關停工的定義,以確保僱員獲得更大的保障。當勞工處在本年七、八月間完成分析停工個案的統計資料,並提交勞顧會轄下的勞資關係委員會審議後,政府隨即會再次徵詢勞顧會的意見。如勞顧會對修訂停工條文的具體內容達成共識,政府便會提出相關的立法建議。因此,在現階段實不應倉卒通過條例草案內沒有理據支持和未經諮詢的建議。

基於上述情況,我謹請各位議員支持政府的立場,投票反對梁議員的條 例草案。

謝謝主席。

梁耀忠議員致辭:主席,我想對教育統籌司和一些同事剛才所作的發言作出回應。剛才何敏嘉議員說今晚的條例草案可能不獲通過,儘管如此,我仍很多謝他的發言,亦很多謝民主黨表示會支持我的修正案。事實上,今屆立法局內,我們有很多來自工會和勞工界的代表,但剛才有關本條例草案的發言中,只有民主黨和李卓人議員提出意見,其他勞工界的朋友反而沒有說出他們的意見,這是令我覺得不開心的地方。

八十至九十年代,開工不足是一般"打工仔"所面對的問題,今天竟然大家都不想再講,原因為何,我想大家有各自的原因,我不想分析。我只想說,其實當大家說要為打工朋友爭取權益時,我很希望不要只是空談,最重要的還是要採取實際行動,真真正正為打工朋友的權益做些實際的工作。無論各議員對這項條例草案有甚麼意見,無論我的修正案是否比較溫和也好,其實這修正案旨在重新釐訂"停工"的定義,以改善過往工友常常提到的"吊鹽水"問題。

我希望在座議員認真的想一想,為甚麼工人將停工稱為"吊鹽水"呢? 這是否恰當呢?勞工界朋友用"吊鹽水"作為"停工"的定義,其實反映了 真正的情況。不論李卓人議員或教育統籌司的觀點為何,其實現時的條例只 會令工友苟延殘喘,但他們的生活真的很悲慘。這是因為他們只可以賺取一 半的工資,而且很多時候他們的工資是以底薪計算的。試想想,一個工友以 底薪計算工資,而且只是計算一半的工資,他們到底如何維生呢?特別是在 工廠工作的工友,他們的正常工資也只有四、五千元,一半工資便只有二千 多元,這樣如何足以維生呢?所以, "吊鹽水" 這名詞確實將他們的苦況反 映出來。當然,僱主會說他們本身的情況也很差,他們也出現所謂的困難, 所以無法提供足夠的開工日數,但他們仍然要付出一半工資,令工人不用遭 受剛才田北俊議員所說的遣散。這方面來說,僱主這般的做法當然不錯;但 另一方面,大家有否想到,工友其實不是提出過分的要求,他們並不是要求 支取全薪。其實,勞工都體諒共渡難關這個道理。現在這項條例草案,無論 獲得通過,還是保留原來的條例,工人都領取不到全薪。所以,我們不是不 體諒所謂旺淡季的情況,事實上我們非常體諒到,所以不要說勞工界貪得無 厭,或完全不理會僱主的困難,這絕對不是事實。

田北俊議員和教育統籌司經常說,將現時的 26 個星期予以縮短便沒有靈活性,而且結果可能迫使僱主決定要關閉工廠,導致員工可能連一半的生活費也拿不到,並且要面對失業的苦況。我希望對田議員再說一次,如果僱員這樣決定時,他要先作出抉擇。如果他真的要僱主按着我提出的條例草案那樣做,否則便拿遣散費,他便要考慮到提出之後所面對的困難,並不是為了拿遣散費便可以甚麼也不理。大家也應該想到,這些工友大多是上了年紀

的人,他們作出這個決定,一定有背後的因素,那就是這樣拖下去,根本不能應付生活,所以,他迫於無奈要作出決定,寧願拿遣散費,也不想再捱下去。這實實在在的情況。我希望大家明白,雖然田北俊議員本着一片好心考慮這個問題,我也很多謝他這樣做,但僱員本身也會經過深思熟慮,才作出抉擇。

事實上,今時今日,香港弄成這樣子,都是歸究於七十和八十年代的所謂"國際分工現象"。投資者不斷到一些地區,或一些能夠令利潤更為豐厚的地方發展工序,進行赤裸剝削,以致現時香港工業不斷萎縮。那些以往付出過青春和血汗,又或是為香港的繁榮及經濟貢獻了一生的工友,最後變成了不斷地"吊鹽水"。因此,我認為僱主不能夠推說因有旺淡季而需要靈活性,不得不要工人捱下去,我覺得僱主不可以這樣做。除此之外,更有些像田議員以前說的無良僱主,他們明知自己的工廠或公司根本不可以再捱下去,例如8個月後便可能要倒閉。為了逃避支付遣散費,或逃避支付長期服務金,他們會利用所謂"吊鹽水"的方法,看看工人能否捱下去。如果可以的話,惟有最後給予遣散費或長期服務金。否則,僱主便可以省回一筆遣散費或長期服務金。這也是我提出本條例草案的其中一個最重要的因素。

我收到一些工友投訴他們的僱主明知工廠將會倒閉,便開始 "吊鹽水",讓工人無法捱下去而自動離開。因為根據現時的法例,如果工人自動辭職,根本不會得到任何補償。這解釋了為何要縮短時間,將 26 個星期改為 10 個星期。我認為我們須要同舟共濟,而且體諒大家的困難,但不要這樣拖下去,兩、三個月也許可能接受,但四、五個月又如何拖下去呢?工人不用養家活兒嗎?

主席,本條例草案並不是看不到僱主的困難,事實上,我確實看到困難存在,但我亦希望僱主能夠看看工友的難處,不要只想自己有困難,工友沒有困難。事實上,像剛才何敏嘉議員所說,現在的情況可能沒有過往那麼嚴重,但為何沒有那麼嚴重呢?特別是紡織業方面,大家也知道去年美國就配額問題與香港發生很多爭議,亦導致政府收緊"潛水貨",使一些紡織製配廠得以繼續經營,情況因而有所改善。而較早一年前,情況卻是差很多天極是如此,現在製造業也出現這種現象。我記得有一間手錶工廠同樣出現定種現象,那間手錶廠已經營了有8年,有幾位工友的年資也超過5年,促僱主希望在一、兩年後將工序慢慢移上中國大陸。基於這個計劃,他為定種現象,那間手錶廠已經營了有8年,有幾位工友的年資也超過5年,避免支付遣散費或長期服務金,便慢慢將工作時間縮減,導致最後這幾位工友無可奈何地自動辭職,一分錢也拿不到。這現象便是我剛才所說最不想看到的現象。但事實上,很可惜有一些無良的僱主真的這樣做。所以,本條例草案

只不過旨在針對這情況作出少許改善,並非要達到全日工作這情況。我希望 大家能夠明白有些工友的處境十分困苦,希望大家去想一想這件事。

剛才教育統籌司說,本條例草案不夠理據和資料,而且沒有諮詢勞工顧問委員會。據我所知,近這兩年來,本局一定會就任何條例草案成立條例草案委員會,聽取其他持有不同意見的團體的意見,並且進行諮詢。如果真的連條例草案委員會也沒有成立,便拿上來進行二讀、三讀,我覺得真的不太好。可是,我們曾就本條例草案成立委員會,讓大家提出意見。事實上,那天很多資方人士前來表達意見,雖然是罵人多於提意見,但總算是有給予他們機會。所以,我們並沒有阻截他們提供意見的渠道。

至於說到理據不足,這是見仁見智的問題。有關開工不足的資料,怎可以有客觀的資料呢?例如剛才我所說的手錶廠的例子,工人會否去勞工處投訴呢?他當然不會。事實上,很多時遇有這些開工不足的情況,只要僱主給予 12 日,勞工處也不會受理有關個案,當然,勞工處會說有這些資料,但有多少工人明知法例沒有提供保障,還到勞工處投訴呢?所以,即使勞工處有資料,也不會是準確的資料。政府說會進行調查,搜集資料,我相信搜集得來的資料也會流於表面,而不是完整的資料。

主席,就本條例草案而言,我不是沒有理據,也不是沒有資料,只不過大家的立場完全不同而已。剛才何敏嘉議員也說過,本條例草案可能不獲通過,原因是政府最近有一個新想法,那便是在暑假期間政府會進行詳細研究,研究後可能會立法將"停工"的定義再加以改善。此擧令部分議員覺得既然政府會這樣做,不如讓政府做,因此而不支持我的條例草案。我想告訴大家,即使我的條例草案不獲通過,我也希望政府遵守諾言,做得比我好。不過,我亦希望各位議員明白一個道理,那便是一鳥在手,好過百鳥在林。如果有機會的話,應盡快通過實行。因為政府所許下的很多承諾都是空洞的,正如剛才黃偉賢議員就上一項條例草案不斷批評政府只懂說會做。最後結果如何呢?死怕大家心中有數。

此外,我希望大家明白,未來臨立會的成員,都會以商界代表為主,甚至將來第一屆的立法會的選擧,亦限制了基層市民的參選。所以,我們的未來仍是會以工商界為主導,這是不容置疑的。日後能否真的會有條例草案滿足或保障勞工階級的權益,這是令人懷疑的。所以,我奉勸過去不斷爭取工人權益的團體或同事支持本條例草案。

謝謝主席。

條例草案二讀之題經付諸表決。

Voice vote taken.

聽取聲音表決。

Mr LEUNG Yiu-chung claimed a division.

梁耀忠議員要求點名表決。

主席:本局現進行點名表決。

主席: 謹提醒各位議員,現付諸點名表決之議題為:《1996 年僱傭(修訂)(第4號)條例草案》予以二讀。

請各位議員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

主席:在本席宣布結果之前,請各位議員核對所作表決,是否有任何疑問? 現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN,Mr CHAN Kam-lam, Mr Paul CHENG, 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 and Mr NGAN Kam-chuen voted against the motion.

Miss Christine LOH, Mr CHAN Wing-chan, Miss CHAN Yuen-han and Mr CHENG Yiu-tong, abstained.

THE PRESIDENT announced that there were 22 votes in favour of the motion and 30 against it. He therefore declared that the motion was negatived, and that no further proceedings would be taken on the Bill.

主席宣布贊成議案者 22 人,反對者 30 人。他於是宣布議案遭否決,並宣布本局不會就條例草案進行進一步的議事程序。

Committee stage of Bills

條例草案全體委員會審議階段

Council went into Committee.

本局進入全體委員會審議階段。

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

《1996年性別及殘疾歧視(雜項規定)條例草案》

Clauses 1, 2, 10, 14, 15, 18 and 19 條例草案第 1、2、10、14、15、18 及 19 條

MISS CHRISTINE LOH: Mr Chairman, I move that these clauses specified be amended as set out in the paper circulated to Members.

I believe these clauses are not in dispute, and from looking at my neighbour's stack of documents given to him by the Administration on how to vote, I notice that none of these clauses are in dispute, so I will not say anything.

It is already very late.

Proposed amendments

擬議修正案內容

Clause 1 (See annex III)

條例草案第1條(見附件 III)

Clause 2 (See annex III)

條例草案第2條(見附件 III)

Clause 10 (See annex III)

條例草案第 10 條(見附件 III)

Clause 14 (See annex III)

條例草案第 14 條(見附件 III)

Clause 15 (See annex III)

條例草案第 15 條(見附件 III)

Clause 18 (See annex III)

條例草案第 18 條(見附件 III)

Clause 19 (See annex III)

條例草案第 19 條(見附件 III)

田北俊議員致辭:主席,陸恭蕙議員偷看我這份文件時,沒有說是政府給我的。

全委會主席:請就議題發言, (眾笑)或提出規程問題。誰叫你踫巧坐在她旁邊,給她看見也沒有辦法的! (眾笑)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I rise just merely to say that the Administration agrees with the Committee stage amendments proposed.

Question on the amendments put and agreed to.

修正案之議題經付諸表決,並獲通過。

全委會主席:由於就第2、14、15、18及19條所動議,有關刪去條文之修正案已獲可決,因此第2、14、15、18及19條會從條例草案中刪去。

Question on clauses 1 and 10, as amended, put and agreed to. 經修正的條例草案第 1 及 10 條之議題經付諸表決,並獲通過。

Clasue 3

條例草案第3條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 3 be amended as set out in the paper circulated to Members. I will speak on clauses 3 and 13 together because they are connected.

Clause 13 gives the EOC two new functions which are, first, to promote the public acceptance and understanding of internationally-recognized standards for the equal treatment of men and women, and second, to examine and report on any proposed legislation that the Commission considers may have equal opportunity implication.

Clause 3 specifies international standards which are relevant for these purposes. Clause 3 mentions obligations to eliminate sex discrimination under the International Covenant on Civil and Political Rights, the International

Covenant on Economic, Social and Cultural Rights and CEDAW and the Committee stage amendment, the clause to reflect that SCEDAW has been applied to Hong Kong since the Bill was first gazetted, hence one of the Committee stage amendments that have to be moved, which Dr the Honourable LEONG Che-hung, the Honourable James TIEN and the Honourable Mrs Miriam LAU seem to think, implies that the Bill is not well drafted. In fact, as you can see from this case it is not true.

Clause 3 also mentions other relevant guidance provided in the United Nations 1993 Declaration on the Elimination of Violence against Women and provided in two recommendations by the International Labour Organization concerning employment discrimination and equal pay.

Members and the Commission should be reassured that these clauses do not impose any new legal duties on the Commission. Indeed, if they did, the clauses would have been blocked for having a charging effect. The clauses merely give the Commissioner discretion to undertake these functions if in the Commission's strategic judgment they would be useful.

Moreover, it is undisputed that the Commission could undertake these functions even without these clauses under the authority of its existing general function of promoting equality of opportunity between men and women. The legal effect of these clauses is, therefore, rather innocuous, but I nevertheless insist on putting these clauses forward because an important principle is at stake. Hong Kong is proud of being a cosmopolitan and internationally-oriented territory. We participate actively in a wide variety of international organizations, and the laws of Hong Kong are replete with express references to international standards, conventions and agreements, both binding and non-binding.

Nevertheless, the Administration steadfastly resists the insertion of any reference to the relevant international standard in equal opportunity legislation, even as it regularly represents this legislature to the United Nations as implementing those standards. This is not only hypocritical. It retards the development of equal opportunity law in Hong Kong. Attention to fast-developing international standards is valuable in the area of equal opportunity for the same practical reasons as in any other field. As the expert body in this field, the EOC should as a matter of course take up the task of

overseeing and promoting the awareness and implementation of such standards.

I hope that it will do so whether or not these clauses are enacted, but these clauses will substantially assist it in that task. I hope Members will vote for clause 3.

Proposed amendment

擬議修正案內容

Clause 3 (See annex III)

條例草案第3條(見附件 III)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as a matter of principle, we cannot agree with the proposed amendments which seek to specify international covenants in domestic legislation.

Clauses 3 and 26, in conjunction with clauses 13 and 30, seek to expand the powers of the EOC to include the promotion of international instruments which have not been accepted for implementation in Hong Kong. This is unacceptable and will mislead the public into thinking that the standards in these instruments are legally binding.

Furthermore, for the EOC to be seen to be pushing for the adoption of standards not yet applicable to Hong Kong will not be conducive to the EOC's political neutrality.

Mr Chairman, the Administration strongly objects to clause 3 and the Committee stage amendments.

MISS CHRISTINE LOH: Mr Chairman, the Administration seems to argue that these have to be legally binding before the EOC can be promoting them. I think they know very well in their hearts that these are standards, and standards as such will not become part of the law. But if we abide by these international agreements and conventions, the EOC should of course be pushing them.

Thank you, Mr Chairman.

Question on the amendment put.

修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第3條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:在本席宣布結果之前,請各位委員核對所作表決,是否有任何 疑問?現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN

立法局 一 一九九七年六月十一日

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 and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 31 against it. He therefore declared that the amendment was negatived.

全委會主席宣布贊成修正案者 25 人,反對者 31 人。他於是宣布修正案遭否決。

梁智鴻議員:主席,根據《會議常規》第 37 條第(4)款的規定,我動議若有委員在本次會議席上就《1997年應課稅品(修訂)條例草案》的其餘各項修正,要求進行點名表決時,全體委員會須在點名表決鐘聲響起 1 分鐘後立即進行有關的點名表決,希望同事不要反對,也不要以此進行辯論。

Question on the motion proposed and put.

議案之議題經提出待議,隨即付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本席以為可者佔多,本席宣布可決。即若有委員在本次會議席上,就《1996年性別及殘疾歧視(雜項規定)條例草案》其餘各項修正案要求進行點名表決的話,全體委員會須在點名表決鐘聲響起1分鐘之後,立即進行有關點名表決。

Question on the original clause 3 put.

原擬條例草案第3條之議題付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:第3條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:尚欠數人。在本席宣布結果之前,請各位委員核對所作表決, 是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, 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 and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 24 votes in favour of the motion and 31 against it. He therefore declared that the motion was negatived.

全委會主席宣布贊成議案者 24 人,反對者 31 人。他於是宣布議案遭否決。

全委會主席:由於全體委員會不同意把第3條納入本條例草案,即表示全體員會亦不會同意把第13條(與第3條有關連之一條)納入本條例草案。因此,

第 13 條將不會被讀出,而該條文亦不會納入本條例草案。

Clauses 4, 5 and 6 條例草案第 4、5 及 6 條

MISS CHRISTINE LOH: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

A major purpose of the SDO is to eliminate indirect discrimination, that is, apparently neutral rules and practices which in actual practice have a disproportionate impact on one sex or another. This purpose has been thwarted in the United Kingdom by a series of court decisions beginning with *Perreira v. Civil Service Commission*. These decisions are virtually certain to be followed in Hong Kong unless clauses 4 to 6 of this Bill are enacted.

In the *Perreira* case the United Kingdom court decided that an indirect discrimination claimant had to identify a requirement or condition that absolutely barred his or her success. This is impossible in most real situations of indirect discrimination. Real decisions, such as the choice of a successful job applicant, are typically based on the balance of criteria. One or more criterion may in practice be highly detrimental to one sex. Nevertheless no single criterion can be described as an absolute bar by itself. As a result, no such decision can be treated as indirect discrimination, no matter how much difficulty the criteria used actually posed for that sex.

The *Perreira* line of cases will almost certainly be applied to the SDO. The Administration has pointed out that Australian courts have not adopted such a restrictive construction of similar language used in Australian legislation. Unfortunately, because the Ordinance is copied from United Kingdom law, Hong Kong courts will follow the United Kingdom rather than the Australian construction of the legislation. Clauses 4 to 6 redefine indirect discrimination to prevent the *Perreira* construction from being applied to Hong Kong. The Committee stage amendment retains as much of the current statutory language as possible whilst still achieving that purpose.

擬議修正案內容

Clause 4 (See annex III)

條例草案第4條(見附件 III)

Clause 5 (See annex III)

條例草案第5條(見附件 III)

Clause 6 (See annex III)

條例草案第6條(見附件 III)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the proposed amendments seek to reverse a decision of the United Kingdom's Court of Appeal that a condition or requirement may constitute indirect discrimination only if it amounts to an absolute bar. At this juncture, there is little information on whether such a reversal is justified. Also its implications have yet to be assessed and more detailed study is necessary before we can formulate a view.

The provisions on what constitutes indirect discrimination are important provisions in anti-discrimination legislation. Therefore any amendment will need strong justification. Miss LOH said her proposed amendments were based on the recommendation made by the United Kingdom Equal Opportunities Commission in 1988. What she has not said is that this recommendation has not been accepted by the United Kingdom Government. Assuming for a moment that the Court of Appeal's decision should be reversed, it is not clear whether the wording proposed by Miss LOH now can achieve the objective.

As the proposed amendments also seek to change other wording in the existing sections, this would mean that other judicial ruling on the meaning of indirect discrimination can no longer be relied upon. This would give rise to uncertainty in what is one of the most important provisions in the SDO.

Mr Chairman, the Administration strongly objects to Clauses 4, 5, 6 and the Committee stage amendments.

Question on the amendments put.

修正案之議題經付諸表決。

Voice vote taken. 聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第4、5及6條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:在本席宣布結果之前,請各位委員核對所作表決,是否有任何 疑問?尚欠3人。現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the amendments.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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 and Mr NGAN Kam-chuen voted against the amendments.

Miss CHAN Yuen-han abstained.

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

全委會主席宣布贊成修正案者 25 人,反對者 30 人。他於是宣布修正案遭否決。

Question on the original clauses 4, 5 and 6 put and negatived. 原條例草案擬第 4、5 及 6 條之議題經付諸表決,並遭否決。

Clause 7

條例草案第7條

MISS CHRISTINE LOH: Mr Chairman, I believe this is another clause that the Government is asking everybody to support so I will not waste your time. Please vote yes. (*Laughter*)

Proposed amendment

擬議修正案內容

Clause 7 (See annex III)

條例草案第7條(見附件 III)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the SDO provides for a grace period for small employers which will end on 13 July 1998. This grace period is reasonable and necessary. We object to the shortening of the grace period as proposed in clause 7(b) and (c) as it will cause much difficulty to those small employers.

Mr Chairman, as the Committee stage amendments seeks to delete this objectionable clause 7(b) and (c), the Administration agrees with this Committee stage amendment. However, Honourable Members may wish to note that clause 7(a) provides a grandfathering provision in respect of death and retirement schemes. Mr Chairman, may I put down a marker that if clause 7(b) and (c) were deleted from clause 7, the Administration will object to clause 7 as amended because there is no urgent need to propose any amendments to grandfather existing death or retirement schemes.

MISS CHRISTINE LOH: Mr Chairman, I hope what the Administration was saying is the same in this paper that I spied from the Honourable James TIEN's set of documents. If what the Administration is saying is "vote for it" and then something else, then yes, please vote for it.

Question on the amendment put and agreed to.

修正案之議題經付諸表決,並獲通過。

Question on the cluase 7, as amended, put. 經修正之條例草案第7條經付諸表決。

Voice vote taken.

聽取聲音表決。

Miss Christine LOH and Mr Albert CHAN claimed a division.

陸恭蕙議員及陳偉業議員要求點名表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:經修正之第 7條,納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。 **全委會主席**:在本席宣布結果之前,請各位委員核對所作表決,是否有任何疑問?尚欠2人。現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, 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 SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 25 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 31 人,反對者 25 人。他於是宣布議案獲通過。

Clauses 8, 9, 22 and 23 條例草案第 8、9、22 及 23 條

SECRETARY FOR HOME AFFAIRS: Mr Chairman, there is no urgency to

propose any amendments to these items at present. Mr Chairman, the Administration objects to clauses 8, 9, 22 and 23.

Question on the clauses 8, 9, 22 and 23 put. 條例草案第 8、9、22 及 23 條之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:第 8、9、22 及 23 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:在本席宣布結果之前,請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 30 votes in favour of the motion and 26 against them. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者30人,反對者26人。他於是宣布議案獲通過。

Clause 11

條例草案第11條

MISS CHRISTINE LOH: Mr Chairman, I will respond.

CHAIRMAN: You may reply afterwards, Miss LOH.

MISS CHRISTINE LOH: I am sorry.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, section 59 of the SDO provides for an exemption for acts which are carried out for the purpose of safeguarding the security of Hong Kong. As this exemption provision serves to protect the interests of our community, it is necessary and should therefore be retained.

I am sure Honourable Members will agree with me that while protecting the rights of the individuals we should not undermine our security. Security measures are, by their very nature, mainly emergency measures which are difficult to foresee. There is no justification for the deletion of the existing exemption provision unless one thinks that our security does not worth protection.

Mr Chairman, the Administration strongly objects to clause 11.

MISS CHRISTINE LOH: Mr Chairman, the Administration has never been able to provide an example of what acts the exception is intended to authorize and the Administration was unable to give an example even at the last minute. It is in fact very difficult to imagine any act of sex discrimination which is both so unfair that it does not fit into any of the Ordinance's many other exceptions and is also necessary for Hong Kong's security. Whatever the intention, the terms of the exception are grossly wide. Any act done for the purposes of safeguarding security falls within its scope without regard to whether the act was reasonable or whether it was actually necessary to achieve the purpose.

Moreover, the exception provides that in cases outside the employment field, the Chief Secretary may conclusively certify any act as subject to the exception. There is no judicial control of the use of such certificates. Let me underline this point, Mr Chairman. The exception does not allow a judge to question the Chief Secretary's certificate.

The reason that there is no similar provision for certification of employment cases is because that provision was struck down in the United Kingdom by a judge of the European Court of Justice before the Administration copied the United Kingdom Act. The exception creates a potentially enormous loophole. I am afraid that in practice it will be tempting for the Administration to deploy this exception to squash any discrimination claims that threatens to interfere with an established practice in any security-related part of the Government.

A similar exception was deleted from the DDO prior to its enactment, and I urge Members to repeal this one as well.

涂謹申議員致辭:主席,我十分驚訝的是,政府於數年前提出原條例草案時未能提出一個例子,一個也不能。我相信以政府擁有這麼多人力、物力,包括整隊政務官及龐大的研究隊伍,竟然由當時提出條例草案至現在答辯時也未能提出一個例子,說明在何種情況下需要削減該方面的自由和權利,若然連一個例子也不能提出來的話,我相信政府的論據是十分虛怯及沒法令人信

服的。其實行將在二十三日及二十八日會議審議的《投訴警方監察委員會條例草案》也會遇到相同的例子。我挑戰政府,假如你在眾多這般削減人權及自由的條文內也未能提出任何例子,我希望各位議員能考慮該點,否則的話,我們便是盲目地跟隨着一項條文,況且,如該條文亦未能說服你的話,你又如何能支持政府維持原條文該條款呢?

全委會主席:是否有其他委員想發言?相信大家不需要本席提醒,委員會階段發言多過一次也可以,但當然不可以重複內容。

Question on clause 11 put.

條例草案第11條之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 第 11 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:在本席宣布結果之前,請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, 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 and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 26 votes in favour of the motion and 30 against it. He therefore declared that the motion was negatived.

全委會主席宣布贊成議案者 26 人,反對者 30 人。他於是宣布議案遭否決。

Clause 12

條例草案第 12 條

馮檢基議員致辭:謝謝主席,我希望就丁屋政策再提一次我的方案,並解釋我如何去處理這個問題。正如剛才我指出,民協希望取消丁屋政策。今次陸恭蕙議員提出的修正,令我們在投票時面對一些困難。困難之處,在於陸恭蕙議員的修正,並沒有建議取消丁屋政策。在這情況下,若民協投贊成票,便變成了贊成丁屋政策繼續存在。但如果民協投反對票,便會令別人覺得民協反對男女平等。所以在這個困難的情況之下,我們民協應如何處理難題呢?

我們的做法,是希望政府在處理這個問題方面,能夠公開承諾會循着替 代丁屋政策的方向或原則行事。我們民協認為,只有取消丁屋政策才能徹底 解決問題,因為取消了丁屋政策,才會令原居民之間不會出現男女不平等的 現象。

另一方面,儘管陸恭蕙議員的修正案獲得通過,丁屋政策仍會存在,仍 會做成另一種不公平現象 — 新界原居民無論男或女,都可以有丁屋, 但市區居民則沒有。我相信在座許多"無殼蝸牛",或居住在臨屋或籠屋的人士,全都希望擁有一間屋的。因此,若政府繼續容許新界原居民擁有丁屋的話,就不如讓所有市區居民享有同等待遇了。若不能這樣的話,我相信要我們民協投贊成票,變相支持丁屋政策,便會大有問題了。但我會向大家作出承諾,民協會繼續爭取取消丁屋政策。

昨天政府曾作出承諾,而特區首長董建華先生,亦曾作出口頭承諾,表示會研究如何處理替代現行的丁屋政策。當然我沒有直接聽到董建華先生這樣說,只是透過政務司得悉。政府表示會在今年第三季成立專責委員會,研究如何處理替代現行丁屋政策。我所指的承諾,是從政務司剛才的答覆譯本中,逐字節錄出來的。這個承諾背後具有雙重意義。第一個意義,是政府對現時已經符合了擁有丁屋權的新界原居民,作出承諾,表示願意想辦法去處理這群人的居住問題。我個人很明白這群原居民的憂慮。很多原居民都符合條件申請興建丁屋,但等待了5年、10年、甚至20年,到現在政府仍沒有批地給他們,令他們沒有辦法擁有一間屋。今天若取消丁屋政策,他們20年以來的渴望,便會成為泡影,這對他們是不公平的。

我本人一直從事社區組織工作。我們從前為木屋區和臨屋區的居民爭取權益,期間發現儘管政府曾經白紙黑字地作出承諾,表示會在某年某日進行清拆,但最後卻沒有這樣做。我們很明白他們的感受,並會努力為他們爭取。同樣地,我們亦明白到,這群今天站在局外,甚至坐在公眾席上面的原居民,是會感到很絕望的。我絕對明白他們的感受。不過,我亦希望他們也能夠明白其他人的感受。

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說,若政府仍欺騙我們的話,若行政長官也欺騙我們的話,他們就無疑背負了殖民地遺留下來的包袱,永遠沒有放下來。直至今時今日,我仍然相信香港政府不會是一個無信無義的政府。到今時今日,我仍相信特區首長董建華先生,是不願意做一個對市民無信無義的領袖的。

民協的政綱要求政府取消丁屋政策。同時,民協亦堅持政府須按一般的政策,若曾經承諾給予別人某些東西,便要繼續緊守承諾。所以,我們建議用一個方法去替代現行丁屋政策。在短期之內,我希望政府考慮民協的方案,來替代丁屋政策。我以下說一說我的方案的原則:

- (一) 政府應盡快訂立一個截止丁屋申請的日期;這即是說,在截止日期之後才出生或年滿 18 歲的原居民再不能申請丁屋。現時符合資格而已登記了的並獲承諾的原居民共有 13 000 人左右。換言之,在截止日期之後出生的男丁或女丁,都不能再申請丁屋。
- (二) 政府應一次過額外撥地興建原居民的居者有其屋單位。這些居者 有其屋的單位數目應足夠安置 13 000 人。我是按剛才所述的合 資格原居民的數目為準則,將 13 000 人定為標準。單位數目應 足夠原居民去抽籤,而抽籤的制度,則採用現時香港居者有其屋 的制度;

若要參與是項計劃的抽籤,有關人士應:

- (i) 符合申請丁屋條件;
- (ii) 採用綠表去抽籤。
- (三) 是項居屋計劃可以用一個居屋苑的形式出現,因為如果現在所說的是 13 000 人,剛好是 21 座居屋樓宇。但計劃也可以一區興建一座居屋樓宇。例如若能在粉嶺興建一個足夠容納 600 個男丁的居屋苑,則其實便可以在那裏興建一座樓宇都行。換言之,具體方案是可以很富彈性的。同時,居屋價格錢應由政府釐定,而通常而言,直到目前為止,近幾年居屋價是市價的 50%,還有的是,原居民若抽中了居屋之後,3 年之內只可賣給原居民。

最後,原居民若真的想在市場上售賣其單位,亦只能在 10 年後,向政府補地價才能後出售。

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上述(一)至(三)點的方案的第一個優點,就是取消了一種不平等的情況,因為沒有丁屋政策,換言之,就沒有男女是否平等的問題;沒有丁屋政策,就沒有原居民和非原居民的不平等。

第二個優點是達致更平等的狀況,因為現在原居民不可以申請公屋和買居屋,但有了這政策之後,他們都可以像其他人一樣,大家平等。

第三個優點是,10 年之後,有關單位才可拿出市場買賣。其實現時的 丁屋政策,導致很多人炒丁權,炒丁屋,但用居者有其屋方式就沒有炒賣的 餘地。原居民一就是居住在居屋單位,一就是閣下自理,不能拿去炒賣。第 四個優點是賣出市場的單位要補地價,以致最後政府並沒有津貼給原居民。 我希望這個方案能獲政府考慮,作為取替丁屋政策的方法。謝謝主席。

劉皇發議員致辭:主席,正如剛才我所說,小屋宇政策其實與性別歧視、男女平等等問題是扯不上關係的。如果硬要以此為理由,罔顧實情,取消這項旨在解決鄉民居住需要的政策,是不負責任的。我希望本局議員能夠以尊重歷史、尊重現實的態度去看待新界問題。

在新界鄉郊地區,鄉民的居住環境和生活方式均有別於市區居民,因此,我們可以說小屋宇政策其實是一項住屋安排,既能顧及新界歷史的傳統,又能切合鄉民的需要,並補香港政府的房屋政策的不足。制訂這項政策,目的純粹是解決鄉民的居住問題;這項政策只是容許成長年的男性原居民申請建屋。這樣並非是性別歧視,而是考慮到鄉民的傳統生活方式,即是女性鄉民出嫁從夫,並無建屋的實際需要。

事實上,新界鄉議局並不反對將小屋宇政策範圍擴大至適用於女性原居民,大前提是政府必須作出妥善的安排,令鄉郊地區有足夠的土地作建屋之用。鄉議局反對有人以男女平等為藉口,在未完成檢討小屋宇政策、在未有作出其他更好的安排之前,取消這項政策,置鄉民的權益於不顧。主席,新界鄉民千百年來生於斯、長於斯,一直以來都是安份守已,所渴求的只是能夠在自己的家鄉,世世代代地生活下去。多年來,政府以低廉的價格強行徵收鄉民的土地,並且動用大量的公帑興建公屋、居屋,以解決市區人口的居住問題。最諷刺和意想不到的是,到了今天,新界原居民竟然連在自己的家鄉裏、在自己的土地上自費興建屋宇的權利,也勢將受到剝削。但我們在此提醒大家,本來我不想這樣說,不過,我還想用"警告",又或是"忠告"的字眼。

主席,新界鄉民的權益受到無理剝奪,他們一定不會無動於衷,他們不會任由別有用心的人擺布和步步壓迫,而他們也不會忍氣吞聲,任由魚肉。他們一定會捍衞他們應有的權益。主席,倘若陸恭蕙議員的條例草案獲得通過,以致新界原居民的建屋權利,被一刀切的取消,那便是等於用不法手段,粗暴地對香港的原居民進行迫害。歷史告訴我們,這樣的做法從來只會對社會的和諧穩定帶來重大的傷害。事實上,由此而導致人民內部的仇恨、衝突、流血、社會動盪的例子是多得很的。倘若真的出現此局面,也只能夠由那些別有用心,不惜以社會和諧穩定作賭注的人負責。

主席,我知道今天無論我說多少說話,怎樣去解釋,對一些有成見的人,都會起不到甚麼作用。但是,我希望本局各位同事在投票之前,能夠客觀地想一想,投下反對的一票,這樣便可避免影響民生。

主席,我反對有關條例草案。

李永達議員致辭:主席,馮檢基議員剛才說出了民協在這個問題上的立場,但我仍希望3位仍未發言的民協成員作進一步澄清。本局是一個公共機構,而由於我們的立法工作非常重要,我們必須根據事實及可預測的情況作出我們的決定。馮檢基議員剛才披露了一些很新資料,其中包括他曾接觸董建華先生,而據他說,董先生曾給他一些口頭的承諾。這種轉述口頭承諾的情況在香港歷史已發生了不知多少次,但是許多時候,被引述者都因引述錯誤而須作出澄清,跟着便又產生一番辯論。這種情況並不是從未發生過的。因此,我認為馮檢基今天在立法局所說的話,當然可成為他投票時的一個考慮因素,但是若以此來解釋民協的立場的話,便顯得不足夠了。直到今天,公眾或立法局都未有聽到未來的行政長官在這個問題上的立場及做法。因此,如果我們盡信馮檢基議員轉述的保證而據此立法的話,我們的立法過程便會變得輕率。

第二,馮檢基議員代表民協說,他們已構思了一個很完善的方案來解決這問題,而他們的方案其實在某個角度來說,可能較陸恭蕙議員的條例草案更為徹底,這確使我感到很意外。我在上星期的辯論也曾表示,一個政黨是不可以這樣做事的。若馮議員有好的意見,他應該早一點提出來辯論,早一點讓大家知道民協想怎樣去解決丁屋問題,以便公眾進行辯論及收集公眾的意見。更重要的是,若民協有好的建議,便應該修訂陸恭蕙議員的條例草案。根據立法局的議事程序,議員是有很多時間提出修正案的,因此,若民協覺得他們的建議這麼好,為何他們等到現在才提出來,而不修訂陸恭蕙議員的條例草案呢?這種做法或技倆令人非常擔心。在立法局裏,議員必須清楚地表明他們是贊成或是反對。在這方面,我知道有些同事並不贊成陸恭蕙

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議員的建議,而民主黨卻是贊成的,立場很清楚,也不須迴避。但是,當我們只懂找藉口來解釋自己的立場,而不是把自己的立場體現於法例上,更說出一些未來可能而又不一定發生的事情來作根據,其他議員便有很合理的論據來懷疑我們的真正立場,質疑我們是否口是心非。據我觀察,民協已不是第一次這樣做。

上一次,在立法局辯論鐵路發展策略時,我已指出,若議員有好的意見,便應早一些提出來辯論,修訂別人的建議,不要在最後關頭才提出來,可是直到現在,我從未在報章上閱讀過民協這個建議,而我已算是一個很留意房屋問題的議員。我在今天才第一次聽馮檢基議員說出這麼詳細的建議。我不相信馮議員是在今天午飯時才突然想到這個好意見吧!為甚麼有這麼好的意見也不提出來辯論呢?為甚麼提出修正案呢?所以,我希望民協作出澄清,然後我才去辯論,謝謝主席!

全委會主席:馮檢基議員,是否規程問題?

馮檢基議員:主席,我想回應李永達議員所提的問題,可否有第二次發言?

全委會主席:在全體委員會審議階段時是可以的。有沒有其他委員想發言? 詹培忠議員。馮議員,本席等一會再請你發言。

詹培忠議員致辭:主席,我希望說幾句來支持劉皇發議員和感謝陸恭蕙議員提出建議。但我想提醒各位同事,要對自己的投票決定負上全部的責任,不要將責任推給其他局外人士。

馮檢基議員:主席,可能李永達議員在二讀時不在場。因為政務司的演辭很清楚,而我剛才在演辭中所說的,是政務司的說話的翻譯,他說甚麼便翻譯甚麼。可能李議員當時不在場,所以聽不到政務司的說話。再者,李議員質疑董特首究竟有沒有向我作出口頭承諾,我現在當然沒有辦法找他來澄清。但明天我的言論會見報,若沒有的話,董特首可以指我說謊。不過,最少政務司現時是在場的。

第二,民協提出了意見,不等於報章有刊登,報章有刊登,也不等於李議員有看過。我們建議用居屋去處理丁屋問題,曾向梁振英說過,特別是梁振英來民協時有記者在場,我們也說過。我們也向梁寶榮說過。最近我們與他會面時,建議收回兩個跑馬場,並提議他在將軍澳建大跑馬場,那時我們也提出這個方案。

第三,五月二十六日,當我們會見黃星華,討論長遠房屋策略時,我們又有說過。我們民協曾兩次就長策說出如何在短期之內,能拿出土地解決問題。丁屋是一個奢侈的方法,我們反對。建屋只得3層,為何不是26層。38層?當時我們是這樣說,寫法也是這樣的。希望李永達議員不要說,他聽不到的,就等於我們沒有說;或說他不知的,就等於不存在。其實,這是不科學的,也不是一個好的辯論方式。我也實在不是第一次答覆李永達議員這樣的一個問題,以往兩次的情況也一樣。那時是在半年前,我們討論行了。法機關的關係。今次我可以告知大家,這個問題已不是第一次提出的可能我們不提出修正?如果我可以提出修正,用居屋來取替丁屋的話的可能我們不提出修正?如果我可以提出修正,用居屋來取替丁屋的話別題坐在政務司的位子上了。因為我沒有條件動用政府的開支。這個問題,但是涉及政府開支,如何修正呢?相信大家都不是第一次當議員了。第二次用同樣的問題來指摘我們,我認為不公平。我只是想證清一些問題。

何俊仁議員致辭:謝謝主席,我只想作出很簡單的回應。第一點,剛才劉皇發議員發言時第一句便說,他認為現行的丁屋政策並無歧視成分。其實,倘若劉議員對自己的說法具有足夠信心,他根本並不需要擔心這項修正,因為這項修正只是影響和適用於一些有含歧視成分的政策。丁屋政策以往和現時是豁免於《性別歧視條例》的,是項修正只是針對丁屋政策是否仍應享有豁免,我們並不是要取消這項條例的豁免條文。所以,換言之,若有關政策含有歧視成分才會受到影響。相反,若沒有歧視性,根本是不受影響的。

第二點,剛才劉皇發議員說了很多有關丁屋的歷史背景。在以往的條例草案委員會會議中,劉議員亦曾經提出過很多資料,我們亦很感謝他再三解答我們的問題。不過,我們在討論這項條例草案時,我們並非要解決及意圖全面解決新界居民的居屋問題,我們亦無意只是針對一些歷史遺留下來,而政府又遲遲未能解決的問題。事實上,我們覺得,要解決這個問題,我們是須要進行更全面的觀察的;我們不要只將新界的問題分開處理。我認為我們是可以有方法解決問題而不用繼續維持一些有歧視性的政策的。所以,我覺得即使今天我們通過了這項條例草案,我們仍然可以繼續討論怎樣採取一些有效措施,以解決歷史遺留下來的問題,解決一些新界居民的居住問題,正如我們急於解決市區人士所面對的居住問題一樣。

其實這項修正是有寬限期的。如果我們像馮檢基議員一樣對政府有信心,我們應該催促政府在這寬限期之內完全落實它所作出的承諾,包括董特首或布政司向民協所作出的承諾。其實兩年的時間是應該可以解決問題的。不過我記得兩年前,當這條《性別歧視條例》被提出辯論通過時,亦當然是胡紅玉議員提出《平等機會條例》時,政府一直都想利用多一些時間。其實,今次若再給予多兩年,已經4年了,如果有誠意的話,為何不能解決呢?其

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實現在我們須要急於處理的,是性別歧視的問題。我們覺得原居民居住問題是要解決,但這並不限於男丁,女士的居住問題亦要解決。況且大家也知道丁屋政策的落實是有很多問題存在的,而政府亦知道若要全面落實這項政策的話,是沒有足夠的資源來應付的。因此,政府採用很多行政方法來製造阻礙。我想很多原居民也有投訴,輪候時間長達十年八年,也不知能否得到丁屋,這樣又是否令人滿意呢?

其實,我們不應逃避這些問題,因為這些問題是要面對及解決的。但歧視問題是不能再容忍的,而我覺得再給予多兩年的寬限期是足夠的,我希望,如果大家真正相信馮檢基議員所指出的。如取得政府承諾,兩年時間是足夠的。

因此,我希望大家在這背景下,應該支持修正,在兩年內使這類歧視政策不能再存在。與此同時,我相信大家同事亦會繼續致力一起解決房屋居住的問題,包括新界以往歷史所遺留下來的土地徵用問題,和因此而引起的房屋居住問題。

謝謝主席。

李永達議員致辭:主席,我第二次發言仍然想辯論這個問題。

第一,馮檢基議員剛才沒有回答我的問題,董先生答應他的是甚麼事?

全委會主席:為了減低火氣起見,本席想提醒一下議員,稱呼同事的時候請稱呼議員例如馮檢基議員、李永達議員等,如果大家直呼其名的話,以後就會越爭辯越厲害。再者,雖然有時候所說的話並沒有直接指摘別人說謊,但仍應該小心,因為這會造成不好的氣氛,本席希望大家記得一些基本的禮儀。請李議員繼續。

李永達議員:主席,我覺得我現在說話時很斯文。我對《會議常規》十分熟悉,所以我沒有想過要控訴別人說謊。

剛才馮檢基議員提到董建華先生曾說的話,引證了我所擔心的事,就是 現時並無任何書面保證,董建華先生一直會如馮檢基議員所說一般那樣做 事,我覺得這做法很輕率。

第二,剛才馮檢基議員說,他曾將那複雜和嶄新的意見,告訴很多

人,我不知道他有沒有對報章說,但最少我知道報章沒有刊登其意見。似乎有關民協就丁屋政策的立場和文件,都沒有在報章上刊登。如果民協採取這種立場,我其實十分歡迎他在立法局辯論之前數星期或一天之前,讓我看看他想提及的內容,或他有沒有立場,如果他今天才說出來,我們又怎樣辯論呢?這對同事是否公平?

第三,有關公帑支出,我和馮檢基議員一起進立法局,我們知道立法 局議員條例草案的限制是不可以有涉及公帑支出的部分,不過,大家作為立 法局議員這麼多年,亦曾參與各條例草案委員會,如果各位有好意見,如馮 檢基議員有意見,我不反對,我也會支持,由很多同事一起攪盡腦汁想出怎 樣可以不構成公帑支出。我與廖成利議員在同一個條例草案委員會內談論租 金問題,我們也擔心修正會帶來公帑支出,應該拿出來大家討論。我與廖成 利議員談得十分投契,立場一致,我看不出有甚麼問題。我認為應早些將意 見拿出來跟人討論,以找出一個既符合大家的原則,又可做到不涉及公帑支 出的辦法。此刻若你對我說會涉及公帑支出,我當然辦不到不涉及公帑支 出,這並不是辯論公共政策和制訂法律的方法,如果你覺得這意見是好的, 比陸恭蕙議員的意見還要好,那便應拿出來讓公眾討論,尋求一個好方法去 修正,做到不涉及公帑支出,這便是最好的方法。如果你在1個月前或兩個 月前,提出政策,接着表示很擔心會涉及公帑支出,則無論陸恭蕙議員怎樣 聰明,她花兩個月時間也不能得出一個不涉及公帑支出的結論。我十分佩服 馮檢基議員,他到現在才跟我提這件事。主席,公共政策辯論是否這麼兒 戲?

謝謝主席。

馮檢基議員:主席,可能李永達議員剛才不在,因此不知道我引述董建華的 說話是甚麼。現在我再說一遍。如果他翻閱議事紀錄,便可知道我已說了 3 遍。董建華所承諾的是.....

全委會主席:規程問題,馮檢基議員,請你坐下。李柱銘議員有一個規程問題。

李柱銘議員:主席,你好像說過我們可以多次發言,但不可以重複,但他自己也說已說了3遍。(眾笑)

馮檢基議員:是你們的黨員要求我澄清,他說我沒有回應。

全委會主席:你無須再說,你只要說"我剛才已經說過了,大家翻查會議紀錄就會見到我事實上已經說過了。"這樣說已經很清楚了。

廖成利議員致辭:謝謝主席,我想補充幾點意見。第一,我感到失望,直至現時為止,我還沒有聽見民主黨議員或各位議員提出任何有關取消丁屋政策之前要提出的可行方案的具體意見。昨天就條例草案二讀發言時,我曾提出要求,希望我們在取消一項這麼重要的政策時,要提出一些具體可行的方案,所以,我希望民主黨可提出一些類似建議,不會只說通過了條例草案後,會發生甚麼事,大家都不知道。因此,我想民主黨仍有很多議員未發言,等一會各位議員也可就此發言,提出意見。

第二,剛才李永達議員提及民協議員該早點提出意見,這才算是一個嚴肅的討論,也可以用訂訂條例的方法來處理這些建議。剛才馮檢基議員已提到我們曾在一些場合提過,在條例草案委員會的討論中,當鄉議局成員出席時,我曾提出"斬纜"方案,即時代已經變更,我們該想想怎樣把這些事情斬斷。當時陳婉嫻議員也曾提出類似的跟進質詢,她也頗同意這個方向。

其實,這些意見已在很久以前提出,我們亦曾在其他場合提出這些意見,不過可能沒有在報章上詳細報道。有時候,我們可能沒有將意見傳真給各位議員,這是我們失策的地方。稍後我們會將載有我們的意見的整份文件,補送各位議員,以供參考。李永達議員對房屋問題尤其關注,我應該將他的傳真號碼存檔於民協的傳真機內,有關房屋的事宜都可讓他過目。不過,希望李議員也可反過來讓我們看看他的意見,大家互相交流。

在提出修訂條例方面,這卻是不可能的。因為我們也該看看,必定會涉 及有公帑支出,我們尤其要在政策方面考慮怎樣推行另一個政策來代替現時 的丁屋政策,所以,這也是行不通的。

由於時間不足,更應該多些將意見提出來讓大家討論,我想我們就這一 點檢討一下。

最後,其實在今天的辯論中,我們希望在取消這項政策之前提出方案, 這是立法局一貫的處事方法。我們堅持這種處理方法,所以,今天可能有人 誤會我們反對男女平等,但我們仍會堅持,繼續努力,找出解決這件事的方 法。其實,大家目標一致,方向也一致,只是手法不同,我們不能因此便說 大家有分別,於是就像李永達議員一般作出批評。難道只有某人提出的方法,才是最好?殊途同歸而已,希望大家容許我們有這種空間。

謝謝主席。

涂謹申議員致辭:主席,關於這個題目,我覺得最重要的是如何解決這個問題。但我重申一點,就我聽民協的議員所說,他們也認為現時的丁屋政策含有歧視成分,即男女不平等。否則,他們也不會要求取消。問題是我們容許這件事存在多久呢?似乎他們所信賴的有兩點:第一點,是剛才政府所說的話,這亦包括第二點,即特區首長董建華先生所說的話。

剛才政務司說答應於3個月內成立小組,研究如何替代。我們在後廳時 曾進行多番討論,我們說研究如何替代,最後的結果可能是不能予以替代, 應予維持原狀。這樣也不能說政府無信無義,因為政府可以說研究的結果是 不能替代。因此,如果改為決定如何替代,便是說已經決定替代,只不過尚 未決定用甚麼方法替代而已。不過,他們說政府不會作出修改。事實上,政 府仍有所保留,可能在研究完畢後繼續維持原狀,或甚至說這才符合《基本 法》。如果說政府的承諾不着重字眼,那麼"研究"和"決定"有何分別 呢?我們千萬不要這麼想,因為今天較早時,葉國謙議員曾代表我們的委員 會就梁銘彥先生離職事件作出報告。議員只要看完報告,便會對政府的信心 存有很大的質疑。因為政府人員在委員會內宣誓後作供,也同樣給予技術性 的答覆,然後便說那是所謂的"技術性答案"。林煥光先生經常這樣說,委 員會認為在這件事情上,政府的聲譽蒙污,公信力嚴重受損,也損害了政府 當局與立法局的互信關係。我不是今次才這樣說,而是委員會下星期會辯論 報告,這只不過是我們 11 位議員一致的結論,並不代表五、六十位議員也 持同樣的看法。問題是政府只給予技術性的答覆,先進行研究,然後不給予 承諾,那麼實際上政府的承諾是甚麼?我們是否便容許這個不平等、你同 意、大家也同意的現象存在?這個現象又可以維持多久?

其次,我們要以政府最近的說法來判斷我們的立法基礎。剛才馮檢基議員說,如果我們取消豁免,便可能會有"女丁"提出挑戰,甚至其他非新界原居民的人也會提出挑戰,認為政府繼續實行丁屋政策,便是違反歧視政策。"女丁"可以根據這項法例挑戰政府,如果男女丁也有權的時候,其他非原居民的人也會根據《人權法》挑戰政府。不過,問題是如果真的取消豁免,政府知道會站不住腳,因為這個政策不能承受法律的挑戰,政府也因此說男女不會同樣享也有丁屋權利。如果事實如此,便不會發生馮檢基議員所說的情形:新界"男女丁"均享有特權,市區或非新界地區的則不能享有這

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項特權,這便是所謂"城村"的分別。政府屢次這樣強調已決定這樣做,所以,我覺得我們預測政府進行分析的時候,都一定要基於我們現有的資料。由於我沒有跟董建華先生談過,所以我沒有資料。我也不會質疑馮檢基議員有否錯誤引述。不過,有時候可能董先生認為這只不過是閉門會議,甚至他沒有想過議員會說出來,議員說出來,他也許會感到很尷尬,甚至不知應不應否認。所以,我懷疑會否是這類的承諾?可能有待明天。特區首長辦公室作出回應才能知道。

主席,我想回應劉皇發議員剛才提出的一點,他說新界的原居民不會"啞忍",也不會任由他人"搓圓壓扁",他們不會坐視不理,一定會起來反抗。我想說的是,其實這不平等的權利存在於原居民與非原居民之間,同樣也會令市民之間存有(如有的話)一些所謂猜忌和分歧,例如為何別人有、自己卻沒有的問題。換句話說,如果保留這項政策,一樣會出現互相怨忿、怨恨的情形。這也可從議員的看法反映出來,並非說維持這項政策,便可以相安無事。這絕非庸人自擾,而是現存的問題和情緒,我們也需要解決。

我希望不論修正案通過與否,既然政府許下了一個如此虛浮的承諾, 我希望以議員身分指出,這些怨忿和分歧仍然會客觀地存在,須要我們設法 解決。

黃偉賢議員致辭:主席,剛才民協廖成利議員不只一次要求,假如稍後陸恭 蕙議員的修正案獲得通過,民主黨便應提出方案,以解決丁屋的問題。我們 剛才辯論修訂應課稅品如柴油稅、葡萄酒稅的時候,已被自由黨成員稱我們 為政府,說我們教政府怎樣計算稅收。事實上,我們並不是政府,也沒有政 府那麼多的資源、人力和資料。我們未必可以像馮檢基議員一樣提出方案, 儘管我們不知道有關的方案是否可行。這個方案一直沒有建議截止日期,如 果建議政府和鄉議局訂定截止日期,他們會怎樣做呢?你想劉皇發議員有沒 有膽量說何時為截止日期?10年後,他有沒有膽量說?100年後,可能他才 會有膽量說出來。我相信如果我們今天有機會真正中止或不給予豁免,然後 給予政府兩年時間進行檢討。我相信檢討工作會永遠拖下去,或正如剛才涂 謹申議員所說,政府可以在完成檢討後說想不到辦法,只好維持原有的政 策。涂謹申議員就此已作出了一部分回應,而我們也曾私下與馮檢基議員討 論過,將"研究"這個字眼改為決定一個不帶有歧視性而可以取代小型屋字 的方案,但馮議員表示曾與有關方面談論過,但認為不可行。其實,如果各 方面都抱着一個共同的目標,希望不久將來可取替小型屋宇這個男女不平等 而且帶有歧視成分的政策,為甚麼他們不肯作出決定?這明顯是因為他們根 本不想取消小型屋宇政策。

第二,馮檢基議員剛才說不支持陸恭蕙議員的修正案,因為他們認為修正案通過後,小型屋宇政策仍然會予以保留。若是這樣,我相信政府和鄉議局也不必緊張。所以,我們今天的辯論應該集中在男女平等這個主題上,也即是說這個歧視性的政策應否繼續下去。

馮檢基議員雖然提出了方案,但他似乎仍容許這個不公平的歧視政策繼續存在,只不過沒有人知道這個政策會繼續存在多久。其實,我不知道解決小型屋宇政策是否一定要提出新方案。馮檢基議員是房屋事務委員,多年與房屋事務委員會共事。不過,剛才他說錯了一句話 — "原居民不可以申請公屋和居屋"。這是因為我們在條例草案委員會裏也提出過同樣的問題,政府也曾經向委員會提交過3份書面答覆,指出原居民只要符合有關申請條件,例如符合入息和沒有私人物業等規定,便可以申請公屋。此外,他們也可以申請居屋,只是問題出現在祖堂的"多份人"方面。政府亦說得很清楚,如果有關的原居民只是祖堂的司理,而他本身沒有實際的產權利益,那麼他同樣可以申請居屋,如果他有實際產權利益,便要在申請時提出證明。事實上,原居民和非原居民現時同樣可以申請輪候公屋。我們是否認為原居民是特殊人士,需要以特別的政策為他們解決住屋問題,而不應用現行的公屋居屋政策來解決他們的住屋問題呢?我們覺得又沒有這個需要。

馮檢基議員剛才提及訂定截止日期,在截止日期前登記的原居民仍然享有權利,並且建議一次過額外撥地為原居民興建居屋。我認為這個建議只會造成男女不平等,我想馮議員提出這個方案,也只是針對 "男丁",不論截止日期為何。這樣做不單止會令這個不公平的歧視政策延續下去,更變相為 "男丁"爭取興建居屋,幫助他們繼續享有特權,以成本價購買政府興建的居屋。這實際上是一項特權,為甚麼原居民不可以和其他人一樣,按公屋和居屋輪候冊的次序輪候。所以,我不認為民協的建議是方案。

主席,我想簡短地複述兩年前本條例草案進行討論時,當時很多鄉議局成員在本局發言時提出的3個重點:第一,以前港英政府大量徵收新界的土地,因此,現在需要作出賠償。我認為政府應該提供賠償,只是賠償應否只限於收地的一代。可是,根據現時的丁屋政策,原居民世世代代也獲得賠償。只要是"男丁",不論他是兒子、孫、還是曾孫,也可以獲得賠償,這是否代代賠償呢?第二,小型屋宇政策於兩年前進行辯論時,鄉議局的同事都說很多新界原居民以耕種為生,他們不可以把牛、泥耙擺放在公屋裏,所以一定要在鄉村居住,可是他們的居住環境又很差,所以需要透過小型屋宇政策改善他們的生活環境,使他們可以繼續務農;第三,維繫他們的氏族,同姓的原居民希望聚居在一起,不希望有"外姓人"在他們的村裏居住。

就這幾個理由來看,現時很多原居民已不再以務農為生,即使繼續耕種,他們可能已轉用現代的工具,在田裏設置耕寮,放置耕種用具。至於氏族制度的問題,我在兩年前的辯論中也曾經提及過,現在新界很多原居民基本上已經把他們的丁屋出租、出售,甚至把丁權出售。例如發展商和他們治談。收購50個丁權,以便同時興建50幢丁屋,然後補地價便可以出售。

現時的丁屋已失去了原來的作用和意義,亦失去了當初改善原居民居住環境的用途。現在,丁屋已變成了商品,擁有炒賣價值。根據馮檢基議員的建議,現時丁屋如果要出售,便應該賣給原村的居民,因為他們可能一輩子也分配不到土地,也不知政府何時才批地。其實,如果是為了維持氏族,希望幫助他們改善居住環境,現時的丁屋根本可以賣給原居民,但為甚麼卻賣給其他人。那是因為出售丁屋的原居民可以因此獲得較高的利潤。到底馮檢基議員、代表鄉議局的劉皇發議員、政府和董建華先生經討論後。達成的共識是否可以實行,我認為實在有疑問。這是因為我一直對政府缺乏信心,尤其是我們在兩年前曾就《平等機會條例草案》進行了一個廣泛的辯論,政府當時表示需要一些時間。但時至今日,政府做了些甚麼。政府一直採用"拖"字訣,而我最擔心的便是拖延,不知拖到何時,事情又怎能獲得解決?這並不是民協的馮檢基議員一廂情願便可以透過研究解決問題。

主席,陸恭蕙議員的修正案設有兩年的寬限期,如果修正案獲得通過,有關方面可以在這兩年內迅速進行檢討。如果兩年前政府承諾的檢討已經展開,現在應該已完成了大部分的檢討,不須再拖延下去。現在我們還有兩年時間進行檢討,為甚麼不可以做到呢?

主席,我希望大家不要在這次辯論中集中討論如何解決丁屋政策的問題。我一直強調,應着眼於怎樣才可使男女平等精神和概念得以落實。我們支持陸恭蕙議員的修正案,也純粹是以男女平等這個方向為着眼點。就這個問題,馮檢基議員和民協的4位同事或許可以討論得較為仔細。

最後,主席,我希望提醒馮檢基議員於一九九五年六月二十八日在本局辯論胡紅玉議員,即由梁智鴻議員代表條例草案委員會提出的修正案,不准小型屋宇政策給予豁免,而我剛才已引述了馮檢基議員的二讀發言,現在不再重複。當時,馮議員投票贊成梁智鴻議員的修正案,也即是反對享有豁免,並採用"一刀切"的方式,然後給予寬限期。今天民協和馮檢基議員所說的,是否因為"覺今是而昨非"?為甚麼他們兩年前沒有考慮清楚便投票支持修正案,反對豁免呢?

張文光議員致辭:主席,本人認為今天最大的錯誤,便是我們非常認真地反駁民協的意見,因為他們本身也未必相信自己會作出修正。有時候,政黨借董特首"過橋",我們應由得它這樣做。可是,我們卻煞有介事,花整晚的時候辯論,這就是開自己玩笑,我認為這是不需要的。民主黨最好省一口氣,因為快將要看球賽了。

謝永齡議員致辭:主席,既然我的黨友着令我說快一點,我便簡短地就3點回應民協。第一,民協要求我們相信政府;第二,民協要求我們相信它與政府的交換;第三,民協要求我們相信它所提出的所謂可行的方案。

要我們相信政府,政府一定要表示很大的誠意,給予一定的承諾和保證 才行。可是最不利的是政府的紀錄不大好,九五年中所說的.....

全委會主席:謝永齡議員,對不起,所謂"重複",不僅是重複自己的論據,重複其他議員的論據,特別是重複同黨其他議員的論據,也是一樣。本席希望你真的精簡一點。

謝永齡議員:我認為最重要的是規劃環境地政司一定要盡快進行研究。答應了檢討而完全沒有作出過檢討,那便不是答應。第二,便是民協與政府或董建華先生的一些交換和研究,我相信最重要的是當中有否作出保證。我不再重複那句說話,而是沒有"保證"這兩個字,也沒有時限,最重要的是其中不包涵不歧視的原則。民協在現時最後一刻才提出所謂可行的方案,這是非常不負責任的做法。至於甚麼才是可行的方案,這是一個十分主觀的問題。我認為現時最可行的方案,便是以立法形式迫政府進行檢討,要求政府保證會基於不歧視的原則,在時限內解決丁屋問題。

謝謝主席。

馮檢基議員致辭:主席,我們剛才解釋過我們不是最後一刻才提出的,可能

謝永齡議員因觀看球賽而聽不到,而我亦不再重複了。

我想解釋一下為何我以前投票贊成豁免的修訂,但今天則反對。因為當日政府沒有答應過政策的方向,只答應了檢討,但檢討之後是甚麼方向我是不知道的。所以,我覺得當時我不可以投贊成票,即不可以支持政府或支持修訂。但今天政府說明要替代現行的政策,當然,我不敢要求民主黨相信政府,我只是說直至今時今日,我仍然相信政府不會背信棄義,我直到今時今日仍然相信董建華先生不會背信棄義,我希望他們"說得出、做得到"。

廖成利議員致辭:主席,我只是很簡單回應兩點。第一就是涂謹申議員剛才說,若成立一個委員會,要檢討多久呢?有沒有一個所謂"時限"的問題。這很明顯顯示有議員很不信任政府,背後是信任的問題,所以政府要很清楚,要做得"好好睇睇",不要糗給那些看扁你的議員看,特別不要給他"看準",因為應驗了就真是很不得了,將來又多一個罪證。所以政府若是在第三季會成立一個專責委員會,真的要有一個工作方向及時限,在很短的時間內便與鄉議局及社會人士討論一些可行的方案予以代替,取消丁屋政策。

第二點是我聽到,黃偉賢議員剛才說了十多分鐘,他只是對民協提出的 方案作出批評,但是我剛才提出的挑戰及問題是,我要他們提出一個方案, 現在我們不是今天要通過方案,我們今天只是要提出一些方案,都是可以行 得通的,可以進行再修改的,讓政府參考。民協不覺得提出了方案便一定是 很周詳或完全解答到一些大家的疑問,但最少要盡一些努力,總要盡一些這 樣的努力吧。但他們只是提出批評後便以攻為守,根本最後亦沒有答到我的 問題,我的問題便是:請你提出可行的方案,可能今晚做不到,如果今天有 了結果後,希望民主黨向公眾提出一個可行的方案。

謝謝主席。

黃偉賢議員:主席,剛才我發言時,已說明現在原居民與所有香港市民一樣,他們有資格申請公屋及居屋,根本上不需要.....

全委會主席:今天本席已發出了一份文書給大家,說明如果議員是要提出規程問題,請直接說"規程問題"。

羅致光議員:對不起,我剛才太細聲了。主席,我可否提出程序動議,而立即付諸表決。

全委會主席:你提出一個規程問題,由本席作一個裁決,可能較提出程序動議更好。因為在《會議常規》中,對於有關議事程序的議案所提甚少,否則若全部變成議案,而那個議案本身又可以辯論下去的話,將會永無止境。你不如指出現在有甚麼規程問題吧。

羅致光議員:謝謝主席的指引,但是我還不是太明白主席的指引,現在是深夜1時,我理解的能力和說話的能力已經打了很大折扣,所以我只是希望主席可以裁定是否可以盡快作出一個即時表決。謝謝主席。

楊森議員:主席,規程問題。

全委會主席:楊森議員,是否規程問題?

楊森議員:是的,主席。因為主席你今天有一個比較特別的措施,就是議員發言後可以不斷再發言,你說只可以發言兩次,但現在不止兩次,如果這樣下去,我們可以發言至天明的。因為有人發言之後,如果有議員不太接受或不服氣,接着又擧手。陸恭蕙議員有很多修正案,但現在只處理到第 12條。主席,如果這樣,我又要加入,是否一直拖下去呢?請主席裁定。

全委會主席:剛才羅致光議員未曾提出規程問題之前,本席已經準備要求黃偉賢議員就議題發言,而議題就是"第 12 條納入本條例草案"。即使在辯論當中有別的議員提過別的事情,也不要將議題變成是討論那個內容,例如民協方案究竟對不對、好不好,能否解決丁屋問題;而是究竟是支持第 12 條納入本條例草案。如果大家仍然是就納入本條例草案。如果大家仍然是就

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這個議題發言的話,而不是針對剛才議員說了別的事情,是不會離題的。黃偉賢議員,你還想不想發言?

黃偉賢議員:主席,其實很簡單。我沒有離題,我提出的方案是現在已經有的,就是現有原居民可以申請公屋及居屋。另外,主席,最後一點是馮檢基議員不斷重申,他們認為政府的承諾可以解決問題,但是我們一直強調的,是研究完成後得出來有關原居民的房屋政策可能是另一個帶有歧視成分的政策。謝謝主席。

全委會主席:葉國謙議員,是否有規程問題?

葉國謙議員:主席,如何可以令這個無休止的辯論終止,使我們能夠迅速表決呢?

全委會主席:可以透過一個程序議案進行,但我們的《會議常規》中並沒有如此的規定,並沒有這樣的安排。倪少傑議員。

倪少傑議員:主席,是你剛才自己說的,偏離了議題後,這位議員說完,那 位議員又再繼續,這樣是牴觸規程的。所以我先前還想對你說: "主席,為 甚麼你不早些說呢?"讓他們辯來辯來,現在變成"砌來砌去",大家"抽 後腳",這是甚麼辯論呢?根本不是辯論,所以,主席,我覺得你應該下一 個決定,按照剛才黃偉賢議員未再發言時,你所說的那一些道理,加以制止 便可以了。

全委會主席:剛才本席提及兩個方式,一個方式是希望大家能夠自律,就着議題發言,如果有必要作第二次發言也可以,但不要重複。至於剛才葉國謙議員問我有沒有方法,等如羅致光議員問有沒有一些程序議案可以提出,本席說有,那就是"That the question be now put",即"將議題立即付諸表決"。本席可以容許議員動議這樣的一個議案,即是"將議題立即付諸表決",本席可以豁免預告,讓一位議員動議;如果有議員要求動議的話,本席可豁免預告,但本席亦可不許動議,因為如果過早將一項合理的辯論中止,是不對的。現在有否議員動議將議題立即付諸表決。

楊森議員:主席,我正式提出這樣的一個議案,因為剛才的討論已不斷重複。請主席進行表決。

全委會主席:現在的待決議題是:將原議題立即付諸表決。

涂謹申議員:我能否就這項議案發言?

全委會主席:本席暫停會議5分鐘。

1.42 am

凌晨 1 時 42 分

Sitting suspended.

會議暫停。

1.53 am

凌晨 1 時 53 分

Committee then resumed.

全體委員會恢復會議。

全委會主席:各位委員,剛才本席容許楊森議員無須預告動議一項程序議案,就是"將議題立即付諸表決";即是說,就這條例草案"第12條納入本條例草案之內"這項議題,立即付諸表決。

在楊森議員提出這項議案之後,本席立刻提出了這項待決議題。根據厄斯金梅第 405 頁,讓本席先讀出英文:"After a question has been proposed, a member may rise in his place and move "That the question be now put." That question must be put forthwith, without amendment or debate, unless it appears to the Chair that the motion is an abuse of the rules of the House or an infringement of the rights of the minority."因此,這項程序議案的議題不容修正、不容辯論、須立即付諸表。本席容許了這項議案的提出,就須立即把議題付諸表決。所以本席現在提出之待決議題為:"將原議題,亦即"條例草案第 12 條納入本條例草案之內"之議題,立即付諸表決。現付諸表決。

Question on the motion put.

議案之議題經付諸表決。

The Chairman said he thought the "Ayes" had it.

全委會主席表示他以為"可"者佔多。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 將原議題立即付諸表決。這樣大家明白嗎?即"第 12 條納入本條例草案"之議題,應該立即付諸表決。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Dr David LI, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr Eric LI, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-Yin, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-Yan,

Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, 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, Mr LAU Chin-shek, Mr Ambrose LAU, 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, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr LEE Wing-tat abstained.

THE CHAIRMAN announced that there were 55 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried. 全委會主席宣布贊成議案者 55 人,無人反對。他於是宣布議案獲通過。

Question on clause 12 put.

條例草案第12條之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:第 12 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, 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 and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 23 votes in favour of the motion and 33 against it. He therefore declared that the motion was negatived.

全委會主席宣布贊成議案者 23 人,反對者 33 人。他於是宣布議案遭否決。

Clause 16 條例草案第 16 條

MISS CHRISTINE LOH: Mr Chairman, I would just want to say that since the Secretary was not allowed to speak just now on clause 12, we did not actually hear the Government's undertaking, I think, for the purposes of Mr FUNG's suggestion. But moving onto clause 16, this is the \$150,000 cap for the SDO. Please support this.

Proposed amendment

擬議修正案內容

Clause 16 (See annex III)

條例草案第 16 條(見附件 III)

田北俊議員致辭:主席,這個修正關於在以前的《性別歧視法例》中關於性別歧視和性騷擾方面,如果犯了法,有一個罰款的上限,便是 15 萬元。在這兩個情況下,當然我們可以說性騷擾一定不會是一間公司做的,一定是個人,那麼除非他是一個自己做老闆的個人,否則,如果他亦是其中一個夥計,對其他的女同事或男同事進行所謂的性騷擾後被判罰,現在 15 萬元上限,我已經覺得太高,因為你可說這些是存心或不存心的犯法。一旦罪名成立,這項罰則可以令他傾家蕩產。一名打工仔可能對一名女同事或男同事說了一些不知是甚麼的話,屬於性騷擾而被罰款時,15 萬元上限也沒有的話,法官可判他罰款數百萬元。

同一情形,對公司來說,根據《性別歧視條例》公司聘請僱員時,刊登招聘廣告時不經意的寫上男性或女性的要求也屬觸犯了條例,現在尚有少許保障,便是那 15 萬元的上限,你是否想令小商人因一件事而破產呢?當然陸恭蕙議員可以說那個法官不會那樣傻,但這卻不得而知,只能任由那個法官怎樣裁判,他可能判數萬元、十多萬元。我覺得如有上限,勉強還可接受,如果連上限也被取消時,事實上那件事的最終結果會如何是沒有人會知道的。

主席,我反對這個修正。

黃偉賢議員致辭:主席,我發言支持陸恭蕙議員這項修正。

剛才李卓人議員在二讀時已提過,這上限是當年由前輩同事林貝聿嘉議員提出,她並非憑空想出來,而是跟從英國的做法,然後按入息中位數來計算,乘以 18.75 倍,我不太清楚她用甚麼程式計算出來,但當時是用九四年的入息中位數,現時的入息中位數可能已有所增加。

不過,胡紅玉議員後來也曾說過,英國已撤銷了上限,既然別人走過的路,也認為是走錯了,因而撤銷有關的上限,我們立法局沒有理由跟別人走一條錯路。因此,我希望同事支持撤銷上限,保障那些受歧視的人。

謝謝主席。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the main effect of the Committee stage amendment is to remove the cap on damages in proceedings in relation to the employment field.

Under the existing provisions in the SDO there is no cap on damages to be awarded in proceedings not related to the employment field. The existing cap on damages in proceedings in relation to the employment field resulted from a Committee stage amendment moved by a Legislative Council Member and supported by a majority in the Council when the Sex Discrimination Bill was debated in mid-1995. We respect the views of those Legislative Council Members who considered it prudent to impose such a maximum limit. Since then there has not been any new development to suggest that the cap is inappropriate. Therefore there is little or no justification for removing the cap at this stage.

The original clause 16 as proposed by the Honourable Miss Christine LOH also seeks to empower the District Courts to make remedies, including reinstatement orders, and to repeal the provision that there shall be no award to damages if the indirect discrimination was unintentional. For the sake of good labour relation, the Administration considers that the courts should be empowered to order re-employment only where both the employer and employee concerned consent. Yet, such a condition is not written into clause 16.

I should add that the provision of such a condition would mean not only that an employer will not be compelled to re-employ a person, it will also mean that a former employee will not be compelled to accept re-employment even though she or he may prefer other remedies such as compensation.

As regards the original provision in the SDO that there shall be no award to damages if indirect discrimination is committed unintentionally, this is a fair provision expressly when anti-discrimination legislation is so new to Hong Kong. In the United Kingdom, a similar provision was amended only after the relevant legislation had been in operation for some 20 years. The amended United

Kingdom legislation provides that for unintentional indirect discrimination, damages may be awarded only where it would not be just and equitable to grant other damages alone. Such a condition, however, has not been written into Miss LOH's proposal.

Mr Chairman, the Administration objects to both clause 16 and the Committee stage amendment.

MISS CHRISTINE LOH: Mr Chairman, the Committee stage amendments that I am proposing, that we are asked to vote on right now, only deals with the \$150,000 cap. I do not know whether the Administration may be partly asleep by now and the issue dealing with reinstatement comes a little bit later.

Question on the amendment put.

修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第 16 條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony

CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 25 against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 31 人,反對者 25 人。他於是宣布修正案獲通 過。

Question on clause 16, as amended, put.

經修正之條例草案第16條,經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:經修正之第 16 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。 **全委會主席**:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE nd Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 25 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 31 人,反對者 25 人。他於是宣布議案獲通過。

Clause 17 條例草案第 17 條

SECRETARY FOR HOME AFFAIRS: Mr Chairman, in the United Kingdom the Commission for Racial Equality has made a similar proposal. However, the United Kingdom Government has also decided to wait and see the effect of the

change in the field of race relations before deciding whether to make any change to the United Kingdom Sex Discrimination Act. Hence there is no need for us to rush to make any similar amendments to the SDO this time round.

Mr Chairman, the Administration objects to clause 17.

MISS CHRISTINE LOH: Mr Chairman, this is one of the very few recommendations made by the United Kingdom Commission that was accepted by the United Kingdom Government, and four years later, however, the necessary legislation has still not been enacted by the United Kingdom because the Home Office said it was not able to get a legislative slot, so I think I dispute what the government official just presented to us. So, I hope that we in Hong Kong can implement the proposal more expeditiously. In fact we have an opportunity to do it right now.

Question on the amendment put and negatived.

修正案之議題經付諸表決,不獲通過。

Clause 20

條例草案第20條

SECRETARY FOR HOME AFFAIRS: Mr Chairman, we expect that conciliation by the EOC will not take more than two years to complete. Besides, by virtue of section 86(3) of the Sex Discrimination Ordinance, the District Court may consider any claim or application which is out of time if it considers it just and equitable to do so. Therefore there is virtually no need for amending the SDO at this stage.

Mr Chairman, the Administration objects to clause 20.

MISS CHRISTINE LOH: Mr Chairman, there is really no sensible reason for the Administration or any Member to oppose clause 20. The clause provides that any time spent in conciliation does not count against the time limit to bring court proceedings.

The time to bring proceedings under the Ordinance is short: two years from

the date the act in question was done. Everyone, including the Administration, agrees that a person whose complaint is being conciliated should not need to break off conciliation and bring proceedings instead merely because he or she would otherwise run out of time and lose the right to bring proceedings.

In cases where conciliation has caused delay, everyone, therefore, agrees in principle that the time limit to bring proceedings must be extended. The current Ordinance does not do so. It gives the District Court a general discretion to allow any claim that is out of time and specifically directs the court to consider two circumstances. One is the time elapsed during conciliation. The other is the time elapsed before a claimant entered into conciliation.

Mention of the latter circumstance is discouraging because it suggests that in some cases the court will still disallow a late claim filed as soon as conciliation ends. For a potential claimant who wonders if he or she will be penalized for persisting with conciliation, the existing law offers hope but by not means certainty. To avoid discouraging conciliation efforts, the time limit for litigation must be certain and clause 20 makes it so, Mr Chairman.

Question on clause 20 put.

條例草案第20條之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

Miss Christine LOH claimed a division.

陸恭蕙議員要求點名表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:第 20 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。 **全委會主席**:請各位委員核對所作表決,是否有任何疑問?尚欠2人現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 25 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 31 人,反對者 25 人。他於是宣布議案獲通過。

Clause 21

條例草案第21條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 21 be amended as set out in the paper circulated to Members.

Clause 21 ensures that the EOC is able to bring judicial review proceedings to uphold laws other than the SDO itself if they are relevant to its functions. Examples of such laws include Article 22 of the Bill of Rights Ordinance and certain provisions in Chapter 3 of the Basic Law.

It is well established that the United Kingdom Equal Opportunities Commission has such a power and is not limited to enforcing the United Kingdom Sex Discrimination Act only. For example, the United Kingdom Commission has successfully invoked applicable European equal pay laws numerous times in judicial review proceedings. It is doubtful, however, that the Hong Kong Commission has inherited a similar power.

The SDO, unlike United Kingdom law, specifically authorises the Commission to litigate but fails to mention any law other than itself. This omission may prevent the Commission from invoking other laws. Clause 21 ensures that this problem will not arise here.

Proposed amendment 擬議修正案內容

Clause 21 (See annex III)

條例草案第 21 條(見附件 III)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Secretary for Home Affairs is already empowered under the SDO to make a regulation to allow the EOC to bring proceedings in its own name and such regulation approved by this Council came into effect since December 1996.

The amendments proposed in clause 21 are, therefore, unnecessary and irrelevant. I believe this is the reason why the Honourable Miss Christine LOH now proposes to repeal clause 21 by this Committee stage amendment. However, this Committee stage amendment not only seeks to repeal clause 21 but also to empower the EOC to bring judicial review proceedings under the SDO.

As the Commission can bring judicial proceedings under the existing SDO, there is really no need for an express provision in the Ordinance.

Mr Chairman, though the Administration agrees to the proposed deletion of clause 21, its objects to this Committee stage amendment which also seeks to make it expressly that EOC can bring judicial review proceedings. Mr Chairman, may I put down a marker that if this Committee stage amendment is defeated, the Administration will also object to clause 21 in its original form.

Question on amendment put.

修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第 21 條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN

Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 30 votes in favour of the amendment and 26 against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 30 人,反對者 26 人。他於是宣布修正案獲通 過。

The clause 21, as amended, put and agreed to.

經修正之第21條之議題經付諸表決,並獲通過。

Clause 24

條例草案第24條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 24 be amended as set out in the paper circulated to Members.

This clause repeals several exceptions in Schedule 5 of the SDO. These exceptions are obsolete or redundant because of clauses 7, 8, 9 and 10 of the Bill. The Committee stage amendment to clause 24 repeals an additional exception in the Ordinance. The repealed exception presently permits marital status discrimination in the Home Ownership Scheme and Private Sector Participation Scheme.

Single-parent families have long complained of being treated unfairly in

this area and I understand the Government has recently revised the rules of eligibility for these schemes to eliminate the discrimination. So, I think everybody should support this clause. Thank you.

Proposed amendment 擬議修正案內容

Clause 24 (See annex III)

條例草案第 24 條(見附件 III)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 24(a) seeks to repeal all the terms as defined in Part 1 of Schedule 5 to the SDO.

These terms are defined for the purpose of the exemptions provided for in Part 2 of the same Schedule. Exemptions under Part 2 of the Schedule include, *inter alia*, different treatment of persons of different marital status arising from provisions of the Civil Service Regulations. This exemption makes sure that the double benefits rule, as currently applied in the Civil Service, will not be rendered unlawful under the Ordinance.

All these exemptions are reasonable and necessary. A repeal of the interpretative provisions so as to handicap the use of these reasonable exemptions is totally unacceptable. As I have explained above, all the exemptions provided for in the SDO are reasonable and necessary.

The effect of clause 24(b) is to repeal the exemptions as described in Items 3 to 8 except for Item 6 of Part 2 of Schedule 5 to the SDO. The Committee stage amendment now proposed by Miss LOH seeks to repeal also the exemption as described in Item 6, that is the exemption given for the Home Ownership Scheme and Private Sector Participation Scheme.

Notwithstanding the Committee stage amendment, Honourable Members may wish to note that to repeal the exemption provided for under Item 3 of Schedule 5 as proposed in clause 24(b) would have necessitated a discrimination

of the current policy of allocating departmental quarters to married but not single members of disciplined services. The repeal of this exemption, therefore, will mean either a lot more quarters have to be constructed or married disciplined officers have to wait much longer before being allocated quarters.

Mr Chairman, the Administration objects to this Committee stage amendment and, irrespective of whether the Committee stage amendment is defeated or not, having particular regard to the effect of clause 24 on current policy of allocating quarters in the disciplined services, strongly objects to clause 24 in its original form.

Mr Chairman, the Administration objects to clause 17.

MISS CHRISTINE LOH: Mr Chairman, the Government objects because it wants to retain a convenient discriminatory practice for its own quarters in the disciplinary services. Frankly, they could just have a points system and if you are not married you may have a lesser need and therefore you have fewer points. They can solve this without having a blatant discriminatory set of regulations within the Government.

That is all, Mr Chairman. There is no reason to support the Government on this.

Question on the amendment put.

修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第24條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?似乎尚欠1人。 現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai and Dr John TSE voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr NGAN Kam-chuen and Mr YUM Sin-ling voted against the amendment.

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

全委會主席宣布贊成修正案者 25 人,反對者 30 人。他於是宣布修正案遭否決。

Question on original clause 24 put and negatived. 原擬之第 24 條之議題經付諸表決,不獲通過。

Clauses 25, 28, 29, 31, 32, 33, 35, 36, 39 and 40 條例草案第 25、28、29、31、32、33、35、36、39 及 40 條

MISS CHRISTINE LOH: Mr Chairman, I move that these clauses specified be amended as set out in the paper circulated to Members.

These Committee stage amendments delete various clauses relating to the DDO.

I told the Bills Committee I would delete these clauses to allow us to focus on other clauses which are more urgent. I believe, again, the Government supports these deletions, so I hope we will just get on with it.

Proposed amendments 擬議修正案內容

Clauses 25, 28, 29, 31, 32, 33, 35, 36, 39 and 40 (See annex III) 條例草案第 25、28、29、31、32、33、35、36、39 及 40 條(見附件 III)

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration agrees with the proposed deletions which preserve the relevant provisions of the DDO in their original form.

Question on the amendments put and agreed to.

修正案之議題經付諸表決,並獲通過。

Question on clauses 25, 28, 29, 31, 32, 33, 35, 36, 39 and 40, as amended, put and agreed to.

經修正的條例草案第 25、28、29、31、32、33、35、36、39 及 40 條 之議題經付諸表決,並獲通過。

全委會主席:由於就第 25、28、29、31、32、33、35、36、39 及 40 條所動議,有關刪去條文之修正案已獲可決,因此,第 25、28、29、31、32、33、35、36、39 及 40 條會從條例草案中刪去。

Clause 26

條例草案第26條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 26 be amended as set out in the paper circulated to Members.

We have already voted once on this with the Disability Discrimination Ordinance. This is the clause that deals with international standards listed for the new Equal Opportunities Commission function. I would not repeat the argument here.

Proposed amendment

擬議修正案內容

Clause 26 (See annex III)

條例草案第 26 條(見附件 III)

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration strongly objects to both clause 26 and the Committee stage amendment for reasons that the Secretary for Home Affairs has explained earlier in respect of clause 3 of the Bill.

Honourable Members will remember that clause 3 of that Bill was rejected by this Committee earlier today.

Question on the amendment put and negatived.

修正案之議題經付諸表決,不獲通過。

The original clause 26 was negatived.

原擬之第26條不獲通過。

全委會主席:由於全體委員會不同意把第 26 條納入本條例草案,即表示全

體委員會亦不會同意把第 30 條(與第 26 條有關連之一條)納入本條例草案。因此,第 30 條將不會被讀出,而該條文亦不會納入本條例草案。

Clause 27

條例草案第27條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 27 be amended as set out in the paper circulated to Members.

This is the clause that deals with indirect discrimination and I will not repeat the arguments here.

Proposed amendment

擬議修正案內容

Clause 27 (See annex III)

條例草案第 27 條(見附件 III)

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration strongly objects to both clause 27 and the Committee stage amendment for reasons that the Secretary for Home Affairs has explained earlier in respect of clauses 4 to 6 of the Bill.

Clauses 4 to 6 of the Bill were rejected by this Committee.

Question on the amendment put and negatived.

修正案之議題經付諸表決,不獲通過。

The original clause 27 was negatived.

原擬之第27條不獲通過。

Clause 34

條例草案第34條

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration objects to clause 34 for reasons as the Secretary for Home Affairs has explained earlier in respect of clause 17 of the Bill.

Clause 17 was rejected by this Committee.

Question on the amendment put and negatived. 修正案之議題經付諸表決,不獲通過。

Clause 37

條例草案第37條

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, we expect that conciliation by the EOC would not take more than two years to complete. In any case, by virtue of section 82(3) of the DDO, the District Court may consider any claim or application which is out of time if it considers it is just and equitable to do so. Therefore there is virtually no need for amending the Ordinance at this stage.

Mr Chairman, the Administration objects to clause 37.

MISS CHRISTINE LOH: Mr Chairman, it is clear that the Secretary does not strongly object as she objected to a number of previous cases. So, I will have another go. This is the one that really allows time in conciliation to not count against time to file claims. I still think it is good for you to support this.

Question on clause 37 put.

條例草案第37條之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:第 37 條納入本條例草案。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?尚欠3人。現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

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

全委會主席宣布贊成議案者 30 人,反對者 25 人。他於是宣布議案獲通過。

Clause 38

條例草案第38條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 38 be amended as set out in the paper circulated to Members.

Clause 38 ensures that the EOC is able to bring judicial review proceedings in relation to laws other than the DDO which are nevertheless relevant to its function.

I hope you will support this. I already explained why earlier on this morning.

Proposed amendment

擬議修正案內容

Clause 38 (See annex III)

條例草案第 38 條(見附件 III)

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration objects to both clause 38 and the Committee stage amendment. Clause 38 seeks to repeal the provision empowering me to make regulations governing when and how the EOC would bring and maintain proceedings. We see no need to make this amendment at this stage. Indeed we are in the process of making such regulations. Mr Chairman, we therefore object to clause 38.

The Committee stage amendment seeks to repeal clause 38 but to add an express provision to empower the EOC to bring judicial review proceedings under the DDO. As the Commission is already able to bring judicial review proceedings, it is not necessary to state this power of the Commission explicitly in the Ordinance. We therefore object to this Committee stage amendment.

Despite that, we agree with the proposed deletion of clause 38. Mr

Chairman, if the Committee stage amendment is defeated, we would also object to clause 38.

MISS CHRISTINE LOH: I think it is time to support this Committee stage amendment, Mr Chairman.

Question on the amendment put.

修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為: 陸恭蕙議員就第38條動議之修正案,予以通過。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?似乎尚欠1人。 現顯示表決結果。

Mr Martin LEE, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr

CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

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

全委會主席宣布贊成修正案者 29 人,反對者 25 人。他於是宣布修正案獲通 過。

question on clause 38 as amended, put and agreed to. 經修正之第 38 條之議題經付諸表決,並獲通過。

New clause 16A 新訂的條例草案第 16A 條 Claims under Part III or IV 根據第 III 或 IV 部提出的申索

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

條例草案條文經過首讀,並依據《會議常規》第 46 條第(6)款的規定,受命 安排二讀。

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 16(A) as set out in the paper circulated to Members be read the Second time.

The new clause amends the SDO to authorize several specific remedies including, in particular, reinstatement. These remedies are already available under the DDO and I urgently need it in respect of sex discrimination. I think this is one of the ones that we will probably win and I wish to thank Members in advance.

田北俊議員致辭:主席,我認為陸恭蕙議員會勝出,不過勝出也要說。就傷殘人士而言,我們認為復職是有其道理的,如果法官判了僱主是錯的話,而那位傷殘人士到其他地方找工作又可能不那麼容易,在該種情況下,那個復

職令是有理由的,可是在性別歧視方面,我卻認為沒有這需要。以香港現時這麼低的失業率,有百多萬婦女僱員,假如她們的僱主被裁定觸犯了該條例後,我相信這位女士也不希望再為她的僱主工作。所以着令她被迫繼續為原僱主工作的話,也是徒然的。謝謝主席。

黃偉賢議員致辭:主席,每個人找工作也十分困難,事實上許多婦女在過去這麼多年來也向我們表達她們找工作十分困難,當她們失去了工作後,並不像田北俊議員所說的那麼容易往別處找到工作。田北俊議員剛才提到他們支持殘疾人士在受到歧視後可由法庭頒令復職,因為他們認為殘疾人士可能基於身體某些因素,所以他們往別處找工作是非常困難的,故此他們支持這個復職令。假如田北俊議員這麼說,似乎給了我們一個感覺,即這種說法對殘疾人士會構成另一種歧視,希望同事支持陸恭蕙議員這項修正案。謝謝主席。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, new clause 16A as proposed by Miss LOH contains provisions similar to the original clause 16 of the Bill, that is, to empower the District Court to make remedies including reinstatement order. I have stated the Administration's objection when discussing clause 16. I would like to make use of this opportunity to reiterate our objection to this proposed new clause. For the sake of good labour relations, the Administration considers that the courts should be empowered to order re-employment only when both the employer and employee concerned consent, yet such a condition is not written into this new clause 16A.

I should add that the provision of such a condition will mean not only that an employer will not be compelled to re-employ a person, it will also mean that a former employee will not be compelled to accept re-employment even though she or he may prefer other remedies such as compensation.

Mr Chairman, the Administration objects to this new clause 16A.

MISS CHRISTINE LOH: I am also happy that the Administration does not strongly object.

Question on the Second Reading of the clause put. 條例草案條文二讀之議題經付諸表決。 Voice vote taken. 聽取聲音表決。 **全委會主席**:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:新訂的第 16A條,予以二讀。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?尚欠2人。現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 33 votes in favour of the motion and 22 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者33人,反對者22人。他於是宣布議案獲通過。

Clause read the Second time.

條例草案條文經過二讀。

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 16A be added to the Bill. Thank you, Chairman.

Proposed addition 擬議的增補

New clause 16A (See annex III)

新訂的第 16A 條(見附件 III)

Question on the addition of the new clause proposed, put and agreed to. 增補新條文之議題經提出待議,隨即付諸表決,並獲通過。

New clause 16B 新訂的條例草案第 16B 條 Claims under Part III or IV 根據第 III 或 IV 部提出的申索

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

條例草案條文經過首讀,並依據《會議常規》第 46 條第(6)款的規定,受命 安排二讀。

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 16B as set out in the paper circulated to Members be read the Second time.

This new clause repeals the bar against damage awards for any indirect sex discrimination that was done unintentionally. This limitation was copied originally from the United Kingdom law, but the United Kingdom provision was repealed last year after the European Court concluded that the limitation unjustly deprived a claimant of an effective remedy for indirect discrimination.

田北俊議員致辭:主席,這項修正是關於無心之失,即不是刻意去做的,而 現在英國已取消了,不過,我相信各位同事也知道,英國有了這條法例 20 年後,經過宣傳、教育,到九五年才將其廢除的。

剛才已經有些同事支持撤銷了 15 萬元罰款上限,若現在又同時取消這個的話,即不是刻意去做這件事被判有罪都可被罰,而且罰款連這 15 萬元

上限也沒有了。

我們是不支持這項修正的。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, new clause 16B as proposed by Miss LOH contains provisions similar to the original clause 16 of the Bill, that is, to repeal the original provision in the SDO, which provides that there shall be no award of damages if indirect discrimination is completed unintentionally.

I have stated the Administration's objection when discussing clause 16. I would like to make use of this opportunity to reiterate our objection. The original provision in the SDO is a fair provision expressly when anti-discrimination legislation is so new to Hong Kong.

In the United Kingdom, a similar provision was amended only after the relevant legislation had been in operation for some 20 years. The amended United Kingdom legislation provides that for unintentional indirect discrimination, damages may be awarded only where it would not be just and equitable to grant other damages alone. Such a condition, however, has not been written into Miss LOH's proposal.

Mr Chairman, the Administration objects to new clause 16B.

MISS CHRISTINE LOH: Mr Chairman, Mr TIEN and the Administration was obviously not willing to listen to what I was saying. It was not through long years of public education that the United Kingdom Government decided to change the law. It was because it was pressed on them by the European Court. The Court did so because it felt that the limitation unjustly deprived a claimant of an effective remedy for indirect discrimination. So, you should vote with me and not with the Administration.

全委會主席:田北俊議員,是否規程問題?

田北俊議員:主席,我可否第二次發言?

全委會主席:現在的議題是新訂的第 16B 條予以二讀,是由陸恭蕙議員動議的,剛才你沒有發言,現在便喪失機會,因為已經完成了最後的答辯,十分對不起。

Question on the Second Reading of the clause put.

條例草案條文二讀之議題經付諸表決。

Voice vote taken. 聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:新訂的第 16B條,予以二讀。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?尚欠 1 人。現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Frederick FUNG, Mr

Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, 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 and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 27 votes in favour of the motion and 27 against it.

全委會主席宣布贊成議案者27人,反對者27人。

全委會主席:根據廸尼遜議長 1867 年所制訂的原則,本席以反對形式行使 決定性表決權,議案遭否決。

New clause 33A 新訂的條例草案第 33A 條 Claims under Part III or IV 根據第 III 或 IV 部提出的申索

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

條例草案條文經過首讀,並依據《會議常規》第 46 條第(6)款的規定,受命 安排二讀。

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 33A as set out in the paper circulated to Members be read the Second time.

This is the last vote that we have to take at Second Reading for these amendments, and I just wish to at this stage thank Members for staying, for those who have stayed. It is a pity one or two people who were supposed to have supported the Bill never showed up tonight at all and I very much regret that.

This is the amendment for lifting the \$120,000 damages cap in the DDO, and again I think this is one of the ones that I will have majority support and I

urge you to vote quickly.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the Administration objects to new clause 33A. The existing provision on remedies only came into effect in December 1996 and has yet to be put to the test.

As the general public is not yet familiar with the DDO, any amendment at this stage would only cause confusion. We do not see any urgency to make the amendment at this stage. We will request, however, the EOC to study the proposal to remove the cap on damages in its forthcoming review in December this year.

MISS CHRISTINE LOH: Mr Chairman, since Members have agreed to lift the cap for the SDO, it would be wrong to not do so in this case, even more wrong since the cap currently is lower.

Question on the Second Reading of the clause put. 條例草案條文二讀之議題經付諸表決。

Voice vote taken. 聽取聲音表決。

全委會主席:本委員會現進行點名表決。

全委會主席: 謹提醒各位委員,現付諸點名表決之議題為:新訂的第 33A條,予以二讀。

請各位委員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

全委會主席:請各位委員核對所作表決,是否有任何疑問?現顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 23 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 31 人,反對者 23 人。他於是宣布議案獲通過。

Clause read the Second time.

條例草案條文經過二讀。

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 33A be added to the Bill.

Proposed addition 擬議的增補

New clause 33A (See annex III)

新訂的第 33A 條(見附件 III)

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

增補新條文之議題經提出待議,隨即付諸表決,並獲通過。

Council then resumed.

全體委員會隨而回復為立法局。

Third Reading of Bill

條例草案三讀

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

《1996年性別及殘疾歧視(雜項規定)條例草案》

MISS CHRISTINE LOH: Mr President, there is not very much to add. I thank Members for speaking and for supporting important amendments to the Sex and Disability Discrimination (Miscellaneous Provisions) Bill. We have worked very hard on this and I think I just wish to take this opportunity to thank our long-suffering Chairman, Dr the Honourable LEONG Che-hung, for having chaired several years worth of this effort. I also wish to thank, of course, the staff who have been following this for us and I think this is a suitable occasion for me to also thank my own personal staff for having spent many, many long hours on this.

With that I think, I hope we do not have to argue with the Administration very much longer. Mr President, the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

SECRETARY FOR HOME AFFAIRS: Mr President, it is not usual in the Legislative Council for anyone to speak on the Third Reading of a bill. I am taking this unusual step because this Council is faced with an unusual situation. Honourable Members are being asked to enact a Bill which seeks to amend the Sex and Disability Discrimination Ordinances. But in fact most of the clauses contained in the Bill are proposed Committee Stage amendments which were not accepted by the Council when these two Ordinances were enacted in 1995.

Since then, there has been no change in the circumstances in Hong Kong to

suggest that the decision made by the Council then should be reversed. I wish to stress once again the Administration's strong objection to Miss LOH's approach to hastily amend the law without knowing the full impact of its consequences. The Bill is neither necessary nor desirable at this stage. It will only disrupt the smooth implementation of the Ordinances.

Mr President, I urge Members to vote against the Third Reading.

MISS CHRISTINE LOH: Mr President, the Government cannot learn to suffer defeat with some face, even at this hour in the early morning. I will not spend any more time because I know everybody is very tired and wish to go home.

But frankly, the amendments that have passed tonight are eminently sensible. They are not going to confuse anybody. If anybody needs to use the bill to go ahead and sought remedy for discrimination they have suffered, what we have done tonight is to have given them better remedies and better ways for pursuing those problems.

主席:各位,本席想解釋一下。依照《常規》第51條第(1)款:"三讀並通過條例草案的議案動議後,立法局即須進行三讀該條例草案的程序,就該議案進行的辯論,須限於條例草案的內容,議員不可動議修正該議案。"所以,三讀議案是可以辯論的,因此剛才陸恭蕙議員雖然跟以前一般的做法不同,先發言才動議是合乎《常規》的;當然議員亦可以發言。

Question on the Third Reading of the Bill put.

條例草案三讀之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

主席:本局現進行點名表決。

主席: 謹提醒各位議員,現付諸點名表決之議題為:《1996年性別及殘疾歧

視(雜項規定)條例草案》予以三讀並通過。

請各位議員先按表決器上端之按鈕表示在席,然後從下面3個按鈕之中 選擇其一按下,以進行表決。

在本席宣布結果之前,請各位議員核對所作表決,是否有任何疑問?現 顯示表決結果。

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 31 votes in favour of the motion and 23 against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 31 人,反對者 23 人。他於是宣布議案獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

ADJOURNMENT AND NEXT SITTING

休會及下次會議

主席:按照《會議常規》,本席現宣布休會,並宣布本局於一九九七年六月十七日星期三下午 2 時 30 分續會。

Adjourned accordingly at one minute past Three o'clock on 12 June 1997. 會議遂於一九九七年六月十二日凌晨 3 時 01 分休會。