

OFFICIAL RECORD OF PROCEEDINGS

立法局會議過程正式紀錄

Tuesday, 24 June 1997

一九九七年六月二十四日星期二

The Council met at Nine o'clock

上午 9 時正會議開始

MEMBERS PRESENT

出席議員：

THE PRESIDENT

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

主席黃宏發議員，O.B.E., J.P.

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

李鵬飛議員，C.B.E., J.P.

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

周梁淑怡議員，O.B.E., J.P.

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

李柱銘議員，Q.C., J.P.

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

李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

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

倪少傑議員，O.B.E., J.P.

THE HONOURABLE SZETO WAH

司徒華議員

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

劉皇發議員，O.B.E., J.P.

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

何承天議員，O.B.E., J.P.

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

夏佳理議員，O.B.E., J.P.

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

劉健儀議員，O.B.E., J.P.

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

梁智鴻議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG

張文光議員

THE HONOURABLE CHIM PUI-CHUNG

詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE

馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA

何敏嘉議員

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

黃震遐議員，M.B.E.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

劉慧卿議員，J.P.

THE HONOURABLE LEE WING-TAT

李永達議員

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

李家祥議員，O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

李華明議員

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

唐英年議員，J.P.

THE HONOURABLE JAMES TO KUN-SUN

涂謹申議員

DR THE HONOURABLE PHILIP WONG YU-HONG

黃宜弘議員

DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

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

田北俊議員，O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN

李卓人議員

THE HONOURABLE CHAN KAM-LAM

陳鑑林議員

THE HONOURABLE CHAN WING-CHAN

陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN

陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN, J.P.

鄭明訓議員，J.P.

THE HONOURABLE CHENG YIU-TONG

鄭耀棠議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG

張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P.

蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN

朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

THE HONOURABLE IP KWOK-HIM

葉國謙議員

THE HONOURABLE LAU CHIN-SHEK, J.P.

劉千石議員，J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

THE HONOURABLE LAW CHI-KWONG

羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

THE HONOURABLE LO SUK-CHING

羅叔清議員

THE HONOURABLE MOK YING-FAN

莫應帆議員

THE HONOURABLE MARGARET NG

吳靄儀議員

THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

THE HONOURABLE TSANG KIN-SHING

曾健成議員

DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,
I.S.O., J.P.

黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

PUBLIC OFFICERS ATTENDING

出席公職人員：

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

CHIEF SECRETARY

行政局議員布政司陳方安生女士，C.B.E., J.P.

MR GORDON SIU KWING-CHUE, C.B.E., J.P.

SECRETARY FOR TRANSPORT

運輸司蕭炯柱先生，C.B.E., J.P.

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

SECRETARY FOR HOUSING

房屋司黃星華先生，O.B.E., J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.

SECRETARY FOR HEALTH AND WELFARE

□ 生福利司霍羅兆貞女士，O.B.E., J.P.

MR JOSEPH WONG WING-PING, J.P.

SECRETARY FOR EDUCATION AND MANPOWER

教育統籌司王永平先生，J.P.

MR PETER LAI HING-LING, C.B.E., J.P.

SECRETARY FOR SECURITY

保安司黎慶寧先生，C.B.E., J.P.

MISS DENISE YUE CHUNG-YEE, J.P.

SECRETARY FOR TRADE AND INDUSTRY

工商司俞宗怡女士，J.P.

MR BOWEN LEUNG PO-WING, C.B.E., J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

規劃環境地政司梁寶榮先生，C.B.E., J.P.

MRS STELLA HUNG KWOK WAI-CHING, J.P.

SECRETARY FOR HOME AFFAIRS

政務司孔郭惠清女士，J.P.

MR RAFAEL HUI Si-yan, J.P.

SECRETARY FOR FINANCIAL SERVICES

財經事務司許仕仁先生，J.P.

CLERKS IN ATTENDANCE

列席秘書：

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

秘書長馮載祥先生，J.P.

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

副秘書長羅錦生先生，J.P.

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

助理秘書長林鄭寶玲女士

主席：現恢復會議。

Third Reading of Bill

條例草案三讀

THE SECRETARY FOR SECURITY reported that the
保安司報告謂：

CRIMES (AMENDMENT) (NO. 2) BILL 1996

《1996 年刑事罪行（修訂）（第 2 號）條例草案》

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

經修正後已通過全體委員會審議階段。他動議三讀上述條例草案。

Question on the Third Reading of the Bill proposed and put.

條例草案三讀之議題經提出待議，隨即付諸表決。

Voice vote taken.

聽取聲音表決。

Miss Emily LAU claimed a division.

劉慧卿議員要求點名表決。

主席：本局現進行點名表決。

主席：現鳴鐘 3 分鐘，因梁智鴻議員動議的議案只在全體委員會審議階段有效。

主席：謹提醒各位議員，現付諸表決之議題為：《1996 年刑事罪行（修訂）

(第2號)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，然後從下面三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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr 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 LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG and Mr SIN Chung-kai voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming and Mr LO Suk-ching voted against the motion.

THE PRESIDENT announced that there were 23 votes in favour of the motion and 20 votes against it. He therefore declared that the motion was carried.

主席宣布贊成議案者 23 人，反對者 20 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。

Resumption of Second Reading Debate on Bill

恢復條例草案二讀辯論

WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL

《大規模毀滅武器（提供服務的管制）條例草案》

Resumption of debate on Second Reading which was moved on 23 April 1997

恢復於一九九七年四月二十三日動議二讀辯論

涂謹申議員致辭：主席，我發言支持這條例草案，但我希望說清楚幾點，令政府關注。

首先，我們注意到現時這條例草案主要是針對一些大規模毀滅武器的擴散背後支援的提供服務的管制。事實上，我也相信正如政府所說，香港不是一些戰略物品的擴散渠道，但最近有些報道提到，德國或美國等國家關注香港將來在“一國兩制”下，能否對這些大規模毀滅武器、核武或化武等的有關貿易及管制會有良好的監管。一直以來，我相信由海關人員執行這方面的法例是勝任及有效的，不過，據我理解，由於這些有關的財務或其他服務其實是日新月異，並會隨着科技發展而擴展，所以現時例如大規模的款項甚至速度，都比我們以前的那一套管制及偵查大為進步。如果我們無法令我們的貿易夥伴有信心，認為我們的管制能好像七月一日前那樣有效時，我相信這會影響我們的金融、銀行、電訊和貿易等各方面所能取得的物品或服務供應。

主席，另一個值得我們關心的課題是，有人問，由於中國在香港特別行政區保留外交及國防權力，因此會否在這方面例外的權力下，令這項法例屬於中國外交及國防等主權的領域下？換句話說，有人擔心中國會否透過外交及國防政策，（例如最近也有國家關注中國售賣武器給巴基斯坦及伊朗等國家）令這些政策伸延到香港，以及這些法例會否受制於主權之下？我希望有關方面會澄清這點。我自己的理解是，如果中國實施的一項國防或外交政策是與我們現行的法例有衝突，例如現時的《駐軍法》可能與香港現行一些法例，尤其是有關警方、海關等執法權的法例有衝突，如何能夠解釋清楚，或以法律形式或任何形式令兩者協調，這是很重要的，也應令全世界清楚明白後作出判斷。

我自己也不相信中國會透過香港來提供有關供應大規模毀滅武器的服務，但在法制上有需要作出澄清，否則，日後就會令我們的貿易夥伴感到擔心，特別是當我們的貿易夥伴的國會或不同政黨之間出現分歧，就可能藉

着某些理由，對香港甚至中國作出批評，而這些批評未必全都是公平的，所以我希望將來特別行政區行政長官能夠與中央詳細研究這比較敏感的課題，不單止這條法例，也應包括中港在外交主權及香港法例之間的交接面下可能出現的很多不協調情況，這些都是有需要澄清及弄清楚的。我想多舉一個例子，就是在有關國家安全法例的執行方面，一些負責國家安全的機構在香港怎樣與香港的執法人員分工呢？又或其本身的執法權會否在香港行使呢？這些都是需要研究的課題。

主席，我支持這條例草案。雖然這條例草案並不是實施某一條公約的規定，但如果香港能夠讓我們的貿易夥伴看到我們有這樣的法例，事實上可以增強別人對我們的信心。謝謝。

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Weapons of Mass Destruction (Control of Provision of Services) Bill was introduced into this Council on 23 April 1997. The Bill seeks to make it an offence for a person who knowingly provides services to assist the development, production, acquisition or stockpiling of weapons of mass destruction. Examples of such services are financing, sourcing of materials, the provision of training, technological information or know-how, and other consulting services.

After the introduction of the Bill, we have exchanged views with Honourable Members who have indicated interest in the Bill. As a result of these discussions, the Administration will be introducing a number of technical amendments to impose conditions on the exercise of certain powers provided for under the Bill, to provide a clear definition of the agencies responsible for enforcing the Bill, and to improve the drafting of a number of provisions. I will explain these amendments during the Committee stage, but I would like to take this opportunity to thank Members for the thought they have put into studying the Bill.

I would also like to take this opportunity to thank in particular the Honourable James TO's support of the Bill. I would wish to state for the record that under the "one country, two systems" concept embodied in Hong Kong's two legal documents, namely the Joint Declaration and the Basic Law, Hong Kong will continue to enjoy after the transition a high degree of autonomy in trade and economic affairs. Hong Kong will continue to legislate and enforce its own trade controls system, maintain the integrity of the system to our satisfaction and to the standards expected of us by our international trading partners. It is in

Hong Kong's own interests to ensure that our trade controls system is one that is respected by the rest of the world. I wish to emphasize that we are doing this for Hong Kong's own interests and not as a result of pressure put on Hong Kong by any other country.

I have already explained the necessity for the Bill when I moved the Second Reading in April. The need arises from Hong Kong's necessity to have uninterrupted access to high-tech goods to support our commerce and industry. To this end, it is indispensable for us to have a strategic trade controls system which closely follows the highest standards accepted by the international community. The enactment of this Bill represents a further step towards this goal.

The Honourable James TO referred just now to the issue of foreign affairs. Under the Joint Declaration and the Basic Law, Hong Kong will remain a separate trading entity and a separate customs territory after 1997. Part and parcel of this autonomy would mean Hong Kong maintaining a separate and autonomous import and export control system, including control on strategic commodities. The basis of our control is trade- and economic-oriented and therefore falls squarely within Hong Kong's autonomy, now and after 1997. As a world class trading economy and a responsible community, we are committed to exercising the highest level of control in all illegal activities including the illegal trading of weapons of mass destruction. Hong Kong will continue to implement its own law to the full professionally and impartially.

Mr President, I comment the Bill to this Council's support subject to the amendments that I will be moving in the Committee stage. Thank you.

Question on the Second Reading of the Bill put and agreed to.

條例草案二讀之議題經付諸表決，並獲通過。

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。

Committee stage of Bill

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。

WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL

《大規模毀滅武器（提供服務的管制）條例草案》

Clauses 1, 2, 3, 5 to 9 and 12

條例草案第 1、2、3、5 至 9 及 12 條

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

The amendments to clauses 1, 5 and 12 are technical amendments mainly to improve the drafting of the Bill. The other amendments serve mainly two purposes: to impose conditions on the exercise of certain enforcement powers provided for under the Bill, and to clarify the definition of the agencies responsible for enforcing the Bill.

Enforcement powers

Amendments to clauses 6 and 7 deal with the power of enforcement agencies to enter and search premises. Under the existing clauses, enforcement agencies can enter and search premises and place without a warrant except for domestic premises. The amendments will require enforcement agencies to apply for a warrant before entering and searching any kind of premises and place. The amendments to clause 6 will also specify the time limits for the detention of aircraft and vessels of a specified tonnage.

The amendments to clause 8 makes it clear that a suspect cannot be detained for further inquiries longer than it is necessary while a maximum detention period of 48 hours has already been provided in the clause.

Enforcement agencies

Amendment to clauses 3 and 9 seek to clarify the definition of agencies responsible for enforcing the Bill. The Bill, as currently drafted, empowers the uniformed branch of Customs and Excise Department and authorized officers to exercise any powers conferred by the Bill. The term "authorized officers" is currently defined under clause 3 to include, apart from a police officer of the rank of inspector or above, any public officer authorized by the Commissioner of Customs and Excise. The purposes of authorizing public officers are twofold: (1) to allow the Trade Controls Officer grade, a non-uniformed branch in the Customs and Excise Department, to enforce the law, and (2) to allow technical experts, for example, Government Chemists, to assist in the investigations. The former will play a major role in the enforcement of the Bill while the latter will mainly play an assistant role. To better spell out the two different roles, amendments to clause 3 provide specifically that public officers mean officers employed in the Trade Controls Officer Grade in the Customs and Excise Department while a corresponding amendment is made to clause 9 to allow enforcement agencies to bring in assistants necessary for the performance of duties.

Thank you, Mr Chairman.

*Proposed amendments**擬議修正案內容***Clause 1 (See annex VIII)**

條例草案第 1 條（見附件 VIII）

Clause 2 (See annex VIII)

條例草案第 2 條（見附件 VIII）

Clause 3 (See annex VIII)

條例草案第 3 條（見附件 VIII）

Clause 5 (See annex VIII)

條例草案第 5 條（見附件 VIII）

Clause 6 (See annex VIII)

條例草案第 6 條（見附件 VIII）

Clause 7 (See annex VIII)

條例草案第 7 條（見附件 VIII）

Clause 8 (See annex VIII)

條例草案第 8 條（見附件 VIII）

Clause 9 (See annex VIII)

條例草案第 9 條（見附件 VIII）

Clause 12 (See annex VIII)

條例草案第 12 條（見附件 VIII）

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 1, 2, 3, 5 to 9 and 12, as amended, put and agreed to.

經修正的條例草案第 1、2、3、5 至 9 及 12 條之議題經付諸表決，並獲通過。

Clauses 4, 10, 11, 13, 14 and 15 were agreed to.

條例草案第 4、10、11、13、14 及 15 條獲得通過。

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

THE SECRETARY FOR TRADE AND INDUSTRY reported that the
工商司報告謂：

WEAPONS OF MASS DESTRUCTION (CONTROL OF PROVISION OF SERVICES) BILL

《大規模毀滅武器（提供服務的管制）條例草案》

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

經修正後已通過全體委員會審議階段。她動議三讀上述條例草案。

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

條例草案三讀之議題經提出待議，隨即付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

Resumption of Second Reading Debate on Bill

恢復條例草案二讀辯論

FAMILY STATUS DISCRIMINATION BILL

《家庭崗位歧視條例草案》

Resumption of debate on Second Reading which was moved on 23 April 1997

恢復於一九九七年四月二十三日動議二讀辯論

DR LEONG CHE-HUNG: Mr President, subsequent to the lengthy debate on the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 two weeks ago, three other equal opportunity Bills, namely the Family Status Discrimination Bill, Equal Opportunity (Family Responsibility, Sexuality and Age) Bill and Equal Opportunity (Race) Bill will receive Second Readings at this sitting.

As the Chairman of the Bills Committee on all these Bills, I shall now speak on the Family Status Discrimination Bill. Mr President, this Bill is the only Bill among these four that is introduced by the Administration. It is to outlaw discrimination on the grounds of family status as a result of overwhelming support of legislation against discrimination in this area as reflected in the Government's 1996 consultation exercise on this issue. This Bill is basically modelled on the Sex Discrimination Ordinance which we passed a few years ago.

The subject matter of this Bill overlaps in substance, in particular Part II of the Equal Opportunity (Family Responsibility, Sexuality and Age) Bill introduced by the Honourable LAU Chin-shek as a Member's Bill. All these Bills cover family status discrimination areas of activities, including employment, education, the provision of goods, facilities, services and premises.

There are, however, two main differences. Firstly, the scope of family status or family status defined under this Bill is narrower than that defined under Mr LAU Chin-shek's Bill. Given the strong public objection to legal recognition for the *de facto* spouse relationship as a form of family status, the Administration proposes to define family status as the status of having responsibility for the care of an immediate family member. As "immediate family member" must be related to the person concerned by blood, marriage, adoption or affinity, this proposed definition will cover *inter alia* relationships between husband and wife, parent and child as well as near relatives. On the other hand, under Mr LAU's Bill "family responsibility" or "family status" in relation to persons means the following:

1. having responsibility for the care of another person, whether or not that person is dependent or other than in the course of paid employment;
2. the status of being a particular relative; or
3. the status of being a relative of a particular person.

Secondly, Mr President, this Bill proposes to empower the Equal Opportunities Commission to oversee its implementation while Mr LAU's Bill proposes to empower the District Court to hear cases brought there under this Bill. It is very obvious that Mr LAU's proposal is for the reason of avoiding the

charging effect.

As in the case of Sex and Disability Discrimination (Miscellaneous Provisions) Bill which we passed a couple of weeks ago, Members of the Bills Committee have divergent views on the Family Status Discrimination Bill, and we have not come to any consensus.

Mr LAU has attempted twice to amend the definition of family status in this Bill by broadening it along the lines of the definition of his Bill. All versions have been ruled out by you, Mr President, on the grounds of charging effect and the scope of the Bill. I understand Mr LAU will be proposing amendments to this Bill, some of which has been claimed by the Administration as having charging effect which will obviously need your ruling.

Mr LAU has finally said also to have Part II of his Bill on discrimination against family status deleted. I am sure he will speak on this some time later.

Mr President, after heated debates some provisions of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996 passed a couple of weeks ago, but after serious consideration the Administration has said they are not to make parallel amendments passed in that Bill to the Family Status Discrimination Bill, and the Honourable Miss Christine LOH will introduce parallel amendments.

Now, I would like to say some of my personal thoughts on this particular Bill and all the other Bills at the same time. Mr President, I welcome the Administration's introduction of this Bill, but regrettably the Government has still not made enough progress in other areas of anti-discrimination necessitating Members to introduce Member's Bills in the line of this legislation as we see today.

I am also disappointed that the Administration is unwilling to make parallel amendments to those passed in the Sex and Disability Discrimination (Miscellaneous Provisions) Bill. Not only will this delay the activity of this Council in its very busy schedule over the next few days, but worse it would be against the interests of Hong Kong in general and this Council in particular to see similar laws on anti-discrimination yet have different provisions.

With those remarks, Mr President, I commend to Members the Second Reading of this Bill.

劉千石議員致辭：主席，社會上一向存在着家庭崗位的歧視，有很多僱主不願意聘用或擢升要照顧子女的女性，又或以有色眼鏡看其他負有家庭責任的人士，認為聘請了他們就會對公司不利。

自九三年開始，上屆立法局議員胡紅玉女士便草擬了反對家庭責任歧視的法例，可惜在九五年立法局年度屆滿時未能獲得通過。

我在九五年十月隨即着手將有關條例草案提交立法局，但政府在去年年底才表示也要草擬反對家庭崗位歧視的法例，而一直拖延至今年四月，才看到政府的法例草擬本。我不知道政府是否礙於我已提交條例草案，才被迫推出一份相關但較為保守的條例草案，但無論如何，政府願意提交這條例草案，對市民來說，總算是有好處的。

我說政府保守，是因為政府的條例草案與我的家庭責任的原條例草案的最大分別，是我對“家庭崗位”的定義，也包括非婚姻關係，而非只限於政府的定義中的婚姻、血緣、姻親及領養方面。我的觀點是，任何人都不應遭受歧視，不應該因其身負家庭責任而被拒絕聘用、被拒絕提供貨物及服務，以及被拒絕租住地方。

其實，“家庭責任”的意思是某人需要在家中照顧一個或多個“需要受照顧的人”。這種照顧者的責任一般是在經註冊的家庭中出現，但也可以在一些沒有正式註冊，但本質上擁有絕大部分“家庭”性質的同住關係中出現。我原來的有關家庭責任的條例草案所關注的，是沒有人因為要負起家庭照顧者的責任而受到歧視，以及被剝奪了發展和選擇生活方式的平等機會。

政府一直大肆抨擊我的原條例草案的“家庭責任”定義中，並無排除同性戀者。我與絕大多數有平等機會意識的朋友都認為，如果女同性戀者及男同性戀者因履行家庭責任而受到歧視，難道我們要認同這種歧視行為嗎？因此，只將“家庭責任”的定義局限在夫妻關係、血緣、姻親及領養關係上，而罔顧其他人士因家庭責任而遭受的歧視，這條法例也是不公平、不合理的。

有人認為擴闊家庭責任的定義只會鼓勵同居風氣，我實在摸不着頭腦。社會是進步的、是正在發展中的，社會的風氣轉變不是上一代人可以控制下一代的，社會律例也必須跟着社會的氣候走。現時，香港法例中《家庭暴力條例》、《財產繼承（供養遺囑及受養人）條例》及《僱員賠償條例》將非

婚姻關係也納入保障，可見法例要因應社會的需要而制定及改變。

同樣，如果非婚姻關係不為大家所接受，自然會受到大眾唾棄，自然會有其他渠道，如社會輿論等制止這風氣的蔓延，這並非我的平等機會條例草案所要解決的問題。我提出的條例草案的精神，是保障每一類負有家庭責任的人都不會遭受歧視，這是原則問題，也是人類應享有的基本權利。

由於政府提交了有關家庭崗位的反歧視法例，如獲得通過，我的平等機會條例草案中的家庭責任部分便只剩下小量及不完整的條文，我只好將這部分撤回。雖然如此，我希望政府盡力負上反歧視的責任。今天你們放棄了部分受到歧視的人的權利，我希望你們有盡快檢討的一天。人人都有錯，但我總希望錯的時間不要太長。

我謹此陳辭。謝謝主席。

劉健儀議員致辭：主席，本人代表自由黨發言支持政府提出的《家庭崗位歧視條例草案》。

自由黨一直支持平等機會這個大原則，反對任何形式的歧視；但是，我們必須明白，歧視這個問題是不能抽離個人信念、社會道德觀念及社會價值觀念，故此，要以新法例或新措施來禁止歧視，我們認為絕對不可操之過急，必須廣泛聽取市民的意見，得到公眾支持，這樣才會有效地促進平等機會。

外國政府推行反歧視法例時，必定給其國民充分時間來適應，絕不倉卒地提出立法或修訂。自由黨支持政府現時所採取的審慎態度，以循序漸進的方法，在香港引進反歧視法例。

《家庭崗位歧視條例草案》是本港第三條平等機會條例，而政府向本局提交此條例草案前，已於去年一月就家庭狀況進行為期兩個月的諮詢，收集公眾對因家庭狀況而遭受歧視的意見。諮詢結果顯示，絕大部分市民都支持立法禁止這方面的歧視。

政府提出《家庭崗位歧視條例草案》的目的，在於禁止一切因家庭崗位而作出的歧視行為，而條例草案所指定禁止歧視的活動範疇與《性別歧視條例》所涵蓋的相若，自由黨認為這做法是符合公眾利益的，因為可使市民大

眾較容易了解及適應新的反歧視條例。

至於哪些人士可受條例保障，政府主要根據諮詢得來的公眾意見，把“家庭崗位”界定為肩負有照顧直系家庭成員的責任崗位；而直系家庭成員須與該人有血緣、婚姻、領養或姻親關係。條例的實施能進一步保障單親家庭，尤其是那些需要照顧年老、年幼及殘疾家庭成員的人士。

條例草案對同居配偶並不提供保障，這方面是與劉千石議員所提出的平等機會條例草案有關家庭責任部分的最大分歧之處。公眾意見很明顯反對利用立法確認同居的關係。香港向來受中國傳統文化影響，雖然現時有不少人接納同居關係，但要確立同居的法律地位，無論是直接或間接也好，則是另一回事。自由黨是完全理解的，並尊重市民這方面的意見。

《家庭崗位歧視條例草案》是一條嶄新法例，在這方面，香港比其他亞洲國家，甚至英國及美國更前衛，因為這些國家現時還沒有制定法例，禁止基於家庭崗位的歧視。澳洲在一九八四年通過《性別歧視法令》後，在8年後，即一九九二年才將其修訂，加入禁止因家庭責任的緣故而解僱員工的條款。基於這法例倡議的概念較新，能夠參照外國的案例較少，政府在推行《家庭崗位歧視條例草案》時，特別需要給予市民充足時間了解法例及作出適應，尤其是僱主及僱員。

事實上，《性別歧視條例》及《殘疾歧視條例》全面實施僅六個多月，很多市民仍未完全了解這些法例。不少小型公司的僱主現時正忙於根據平等機會委員會發出的《僱傭實務守則》，制訂新的人事政策及行政程序，確保公司在一九九八年的七、八月間能全面遵守這兩條反歧視條例的規定。若在這時引入第三條反歧視條例，即時施加於這些小僱主身上，一方面會令他們感到很混淆，另一方面，這些僱主未必能有充足時間及資源為第三條反歧視條例作出部署。故此，自由黨支持政府為小型公司僱主設立寬限期。

雖然自由黨今天支持這條《家庭崗位歧視條例草案》，但自由黨始終認為，以僵化的法律條文以期消除社會上存在的歧視，並不是最有效的方法，充其量這只能擔當輔助的角色。現時社會上的各種歧視，部分有其文化、宗教及道德觀念的獨特背景，要徹底地消除歧視，政府應加強宣傳教育，透過潛移默化，逐步改變市民原來的道德及價值觀念，從問題的根源來解決歧視問題。

主席，本人謹此陳辭，代表自由黨支持《家庭崗位歧視條例草案》。

陳婉嫻議員致辭：主席，工聯會支持政府提出的《家庭崗位歧視條例草案》，我們認為條例草案可以對基層的“打工仔”，特別是婦女勞工提供就業保障。

參與工會工作多年來，經常都有一些要照顧“屋企”或是單親家庭的“工友”向我反映，說他們申請工作時，因僱主認為他們已婚、有小孩或要照顧家中老人而被歧視，被拒諸門外。此外，我亦看到，因要照顧家庭的關係而不能出外工作或只能從事兼職工作的“打工仔”，有不少很希望能全職工作，或有更多工作機會，但社會卻浪費了這些人力資源。

此外，最近社會上有一些意見認為，一些單親家庭，包括新移民，一家數口每月領取綜援近萬元，是“養懶”這些人，或認為他們無心工作。因此，有些人說政府的綜援政策是“養懶人”。我覺得這說法是非常非常不公平的。據一些單親家庭的爸爸媽媽向我們透露，他們依靠綜援過活並非真的想“養懶”，而是事實上，他們在勞動市場中，受着年齡的限制及家庭責任的影響，很多人歧視他們，特別是一些僱主知道他們是單親家庭的爸爸媽媽時，就沒有將他們放入考慮受聘之列。因此，面對這情況，他們即使不想領取綜援，也被迫要領取綜援。我相信他們決不會因為綜援而放棄工作。他們渴望有一份穩定的工作，渴望自己辛勤工作來養活家人，這是他們的心願。

他們在工作上所受到的歧視是可以想像的。實際上，現在不少老闆的觀點只從管理角度看“伙記”，他們認為“伙記”應該最好 24 小時隨時候命，說加班就加班，不會因為要放工“番屋企”煮飯、湊“仔女”而拒絕工作，或帶“屋企”人去看醫生、帶“仔女”考入學試而突然請假。很多時候，僱主只想到僱員這些狀況。當他們申請工作時，老闆就“耍手擰頭”，寧可選擇一個未婚或沒有子女的“伙記”。因此，我們絕對贊成以立法方式，禁止在工作上對一般家庭崗位的歧視，確保人人享有這權利。很多時候我們會問，為何這社會會繼續容許我剛才所說的情況，以及那些僱主的觀念呢？為何要把人看作為機器呢？為何要令整個社會沒有人情味呢？因此，我們支持立法處理這問題。

此外，令婦女或單親家庭男與女的家長找工作被歧視，亦與政府長期提供託兒服務不足或質量不好有莫大關係。這點政府自己亦承認，政府表示，除了透過立法摒除家庭崗位歧視外，還會提供後援服務，例如幼兒託兒服

務、老人服務、護理院設施等給有需要的家庭，協助他們解決困難。然而，現時這類後援服務的供應量明顯嚴重不足。

就以託兒服務為例，在一九九六至九七年度，政府或其資助日間託兒所提供約 25 000 個名額，但申請人卻有 3 萬人，而香港的 2 至 6 歲小童卻有三十多萬。縱使我們很難統計實際託兒需求量，但以現時的供應量看來，絕不能滿足基層家庭對託兒服務的需要。

我自己做了二十多年的婦女勞工工作，不斷向政府提出這點，但政府從來沒有考慮改善託兒服務。我記得我在八十年代訪問新加坡後，已將別人的經驗告知政府，但很可惜，政府的態度保守。直至今天，政府提出有關家庭崗位歧視的法例時，它重提這問題。我希望政府能切切實實正視這個問題，否則，肩負家庭責任的人士會繼續受到壓力而被迫為家庭而放棄工作，這是他們所不想的。

最後，對於劉千石議員提出修正，取消 3 年寬限期這問題，我與工聯會的婦女事務委員會認為，3 年期限太長，不過，如果完全沒有寬限期，一些小僱主可能會喊“救命”。不過，我們工聯會的婦女事務委員會一直建議政府不應該設有這麼長的豁免期，所以我們會支持劉千石議員的修正案。

主席，我謹此陳辭。

謝永齡議員致辭：主席，我代表民主黨發言支持《家庭崗位歧視條例草案》。

“家庭崗位”是指負有照顧直系家庭成員責任的崗位。其實，香港現時很多家庭崗位，特別是單親家庭，一向受到多方面的歧視。本條例草案可有效地保障家庭崗位免受歧視，令這方面的歧視不合法，因此不能基於一個人的家庭崗位而給予他較差待遇，以及對家庭崗位施加不平等的條件。總體來說，家庭崗位面對數方面的歧視，包括教育、居住、工作及接受服務等，本條例草案已對受到以上歧視的人士作出了一定的保障。

民主黨也會支持劉千石議員提出的取消對小型公司的寬限，以及陸恭蕙議員的修正案。我們認為受害人有权獲得復職，並應該取消 15 萬元的賠償上限。我希望本條例草案獲得通過後，可以更積極消除歧視。

謝謝主席。

MISS CHRISTINE LOH: Mr President, only two weeks ago the Administration lobbied aggressively against every aspect of my Member's Bill to strengthen the Sex and Disability Discrimination Ordinances. I am sure over the next few days the Administration will again aggressively lobby Members not to prohibit discrimination on the basis of age, sexual orientation or race.

The Administration claims that it has a policy of incremental progress in regard to equal opportunities, but its actions are too tentative. The Bill is meant as an example of incremental progress in this case, but Mr President, it is limited to the smallest possible increment.

The Sex Discrimination Ordinance already prohibits discrimination on the basis of marital status. This Bill will similarly prohibit discrimination based on the person's family status, which means the person's responsibility for the care of an immediate family member, such as a child. The Bill defines family status in the narrowest possible way so that any family or dependent relationship that is not already recognized by the law will enjoy no protection from private discrimination under the Bill.

I recall, for example, the reported case of a woman who raised a child abandoned by her neighbours as if the boy were her own. That family will not be covered by this Bill nor will any other *de facto* family relationship no matter how long-standing or how well-recognized it may be in the local community. The heartless policy reason for this limitation is, and I quote the word used by the Administration during the Bills Committee, "clarity". The Administration invoked the charging effect rule to block the Honourable LAU Chin-shek's efforts to widen the definition as well as his efforts to make other minor improvements by amendment.

Rarely has such a large Bill, Mr President, been used to take such a small step. No one in this Council should mistake the Bill's bulk for meaningful content. The 69 clauses and three schedules in it do no more than exhaustively reproduce the provisions and limitations of the Sex Discrimination Ordinance.

The only novel provision in this Bill is its bare minimum definition of family status.

The Administration could have, Mr President, achieved exactly the same effect by simply amending the Sex Discrimination Ordinance instead of wrapping one new provision in a huge re-enactment of that entire ordinance. But I suppose the Administration would not wish to use my Member's Bill as the vehicle to amend the Sex Discrimination Ordinance. As usual, the imperative to squelch Member's Bills triumphs over good sense and thus we have a separate and almost wholly redundant Bill before us.

Remarkably in some respects, the Administration apparently wants this Bill to regress from existing law. The Sex Discrimination Ordinance was changed in important respects two weeks ago when Members passed key clauses of my Member's Bill. In particular Members will recall removing the damages cap that crippled that ordinance, and authorizing the remedy of reinstatement by votes of 31 to 25 and 33 to 22 respectively.

The Administration did not accept defeat gracefully, however, and has declined to move parallel amendments to this Bill. I will, therefore, have to do it at Committee stage. I assume the Administration, however, will not object to these amendments this time.

With these words, Mr President, I support this Bill, but I deplore the cramped and grudging mentality that shaped it.

廖成利議員致辭：主席，我代表民協發言支持這條例草案。

劉千石議員的議員條例草案中亦有家庭崗位這部分，但由於他的條例草案的其中一個最大缺憾，是平等機會委員會的角色是零，即缺乏“先協調後訴訟”的機制，所以如果我們通過了劉千石議員的條例草案，市民可能會覺得十分混亂，不明白為何這條例草案中有一部分是平等機會委員會沒有參與調解的。不過，劉千石議員這做法也有一個很直接的效果，就是令政府立即將正在草擬的條例草案提交本局審議。我要恭賀劉千石議員能獲得這直接效果，令本局可以在六月三十日前審議這條例草案。

政府的條例草案對“家庭崗位”的定義是符合香港的情況的，因為“家庭崗位”對任何人而言，是指負有照顧直系家庭成員的責任的崗位，而直系家庭成員的定義是指因血緣、婚姻、領養或姻親而與該人有關的任何人。這定義令我們較清楚知道是指哪些人，而不會像劉千石議員那條例草案指那些跟你真誠相處的人已涉及在內，我覺得這定義並不清楚；同時，也包括了同居或沒有血緣或婚姻關係的人。此舉會令法例較為鬆動，而且也不符合香港的情況，因為香港對於家庭的定義仍是較為狹窄，對於劉千石議員這前衛的定義似乎未能接受。這條例草案的第二個好處是平等機會委員會有參與的角色。

稍後在全體委員會審議階段，我們民協會支持陸恭蕙議員的修正案。她的修正令這條例草案與《性別歧視條例》和《殘疾歧視條例》趨向一致。她建議法院的權力與上述兩條條例相似。這項修正也不會令大家擔心，因為過去即使有這權力存在，但直至目前為止，仍沒有案例，並沒有人訴諸法庭。這可能是因為法例太新，也因社會教育還不足夠，香港人還不習慣將這些問題提上法庭訴訟。至於取消賠償上限方面，這與上兩星期我們的觀點一致，所以我們會支持這做法。

我謹此陳辭。

SECRETARY FOR HOME AFFAIRS: Mr President, I am grateful to Dr the Honourable LEONG Che-hung and members of the Bills Committee, in particular the Honourable LAU Chin-shek, for their careful examination of this Bill and their comments.

After the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, this is the third anti-discrimination Bill introduced by the Government. In line with the Government's step-by-step approach and as clear support was expressed in the public consultation exercise last year for legislation to protect persons with family status from discrimination, this is the opportune time to introduce such legislation.

Under clause 2 of the Bill family status is defined as the status of having responsibility for the care of an immediate family member. By the term "immediate family member" in relation to a person means someone who is related to the person concerned by blood, marriage, adoption or affinity. The

merit of this definition is that it is clear and certain. It also meets the aspirations and actual needs of our community.

The definition of immediate family member does not extend to co-inhabitants of the same or opposite sex who are not legally married to each other. During our public consultation exercise, an overwhelming majority of the respondents expressed disapproval of giving legal recognition to such *de facto* relationships. We understand and respect such views.

From the submissions received, it appears that most if not all of the persons who require the protection from family status discrimination are the single parents. The definition in the Bill covers them regardless whether the children they have to care for are born in wedlock or are illegitimate. In either case the children are related to their parents by blood. Other examples of persons related by blood are brothers, sisters, grandparents, grandchildren, nieces, nephews and cousins. This list is not exhaustive.

There was concern whether the definition covers couples whose marriages have not been officially registered in Hong Kong. I can confirm that a couple whose marriage is contracted and registered in a system of law outside Hong Kong are considered to be related by marriage for the purpose of the Bill.

As regards a couple who are married under traditional Chinese customs or who have been living together for such a long duration that they are regarded as husband and wife by their friends, relatives and neighbours, the principles of family law apply and a couple whose marriage is valid under these principles will be regarded as related by marriage for the purpose of the Bill.

Two persons are related by adoption only after the necessary procedure has been completed and the adoption recognized by law. This is for the sake of clarity.

Affinity is the relationship between a husband and his wife's blood relatives and between a wife and her husband's blood relatives, for example, father-in-law, mother-in-law and the spouse's brothers and sisters. Again, the list is not exhaustive.

As can be seen from the above, the definition of family status covers a wide range of relationships recognized in law and our customs. I believe the definition is broad enough to include those with family status who actually require protection against discrimination on grounds of such status.

Mr President, during the Committee stage I shall move a number of amendments to the Bill. The proposed amendments to the definition of "estate agent" in clause 2 is to tie in with the definition of the same term as used in the Estate Agents Bill passed by this Council on 21 May 1997.

The proposed deletion of subclause (5) of clause 8 is necessary because the legislative provision referred to in the subclause, that is, section 14(2)(d) of the Employment Ordinance, was repealed by the Employment (Amendment) Bill 1996 which was passed by this Council last week on 17 June 1997.

The proposed amendment to Schedule 1 Item 11 takes account of the new title of the Open University of Hong Kong, which was approved by this Council in the context of the Open Learning Institute of Hong Kong (Amendment) Bill 1997 passed on 21 May this year.

As regards the other Committee stage amendments which I shall move, they are all textual amendments to improve the drafting or to correct clerical errors in the Bill.

I note that the Honourable Miss Christine LOH and Mr LAU Chin-shek will move Committee stage amendments. I am afraid we do not support these amendments.

Mr LAU's proposed amendment to Clause 8 seeks to remove the three-year grace period proposed in the Bill to be given to small employers, that is, those having not more than five employees, for compliance with the provisions in the Bill. The proposed amendment, if adopted, will cause difficulties to the small employers. Anti-discrimination legislation in respect of family status is new, not only in Hong Kong but also in overseas jurisdictions. In the absence of experience of precedence it takes time for the community, especially employers, to understand their new obligations and take steps to comply. Compared with large companies, small employers have much less manpower and resources to fulfil these new obligations. The removal of the proposed grace period would

actually burden the small employers who are already required to develop new personnel policies and administrative procedures so as to comply with all the provisions of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance by July and August 1998 respectively.

Miss Christine LOH's proposed amendments to clause 54 seeks to empower the courts to order re-employment and also to remove the maximum limit of \$150,000 in respect of damages in relation to employment matters. The proposed amendments differ from the two provisions enacted by this Council as recently as last week on 17 June in relation to unfair dismissals. Under the new section 32(n) of the Employment Ordinance enacted by this Council last week, reinstatement orders may be made only where both the employer/employee concerned consent. The requirement for such mutual consent is in the interests of good labour relations and protects the employer/employee alike. Yet, such a requirement has not been written into Miss LOH's proposed amendment.

Also under the new section 32(p)(4) of the Employment Ordinance the maximum damages to be awarded are set at \$150,000, that is, the same as in the Bill. As anti-discrimination legislation is new in Hong Kong and employers are worried about breaching the law for insufficient understanding, the removal of the maximum limit would cause anxiety to them. This would not be conducive to our present objective of counter-weighting acceptance in the community of such new anti-discrimination legislation.

Miss LOH also proposes to amend clause 64 such that the time taken for conciliation by the Equal Opportunities Commission will not count towards the period within which legal proceedings may be brought. Clause 64 at present provides proceedings to be brought with 24 months after an allegedly discriminatory act is done. A conciliation by the Equal Opportunities Commission would normally take much less than 24 months. Furthermore, the clause provides for the courts to consider any claim out of time if it is just and equitable to do so. In the circumstances, we see no need for the proposed amendment.

Mr President, with these remarks, I commend the Bill to Members.

Question on the Second Reading of the Bill put and agreed to.

條例草案二讀之議題經付諸表決，並獲通過。

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。

Committee stage of Bill

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。

FAMILY STATUS DISCRIMINATION BILL

《家庭崗位歧視條例草案》

Clauses 1, 3, 5, 6, 7, 9 to 15, 17, 18, 19, 22 to 53, 55 to 63 and 65 to 69 were agreed to.

條例草案第 1、3、5、6、7、9 至 15、17、18、19、22 至 53、55 至 63 及 65 至 69 條獲得通過。

Clauses 2, 4, 16, 20 and 21

條例草案第 2、4、16、20 及 21 條

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circularized to Members.

As I have explained at the Second Reading debate these are technical amendments.

Proposed amendments

擬議修正案內容

Clause 2 (See annex IX)

條例草案第 2 條（見附件 IX）

Clause 4 (See annex IX)

條例草案第 4 條（見附件 IX）

Clause 16 (See annex IX)

條例草案第 16 條（見附件 IX）

Clause 20 (See annex IX)

條例草案第 20 條（見附件 IX）

Clause 21 (See annex IX)

條例草案第 21 條（見附件 IX）

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 2, 4, 16, 20 and 21, as amended, put and agreed to.

經修正的條例草案第 2、4、16、20 及 21 條之議題經付諸表決，並獲通過。

Clauses 8

條例草案第 8 條

劉千石議員致辭：我動議修正第 8 條，修正案內容已載列於發放給各位委員的文件內。

主席，我本來對政府這條例草案有 3 項修正，包括撤銷小僱主的豁免；加入僱主在要求僱員提供資料時，對僱員提供保障，以及擴闊家庭崗位的定義。很可惜，除了撤銷小僱主的豁免外，其餘的都被指為“涉及公帑”及“超出範圍”，而不能作出修正。結果只會是使更多人墮入受歧視的範圍。

主席，政府經常的幾度板斧是：但凡有新法例，僱主要時間了解適應，小僱主資源有限，需要幾年的豁免期。

給 5 人以下的小僱主 3 年豁免期，是否必要呢？我認為並不必要，只會

讓有家庭崗位的人多 3 年受歧視的危機。

九五年年中通過的《性別歧視條例》及《殘疾歧視條例》，政府認為是新觀念，給了 3 年寬限期給小僱主，以免他們墮入法網。我知道當時很多議員都不贊成，因為如果反歧視法是新觀念的話，大、小僱主都是在同一時間接受此觀念，只要僱主接收到不可歧視的信息，在法例通過的實施日期後，無論在招聘、任用，擢升等範圍內避免歧視即可，當中並不涉及資源問題，反而越少僱員的公司，運作就越簡單。

現在，政府的《家庭崗位歧視條例草案》又“照辦煮碗”，再給小僱主 3 年豁免期，真令人啼笑皆非。過去兩年，政務科在傳遞歧視的信息上，究竟做了甚麼？平等機會委員會在去年五月成立以來，在宣傳平等的教育上，又是否一事無成？否則，為甚麼又要再給 3 年豁免，讓小僱主有機會歧視有家庭崗位的僱員？如果 5 年後又有另一反歧視法例通過，是否又要再給 3 年豁免？

反歧視觀念已非一朝一夕，《家庭崗位歧視條例草案》一旦通過，我想不到在甚麼情況下小僱主需要 3 年時間才明白我們不應歧視肩負家庭崗位的人，而大僱主則不需要。況且，政府已表示，如通過這條例草案，要大約在九八年年初才實施。在這超過半年的時間內，政務科及平等機會委員會既然有把握通知大僱主不要歧視有家庭崗位的人，為何連向小僱主通知一個這麼簡單的信息的能力也沒有？

政府這項豁免，足以破壞反歧視的平等性及合理性，而且造成更多人遭受歧視。主席，除非政務科說自己甚麼也不做，平等機會委員會也不會接受家庭崗位歧視的工作，否則，我希望各位同事支持取消對小僱主的豁免。

我謹此陳辭，提出修正案。

Proposed amendment

擬議修正案內容

Clause 8 (See annex IX)

條例草案第 8 條（見附件 IX）

周梁淑怡議員致辭：主席，我希望呼籲各位同事反對劉千石議員這項修正。

剛才劉議員好像說豁免了小僱主，就即是容許他們歧視別人，其實絕對沒有這樣的事。我們了解到，香港有很多小僱主，而他們的經營條件及其他方面都會面對很多困難，在跟循一些法例的做法方面，也會因為他們在經營上的限制而造成種種不便。因此，給予他們一個“緩衝期”或“暫緩期”，讓他們作出一般具有條件或規模的公司的要求，這並不表示他們無須對歧視採取一個轉變的態度，而是我們要了解香港的事實。事實上，很多政策都會對小型，甚至中、小型企業有特別的照顧和考慮，這是我們了解到他們實際上的困難而作出的。因此，我代表小僱主呼籲大家幫他們一把，反對劉千石議員的修正。

劉健儀議員致辭：主席，自由黨反對劉千石議員提出的修正，取消小型公司的寬限期。

我們必須明白，反歧視法例對小型公司僱主所造成的影響，遠較大型公司為大；而且，小型公司僱主為遵行新法例而能撥出的人手及資源，亦較大型公司為少。要求他們改變慣常的做法和政策，以同時遵行現有的兩條反歧視條例，再加上一條反歧視條例，實在令他們不勝負荷。因此，給予小型公司僱主一段適當的寬限期，不僅是適當的做法，實際上也有需要這樣做，讓本港小型公司得以繼續生存。

本人曾於本年六月十一日本局二讀《性別及殘疾歧視（雜項規定）條例草案》時指出，倉卒地推行反歧視條例可能會使一些小型公司為避免觸犯條例，而把行業結束。若這情況出現，反歧視條例便“未見其利，先見其害”。

主席，基於上述理由，自由黨反對劉千石議員提出的修正案。

李卓人議員致辭：剛才劉健儀議員說假如實施反歧視法例，便會令小型公司的僱主結束營業，我認為這個說法略為誇張。其實，有關平等機會方面，我們希望改變的是觀念，這並不是要讓僱主肩負任何很沉重的負擔。只要僱主明白法例的要求，當他們聘用或擢陞員工時，破除舊有的觀念，例如不聘請有小孩子的人，或有小孩子的人晚上一定沒有空閒時間，所以不給他們陞職機會等，這便已經依循了法例。這並不會引致任何成本上的大幅增加，而只是要觀念上的改變。若觀念能夠改變，便已是一個良好的管理手法。

我希望大家支持劉千石議員的修正，因為這並不會真的對小型公司的僱

主構成很嚴重的打擊。

謝謝主席。

謝永齡議員致辭：首先，如果我們容許小型公司享有豁免的話，其實是有一個雙重標準。為何大公司要納入監管呢？當然，我們不能有這雙重標準存在。第二，聘用員工，應該論人才和能力，而不應論他們的家庭崗位。我認為即使是小型公司聘用員工時，也應該看申請人是否具有合適學歷、水平和才能，而不是基於他們某種家庭責任而決定是否聘用他們。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I explained at the Second Reading debate it would not only be fair but also necessary to give employers of small companies time to familiarize with the new legislation and to adapt their existing practices to comply with it. A three-year grace period is necessary and reasonable.

Mr Chairman, the Administration objects to the Committee stage amendment.

劉千石議員致辭：主席，我希望本局同事支持我的修正。謝謝主席。

Question on Mr LAU Chin-shek's amendment put.

劉千石議員修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他以為否者佔多。

Mr LAU Chin-shek claimed a division.

劉千石議員要求點名表決。

全委會主席：本委員會現進行點名表決。

全委會主席：謹提醒各位議員，現付諸表決之議題為，劉千石議員就第 8 條動議之修正案，予以通過。

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，請各位核對所作表決。是否有任何疑問？以乎尚欠一人。現顯示結果。

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, 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, Dr Anthony CHEUNG, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Dr John TSE, Mrs Elizabeth WONG 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 Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the amendment.

Mr CHAN Wing-chan, Mr CHENG Yiu-tong and Mr LEE Kai-ming abstained.

The electronic display showed 24 votes in favour of the amendment and 24 votes against it.

電子顯示板顯示贊成者 24 人，反對者 24 人。

全委會主席：投票結果：贊成者 24 人，反對者 24 人。根據狄尼遜議長於 1867 年所訂之原則，在未獲過半數的情況下，主席行使決定性表決權，是以反對方式行使。修正案遭否決。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move the amendment set out under my name in the paper circularized to Members.

As I have explained at the Second Reading debate, the proposed deletion is a technical amendment.

Proposed amendment

擬議修正案內容

Clause 8 (See annex IX)

條例草案第 8 條（見附件 IX）

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 clause 8, as amended, put and agreed to.

經修正的條例草案第 8 條之議題經付諸表決，並獲通過。

Clause 54

條例草案第 54 條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 54 be amended as set out in the papers circularized to Members.

The amendment to clause 54 removes the \$150,000 cap on damage awards for unlawful discrimination at work. It also authorizes several specific remedies

including reinstatement.

The damages cap comprehensively undermines the Bill's enforcement scheme. As under the other discrimination ordinances, an award of costs is not normally available under the Bill, a victim of discrimination must, therefore, plan on paying litigation costs out of his or her damage award and no one can realistically litigate on a budget of \$150,000. With little or no prospect of court enforcement, an alleged discriminator will also have no incentive to cooperate in conciliation. Finally, the rare complainant who navigates this obstacle course will not be able to obtain just compensation at the end.

As for reinstatement, it is now available as a remedy both under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. It would therefore make no sense to not allow it under this particular Bill before us. The court will naturally take account of whether an order for reinstatement is practical in the particular case. We know, however, that in many cases, reinstatement will not only be practical, it will be the best remedy for a person who was forced to leave a large organization because of unlawful discrimination.

I am surprised to hear from the Secretary during her speech that the reason for not supporting this amendment today is that it creates anxiety to employers because they do not know how to apply the Bill. Surely we are legislating for the community at large, not for any particular group. And I would suggest to the Secretary if she were so unlucky or if any member of her family were so unlucky as to face discrimination at work and a \$150,000 damage cap was imposed, that she herself would find it extremely unfair.

So, I hope Members will remember how they voted last time and will support my amendment.

Proposed amendment

擬議修正案內容

Clause 54 (See annex IX)

條例草案第 54 條（見附件 IX）

劉千石議員致辭：主席，政府是“知法避法”，採取駝鳥政策，令人感到非

常憂慮。在這個條例草案委員會的會議上，政府曾經窮追猛打，質問我的平等機會條例草案是否與先前的反歧視法例一致，即使是相同的意義，但不同字眼，政府也不接受，認為會使法庭產生混淆。我同意這是一種嚴謹的態度，但是，政府要求別人這樣做，自己卻沒有這樣做。陸恭蕙議員在條例草案委員會會議上，再三問政府假如她的《1996 年性別及殘疾歧視（雜項規定）條例草案》獲得通過，政府會否修正《家庭崗位歧視條例草案》，使其與新通過的法例一致，但是政府支吾以對。陸議員的條例草案已於六月十一日三讀通過，但政府之後提交的條例草案，竟然不顧及新法例的內容，沒有作出相應的修正，結果是在有關性別及殘疾歧視的條例下，在申索方面，員工可要求復職，可要求擢陞，賠償也沒有設上限；但在家庭崗位歧視的法例下，則不可要求復職，不可要求擢陞，索償上限則不能超過 15 萬元。請問政府，這樣做是否會令法庭更混淆；抑或政府認為歧視有家庭崗位的人的罪行應該較輕，所以賠償應較少呢？

主席，職工盟的立場一向是要求受害的僱員能得到復職，這是他們基本的就業權利。我謹此陳辭，支持修正案。

劉健儀議員致辭：主席，自由黨反對陸恭蕙議員就第 54 條提出的修正案。

陸議員建議授權地方法院頒令僱主須擢陞或重新僱用曾經受歧視的僱員，自由黨認為這建議是不切實際的，因為透過法令勉強維繫一個已經破裂的僱傭關係，只會增加日後雙方的矛盾衝突，對僱主及僱員都沒有好處。

此外，自由黨亦反對取消設立損害賠償最高金額的修正。由於反歧視條例是相當新的法例，我們必須給予僱主足夠時間來明瞭法例及作出適應。一些僱主可能在條例實施初期，因為未能充分認識新條例而無意中觸犯反歧視條例。對於這些僱主來說，我們認為不應對他們過於嚴懲。我們必須明白，反歧視條例對商界的影響最為重要，為了避免在一開始時便嚇怕僱主，因此有需要設立賠償的最高金額。

條例草案原先建議損害賠償的最高限額是 15 萬元，這與剛於一九九七年六月十七日通過的《僱傭（修訂）（第 2 號）條例草案》中無理解僱的最高賠償金額相同，自由黨認為作為一個開始，這個金額已經很合理。對於一些小型公司的僱主來說，這個賠償金額的數目已不小，相信已經能收到懲罰及警惕的效果。日後，若有需要提高或取消，則須觀察這法例生效一段時間，以及法庭累積了一定的案例後，方可決定是否有實際需要。我們認為在現階段，設立最高賠償金額是有其需要的。

主席，基於上述理由，自由黨反對陸恭蕙議員的修正案。

陳婉嫻議員致辭：主席，工聯會支持陸恭蕙議員對第 54 條的修正。

正如上次我們支持陸恭蕙議員的《1996 年性別及殘疾歧視（雜項規定）條例草案》一樣，我們覺得有需要在法庭明確規定僱員可以復職。

此外，正如剛才劉千石議員所說，我對於政府在法例上的要求並不統一，感到很驚奇。既然上次在通過《1996 年性別及殘疾歧視（雜項規定）條例草案》時已取消 15 萬元上限，為何政府不修正這條例草案呢？我們在審議這條例草案的委員會會議上，曾問政府如果陸恭蕙議員的條例草案獲得通過，政府會否修正這條例草案，我很奇怪為何政府至今還堅持不進行修正。

我和工聯會的議員都支持陸恭蕙議員的修正。

田北俊議員致辭：主席，上次在討論有關 15 萬元上限時，我們已經說出我們反對的原因。我認為大部分市民都可能明白性別歧視是甚麼，因為性別很清楚，是指男性和女性，很易理解，而且，我們已實行了有關的條例 1 年了，所以我相信很多香港的中小型公司僱主，都明白僱用員工時，例如不能寫“女清潔員”，而是寫“清潔員”，我相信大部分僱主都明白這點。雖然上次我們反對取消 15 萬元上限，但由於有工聯會，而民主黨也變為工黨，所以獲得通過。不過，那天的條例草案獲得通過，並不代表今天的也能獲通過。

剛才，我問李卓人議員“Family Status Discrimination Bill”的中文是甚麼，原來是《家庭崗位歧視條例草案》。請問有多少市民明白何謂“家庭崗位”？我相信十個有九個被訪者都不明白。這又怎樣使現時的僱主遵守《家庭崗位歧視條例草案》呢？如果不設 15 萬元上限，有僱主違反了這條例，他們可能被罰數十萬元、數百萬元，可能會令他們要結業，但那些有關不公平解僱的條例還訂有 15 萬元上限。因此，我不知道為甚麼要取消這上限，這條例草案只是第一次提交，但立刻連上限也取消了。

事實上，這未必是我們工業總會或總商會所謂大僱主所關注的問題，

因為第一，大僱主不會牽涉在內，我們已將有關事務交人事科經理處理。僱員控告經理或主任，他們本身也是“打工仔”，所以工盟說老闆也受害；但有關這《家庭崗位歧視條例草案》，例如擢陞那人的問題，如果有家庭崗位歧視出現，而公司根本沒有發出有關指引，那麼法官應否懲罰那個薪金較高的行政人員，來賠償給受害者呢？對於這種做法，我相信不單止小僱主難於明白，很多被罰的人本身也可能是“打工仔”。

如果今天的條例草案獲得通過，15 萬元這個上限也不是小數目。外國引入這類法案時，大多都會設有賠償上限，在實行了數年後，情況得到解決，才取消上限，這尚算可行。

主席，我謹此陳辭，反對這項修正案。

謝永齡議員致辭：主席，我發言支持陸恭蕙議員的修正案。修正第 54 條，是明確規定法庭可以命令答辯人停止歧視行為，並作出合理的賠償，令受害人有權復職，以及取消 15 萬元的賠償上限。

剛才很多議員都說出了他們支持或反對修正案的原因。有一個論據是反歧視法例是一些新的法例，但我認為這些法例其實已經不算新了，已經實行了兩年。很多議員提到，甚至政府也說，要讓市民，特別是工商界的一些老闆認識到何謂歧視。其實我們現時討論的並不是一個嶄新的概念，社會人士其實已經討論了好幾年。在立法局通過有關的歧視法例後，平等機會委員會也成立來推廣這些法例，所以如果以新法例這原因來推翻今次的修正，我認為理據是不足夠的。為何賠償一定要有限額呢？這是相當不合理的；也沒有人能夠說出為何上限訂在 15 萬元？為何不是 150 萬元；為何不是 25 萬元？沒有人能提出一個很充分的原因，說為何賠償定要有限額。為何不是視乎歧視的嚴重性而定？為何不是視乎家庭責任？我們認為特別在工傷的賠償方面，應該沒有一個上限，很多時候應該視乎個別情況而定。

陸恭蕙議員的修正也提到復職問題，但直至今日為止，沒有議員提及這方面。我看不到為何不支持復職；為何我們要容忍一些歧視行為繼續存在。為何我們不可以幫助一些受到家庭崗位歧視的人？很多個案都提及一些單親家庭因為種種原因……

全委會主席：謝議員，我們現在是討論第 54 條的修正案。

謝永齡議員：主席，我會就第 54 條發言，特別是有關罰款上限。有一個理據是罰款 15 萬元已經足夠，這是田北俊議員說的。但 15 萬元是否足夠，除了須視乎罰款重與否，還要視乎起訴的成功率。如果只是罰款重而起訴的成功率低，也是沒有用處的。要罰款重，又要被捕的機會很高，才可成功阻嚇一些僱主在這方面的歧視。我們不覺得 15 萬元是重罰，所以這條款是必定要取消的。我們也不覺得被捕的機會會提高，除非政府提出一些方案，例如運用平等機會委員會這種機制，令歧視家庭崗位的人較易被捕、被起訴。但我們看不到現時有這樣的機制，因為現時平等機會委員會的職責只是局限於《殘疾歧視條例》和《性別歧視條例》。如果政府沒有特別措施，令被捕的機會率提高，我們看不到為何不取消這 15 萬元上限。

剛才自由黨的同事也提到，現時的法例十分新，要待法庭有多些判例後，讓市民大眾、工商界的朋友知道，才可以令廣大市民有所認識。其實情況並不是這樣。我們的看法是，一項法例通過後，市民，甚至工商界應該有責任認識和遵守這些法例，無須經法庭判決，積累了很多案例後，才要他們遵守法例。主席，這種理據是完全說不通的。我們不能在有人犯了法後，才說刑罰較重或較輕；有了判例後，才規定人們是否遵守。我們認為這種理據完全是荒謬的。

主席，田北俊議員問何謂“家庭崗位”，我感到很奇怪，因為在現時這全體委員會審議階段，還提出這樣的問題。其實“家庭崗位”是指有照顧直系家庭成員的責任的崗位。直系家庭成員包括有血緣、婚姻、領養和姻親的關係。很可惜，今次並不包括未婚同居者的配偶關係。上述定義所包括的人士全都受到這條例所保障。為何兩個星期前，另一有關歧視的法例可取消 15 萬元上限，但今天這條例草案又要有這上限呢？我認為是完全沒有理據的。

此外，有同事提到我們應首先試一試這上限。現時法庭仍未有判例，所以應該待有判決後，我們才有機會試一試這一上限。主席，我們現在不是說買車或買鞋，我們不應該這樣試。我們談論的是一些不合法行為，一些歧視行為，我們不應該對這法例進行試驗。若懲罰輕，就可以犯；若懲罰重，就不可胡來。我相信絕大部分香港市民都奉公守法，他們不想試一試法例，試一試上限，試一試 15 萬元上限是否嚴格。換句話說，有錢的人便可以歧視他人，這是說不通的。如果訂有法例，最少可以起阻嚇作用。如果連阻嚇作用也沒有的話，即代表這一屆的立法局沒有決心消除歧視。

上一屆的立法局議員胡紅玉女士已經很努力在消除歧視方面下工夫，特

別在賠償和限額方面，我們看不到有甚麼新理據、合理的理據，說服我們應該保留 15 萬元這賠償限額。因此，主席，我認為必須支持這項修正，令歧視不合法，而刑罰具有一定的阻嚇作用。如果訂有上限，則阻嚇作用就要視乎那個人有沒有錢，如果有錢，就沒有阻嚇作用。主席，我重申，我們不是說試車或試鞋，那些我們可以試，但我們說的是歧視問題。

主席，我想說一說小型公司的問題，因為有些同事說小公司會有一定的困難。大公司有錢，可以作出賠償，但小公司未必有錢，所以我們一定要顧及小型公司的利益。是否小公司就可以歧視人，而大公司就不可以呢？主席，我不能認同這種雙重標準，特別是我們是一個立法機構，我們應該一視同仁，不能因小型公司沒有 15 萬元作出賠償而要照顧它們。我們是立法者，不是替他們策劃生意，我們要在立法方面盡量保障香港市民。我們現在是說受家庭崗位歧視者的權益，所以我們不應該替一些小公司辯護。如果我們替小公司辯護，為何又不替大公司辯護呢？我們也可以說這樣對大公司的股東不利，要罰他們錢。

主席，我認為必定要盡辦法取消這 15 萬元上限，否則，我們就是容忍這歧視行為繼續存在。我認為無論對大公司的小股東或小公司的辦事人，都不應容許有這類歧視繼續存在。

謝謝主席。

李卓人議員致辭：主席，首先，我想特別指出，家庭崗位這觀念非常重要。田北俊議員說市民很難明白這觀念，但如果他假設自己真是“打工仔”，便知道很多婦女在求職時會被問及是否有子女、子女多少歲、讀何班級、是否須要趕回家照顧子女等。這些問題其實很普遍。我不知道田議員聘請員工時有沒有提出這些問題，希望他以後都不會這樣問，否則，就是違法。其實整個觀念是，不應該以別人的家庭崗位責任來考慮是否聘用他們。有些單親家庭人士跟我說，有人一聽到單親，就不聘請他們。

全委會主席：李卓人議員，請就議題發言。現討論就第 54 條所提出的修正案，是非常具體的議題。

李卓人議員：我現在會就 15 萬元上限發言，但剛才我要回應田北俊議員沒有就這議題發言的那些言論。此外，田北俊議員剛才也提到，其實最後要由人事部經理負責，但法例清楚訂明這是僱主的責任，而人事部經理是僱主的僱員，所以最後的責任承擔者是僱主，而不是人事部經理。

在甚麼情況下才會出現被罰 15 萬元呢？我覺得如果有一名僱員已經工作了很多年，但後來他因為家庭崗位的責任而被解僱，他就可能會獲得較高賠償；但是如果只是在聘用與否的情況下，則受歧視者的損失一定不會達到 15 萬元這麼多，這是肯定的。不過，如果一名僱員已工作了二十多年，單是因為他變了單親而被解僱，大家都覺得這是不應該的。他其實可以有另一個選擇，所以我希望大家表決支持復職權。如果他有兩個選擇，讓他復職就無須給他賠償 15 萬元了，因為受害人已經沒有損失。不過，如果規定要在勞資雙方都同意下才可以讓員工復職，則那就會有麻煩，因為勞方可能堅持要金錢賠償，法庭也不可以判他不能索取賠償而要他復職，這對僱主也沒有好處。

如果大家不想出現 15 萬元賠償這情況，一個可能性當然就是大家盡量避免違反法例，第二，就是支持復職權，令法庭在徹底考慮所有證供後，可以作出 15 萬元或復職權作為賠償的決定。

謝謝主席。

羅致光議員致辭：主席，我想說的大部分的意見都給謝永齡議員剛才在他較為詳盡的發言中提出了。不過，我想簡單補充兩點：第一，任何法例的修訂都需要適應，但很多時候，無論是一般市民抑或僱主，都是直至最後一刻才作出適應。

第二，至於所謂限額的問題，我覺得有否設立限額，事實上都是視乎我們對法庭的判決是否信任、是否公平。如果我們認為法庭的判決是公平的話，我們設限額又有何意思呢？我希望大家支持陸恭蕙議員的修正。

田北俊議員致辭：主席，我會“識做”，我只會就 15 萬元限額這問題發言。

主席，謝議員說須視乎成功率高不高，即如果很多人被成功起訴，那就差不多；但如果沒有很多人可被成功起訴，則不夠高了。這理論其實不是很

合理的。我們希望香港人不要歧視別人，但反過來卻又希望檢控的成功率高。檢控率高與沒有人歧視，我覺得是剛剛相反的。

如果民主派認為 15 萬元限額不夠高，提議改為 20 萬、25 萬元，我們可以考慮支持，但如果取消了上限，賠償可能是天文數字。這法例今天是第一次通過，市民可能不知道何謂“家庭崗位”。我不是說我們議員不知道，我是說很多市民，包括“打工仔”或“老闆仔”可能並不知道何謂“家庭崗位”。法例一旦通過，便不設賠償上限，我認為是不適當的。

主席，小公司和大公司的分別是，大公司的老闆根本不用理會這些事情，只要聘請了一名人事科經理，要他熟讀這條法例或指引，他便遵照執行，僱主根本不用理會。但小老闆便不同了，他們要“一腳踢”，交租、買貨、見客都是由自己處理。他是否能兼顧得那麼多事情，知道招聘時要顧及“家庭崗位”這問題呢？

此外，有議員提到試車或試鞋。不過，事實上，我們有很多法例在初執行時都設有上限，在若干年後才更改。這不是首次有法例設有罰款上限，我們還有很多法例在立法局通過後，全都設有賠償上限。為何對於那些上限，民主派又支持呢；不說它們是試車、試鞋呢？為甚麼他們只是對這條法例這樣做呢？

梁耀忠議員致辭：主席，我代表街坊工友服務處支持陸恭蕙議員的修正案。

我們認為應該取消 15 萬元上限，原因很簡單，例如田北俊議員買了一輛很漂亮的汽車，價值可能是 30 萬元，但被我弄花了，而法例只規定最高賠償額是 5 萬元，田議員肯不肯呢？他一定不肯。

現在討論的賠償，是給受害的工人或僱員金錢賠償。如果他們的損害根本不只 15 萬元時，故意定下限額，對他們是否公平呢？正如我剛才所舉的例子，對田議員又是否公平呢？他一定不會接受那賠償的，因為他覺得自己的損害根本不只 5 萬元，可能是 30 萬元。

我覺得最重要的是，歧視對僱員造成損害，所以我們給他們賠償來補償對他們的損害，這也涉及另一件事，就是對他們的尊嚴的尊重，即他們的尊嚴受損時，為何對他們的賠償要設限額呢？為何是 15 萬元呢？當他們受到歧視、受到損害時，人的尊嚴只值 15 萬元嗎？

同時，這個賠償數目並不是僱員自行胡亂定出來的，他不可以“獅子開大口”，胡亂說一個數字，因為最後是要經過法庭裁決的。除非我們不相信法官，否則，這個最終決定，是由法官裁決可獲得的賠償數額。因此，我希望大家理解，我們不支持設立上限的原因在於此。

有關復職方面，我認為這是有關尊嚴的問題。過去政府或其他同事都強調，在這樣的情況下，僱員也不會要求復職，即僱主與僱員的關係這樣惡劣，僱員怎會要求復職呢？其實，如果僱員本身有這個意願或要求，而法庭最後是在了解雙方關係的情況下才作出裁決，這裁決是由第三者來作出的，為何我們不容許僱員有復職權呢？這不是客觀上強制僱主接受，而是事實上是經過裁決的。除非我們完全不相信這項裁決、不相信法庭，否則，我們為何不容許這項權利存在呢？其實復職是一項權利，我希望大家明白，無論賠償或復職都是僱員的權利，我希望大家予以重視。

主席，我謹此陳辭。

謝永齡議員致辭：主席，我只想簡單回應田北俊議員的意見，我也是就 15 萬元上限發言。

我想澄清，通常人犯法都涉及兩項因素：第一，被捕的機會率低；第二，即使被捕，他也認為刑罰太輕，所以就會犯法。因此，為何要取消 15 萬元上限呢？因為對一個大商家來說，這是一個小數目，完全不能起阻嚇作用。因此，我們要給大商家一個信息，就是現時雖然我們不知道被捕的機會率，但在刑罰方面，最少立法者現時可以控制，把刑罰加重，就可以避免歧視。

我希望這番說話可以澄清田北俊議員的提問。謝謝主席。

田北俊議員致辭：主席，剛才梁耀忠議員向我提出了多個問題，我想作簡單的回應，雖然那些問題與今天討論的題目沒有關係。

他舉出一個例子，說如果我有一輛價值 30 萬元的車輛，但遭人弄花了，只賠償得 5 萬元，我會怎樣做。假如梁耀忠議員弄花了我的車輛，只賠償我 5 萬元，我會向保險公司索取其餘的賠償。

全委會主席：是否有議員想發言？若有，請不要離題，亦不可重複。

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as I explained at the Second Reading debate, the court should only be empowered to order re-employment where both the employer/employee concerned consent. There is also a need to impose a maximum amount of damages in relation to employment matters in this new area of anti-discrimination legislation in Hong Kong.

The provisions in the Bill are in line with the Members' decision made in the context of the Employment (Amendment) Bill 1996 enacted last week.

Mr Chairman, the Administration objects to the Committee stage amendments.

陸恭蕙議員致辭：主席，我想作出一些回應。第一，政府和一些代表僱主的議員的看法，都是從僱主的利益出發。剛才李卓人議員解釋得很清楚，如果有復職權，對工人和僱主都是最公平的。如果規定有復職權，法官是在判斷是否可能復職後，才會作出決定。在這樣的情況下，法庭也可能不再要求僱主作出賠償。因此，我們不應從某一個利益的方向來判斷法律應該是怎樣。法律應該是持平的。

我曾作僱主，也曾作僱員，所以我明白。也許田北俊議員和自由黨一些同事大多是自僱或是僱主，所以他們不會從僱員的角度來理解這條例草案。其實它對僱主和僱員都是非常公平的。剛才劉健儀議員說，設立 15 萬元上限，已經可以阻嚇僱主，防止他們日後作出歧視行為。不過，在受害者的角度上，如果他們的損失真的超過 15 萬元，那為何硬要他們接受呢？不論是普通僱員或高級職員，這個 15 萬元上限可能會阻嚇受害者不去投訴、不提出訴訟。如果我們從僱主和僱員兩方面來看這件事的話，我們應該讓法庭判決員工可以復職，而且賠償不應設有上限。

上次我們已經就這問題進行辯論，而且獲得通過，《性別歧視條例》和《殘疾歧視條例》都是一致的，所以我不希望今天議員不支持這項修正，因為這樣會令僱主和僱員感到混淆，亦使公眾人士對歧視法例的一些理解感到混亂。

劉健儀議員：主席，我要求陸恭蕙議員澄清，她剛才發言時，是否說如果法庭判令要重再僱用有關僱員，法庭便不會命令有關僱主作出賠償？

陸恭蕙議員：主席，我願意澄清。劉健儀議員是一位律師，我相信她也會很明白，如果法例規定不可能復職，則即使有這可能，法庭也不可以判決員工復職。如果法官認為復職已經可以解決問題，他可能不會判決僱主須給予僱員賠償。我相信法庭會有一個公正的判斷。

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。

Mr James TIEN claimed a division.

田北俊議員要求點名表決。

全委會主席：委員會現進行點名表決。

全委會主席：謹提醒各位委員，現付諸表決之議題為：陸恭蕙議員就第 54 條動議的修正案，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，請各位核對所作表決。是否有任何疑問？現顯示結果。

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 CHAN Wing-chan, Miss CHAN Yuen-han, 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, Mrs Elizabeth WONG 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 Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, 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 amendment.

Mr LEE Kai-ming abstained.

THE CHAIRMAN announced that there were 32 votes in favour of the amendment and 19 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 32 人，反對者 19 人。他於是宣布修正案獲通過。

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

經修正的條例草案第 54 條之議題經付諸表決，並獲通過。

Clause 64

條例草案第 64 條

MISS CHRISTINE LOH: Mr Chairman, I move that clause 64 be amended as set out in the paper circularized to Members.

As I said two weeks ago in this Council, there is no sensible reason to oppose this amendment. It merely ensures that any time spent in conciliation does not count against the time limit to bring court proceedings. Conciliation is a slow process and no one should have to abandon it prematurely for fear of losing the right to bring proceedings later.

The Administration argues that the Bill already offers persons engaged in conciliation adequate reassurance that they will not run out of time. In fact the Bill does not. For reasons I explained in detail last time the Bill offers such persons hope but not certainty. They need certainty which the amendment provides.

Members supported the amendment then and I urge them to do so again today.

Proposed amendment

擬議修正案內容

Clause 64 (See annex XI)

條例草案第 64 條（見附件 XI）

劉健儀議員致辭：主席，自由黨不會因為今年六月十一日陸恭蕙議員就《1996 年性別及殘疾歧視（雜項規定）條例草案》提出同樣的修正獲得通過，自由黨現時就會就範。自由黨仍然反對這項修正，因為自由黨認為任何就有關歧視條例所提出的訴訟都應該有一個限期。如果地方法院認為案件是合理的話，地方法院也會容許提出這個訴訟不會受時間限制。現時陸議員提出的修正只會將申請的期限大為延長，這對僱主是很不公平的。

謝謝主席。

SECRETARY FOR HOME AFFAIRS: As I said at the Second Reading debate that there is no need for the proposed amendment since the Equal Opportunities Commission would normally take much less than 24 months for conciliation, and the clause provides for the court to consider any claim out of time if it is just and equitable to do so.

Mr Chairman, the Administration objects to the proposed amendment.

MISS CHRISTINE LOH: The Administration objects to certainty in the law.

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。

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

全委會主席表示他認為可者佔多。

Mr James TIEN claimed a division.

田北俊議員要求點名表決。

全委會主席：本局現進行點名表決。

全委會主席：謹提醒各位委員，現付諸表決之議題為：陸恭蕙議員就第 64 條動議的修正案，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，請各位核對所作表決。尚欠一人。是否有任何疑問？現顯示結果。

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 CHAN Wing-chan, Miss CHAN Yuen-han, 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, Mrs Elizabeth WONG 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 Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr Paul CHENG, 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 amendment.

Mr CHENG Yiu-tong and Mr LEE Kai-ming abstained.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 19 votes 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 19 人。他於是宣布修正案獲通過。

Question on clause 64, as amended, put and agreed to.

經修正的條例草案第 64 條之議題經付諸表決，並獲通過。

Schedule 1

附表 1

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Schedule 1 of the Bill be amended as set out under my name in the paper circularized to Members for reasons as I have explained in the Second Reading debate.

Proposed amendment

擬議修正案內容

Schedule 1 (See annex XI)

附表 1 (見附件 XI)

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 Schedule 1, as amended, put and agreed to.

經修正的附表 1 之議題經付諸表決，並獲通過。

Schedules 2 to 3 were agreed to.

附表 2 至 3 獲得通過。

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

THE SECRETARY FOR HOME AFFAIRS reported that the

政務司報告謂：

FAMILY STATUS DISCRIMINATION BILL

《家庭崗位歧視條例草案》

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

經修正後已通過全體委員會審議階段。她動議三讀上述條例草案。

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

條例草案三讀之議題經提出待議，隨即付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

Resumption of Second Reading Debate on Bill

恢復條例草案二讀辯論

COPYRIGHT BILL

《版權條例草案》

Resumption of debate on Second Reading which was moved on 26 February 1997

恢復於一九九七年二月二十六日動議二讀辯論

MRS SELINA CHOW: Mr President, as the Chairman of the Bills Committee on Copyright Bill, I now report on its deliberations.

The Bill seeks to localize the law of copyright and provide for a comprehensive regime for copyright protection. The extent of public concern on the Bill is evident by the number of organizations requesting to meet with the Bills Committee and of submissions received. It represents the many interests, some of them conflicting and others overlapping, which are at stake. In more than two-month's deliberations, the Bills Committee has held 19 meetings, met with 15 organizations and received 113 submissions. Members have also been approached individually and in groups by the intensive lobbyists on all sides. Given the large number of issues examined by the Bills Committee, I shall not exhaust all in my speech but just touch upon those which are controversial and have aroused considerable public concern.

Before I embark on the various issues, I must stress the very strong consensus among all parties concerned. The need for Hong Kong's own Copyright Ordinance before 1 July is unequivocally recognized and supported, and the call for tough action against piracy is loud and clear. The broad position and direction of the Administration is endorsed. What was asked of the Bills Committee was to address the balance between the opposing forces in the trades in the context of the wider public interest of the copyright owners and the consumers. The Bills Committee was engaged in a tightrope exercise in which should any one lose his balance the technicians controlling the tightrope below were certain they might be squashed to injuries or even death. As a result, and given the limited time available, the officials and the Bills Committee went through a highly pressurized two months. I am therefore extremely grateful to all those individuals who have co-operated remarkably to reach the final outcome.

As Members are aware, the subject of parallel importation of copyright articles is the most contentious issue in the Bill. There are strong views for and against parallel imports being permitted *per se*, and for and against the proposal of decriminalization in the Bill. The retail trade call for total deregulation of

parallel importation while consumers would like relaxation along the lines of the Law Reform Commission report. The music and film industries, on the other hand, object to decriminalization. Each camp has advanced a number of reasons to support its stance. Without going into the details of their arguments, I must say that the Bills Committee has carefully considered each and every point made by the deputations. The fact that no international standard or consensus has been reached on parallel importation is self-explanatory of the controversy, delicacy and intricacy surrounding the issue. It seems that every country or territory would look at how its own interest would be affected or best served in determining whether to restrict or relax on such imports, and therefore whether a country is an exporter of intellectual property products is a major, if not the most, important factor in deciding the manner in which parallel imports are handled. In general, most developed countries with high standards of copyright protection prohibit parallel importation. We were told that most of them have retained criminal sanctions in their statute books against parallel imports but prosecutions have been few and far between. In fact we were told that many of our partners in the WTO is watching the outcome of our debate from which they might draw lessons. In mapping out a regime that suits our needs, both Members and the Administration have not lost sight of Hong Kong's particular position as a major exporter and consumer of copyright products, especially for films and sound recordings. Against this background, and as a result of strong request for our local producers, the Administration has proposed to amend its original decriminalization provisions in the Bill to the effect that parallel importation of copyright works remain a criminal as well as civil infringement within 12 months of first publication of the work anywhere in the world. After the initial 12 months, civil remedies would still be available to the copyright owner and the exclusive licensee until the end of the copyright term. It would be a defence for a person who imports a work without the licence of the copyright owner if the owner or the exclusive licensee has acted unconscionably, that is by withholding supply on unreasonable grounds, or by agreeing only to supply on unreasonable terms.

Members of the Bills Committee have different views on the adequacy of a 12-month criminal sanction period. Some are sympathetic with the film industry and maintain that this period is inadequate to protect exclusive licensees of foreign films in Hong Kong. Others, however, consider this period acceptable from the consumers' perspective. Taking into account Members' divergent views, the Administration has subsequently revised its proposal to

extend the period of criminal sanctions to 18 months. I must point out that the Bills Committee has not reached a consensus on this issue. Nor has it agreed on the need to define "unreasonable ground" and "unreasonable terms" in the Bill. Since some of my colleagues have given notice to move amendments relating to these issues, I shall leave the debate on these points until the Committee stage.

Another issue related to parallel importation is the level of evidentiary requirement for proof of knowledge of infringing activities. The plaintiff has to prove under the existing law that the defendant has actual knowledge of the infringing activity. Under the Bill, the copyright owner is required only to prove that the defendant "knows or has reasons to believe" that he is dealing with infringing copies. While copyright owners and licensees were satisfied that this new move to lower the threshold of proof for the plaintiff, the retailers were extremely unhappy, for two reasons. First, whereas under the 1956 United Kingdom Act whether imports in breach of a licensing agreement are infringing copies had been unclear in the law and therefore inconclusive the position is absolutely clear in the Bill. In other words, they will be infringing copies once the Bill is passed. Second, without spelling out what constitutes "reasons to believe" retailers can be placed in extreme uncertainty or would be deprived of products to sell even if the licensees have behaved unreasonably. The Administration has acknowledged retailers' concern over the need for certainty and has proposed to add new provisions to clarify circumstance under which a defendant may claim that he has no reasons to believe in that goods that he has been dealing with are infringing copies. The new provisions spell out matters that the court may have regard to in determining whether a defendant has no reason to believe. Again, members of the Bills Committee have different views on this issue and it would be another subject for debate at the Committee stage.

I would like to turn to another issue on which the Bills Committee has received opposite views also, namely, whether decompilation should be expressly permitted in the Bill. Two major business software associations have strongly objected to permitting decompilation for the purpose of interoperability. Other computer organizations, albeit supporting the inclusion of a specific provision for that purpose, criticize the Bill for allowing contractual restrictions on decompilation. The two camps have each put forward different reasons to substantiate their positions. Members in general agree that the provision for decompilation in the Bill fails to address the needs for the computer industry and that the issue should be dealt with in the context of fair dealing. To this end, the

Administration has proposed amendments to the Bill, which, Members are told, have been agreed by the software industry.

The subject of re-transmitting non-encrypted satellite broadcasts has also been high on the agenda of the Bills Committee. The Bill proposes to remove the exemption currently enjoyed by licensees of Satellite Master Antenna Television (SMATV) systems to re-transmit non-encrypted satellite broadcasts without infringing copyright. Whilst major broadcasters in Hong Kong welcome changes, SMATV operators, on the other hand, have argued that non-encrypted programme signals should be presumed to be intended for general reception. Since prevailing licensing conditions of SMATV prohibit them from paying copyright owners for retransmission of non-encrypted broadcasts, SMATV operators have serious concern over the viability of the trade once the Bill comes into operation. To ensure minimal disruption to services currently enjoyed by SMATV subscribers without compromising the rights of broadcasters to distribute their signals, the Administration proposes to provide for a revocable implied license to SMATV operators to retransmit non-encrypted broadcasts. The maker of a non-encrypted broadcast may revoke the license by publishing a six-month revocation notice in the newspaper. Members have been told that the effective date of this proposal will tie in with the change in SMATV licensing conditions following the broadcasting review in 1998. Although the Bills Committee has agreed to support the Administration, the broadcasters remain dissatisfied, and I understand a Member will move an amendment at Committee stage, so I expect the debate to continue.

I would like to take this opportunity to thank all the organizations which have submitted views to the Bills Committee and have made suggestions to improve on the Bill. May I also express the Bills Committee's appreciation of the Administration's hard work, open-mindedness, and promptness in providing information requested by Members in the course of deliberations. The enactment of the Bill is certainly an indisputable proof of Hong Kong's commitment to protecting intellectual property rights.

Mr President, I shall now spend a few minutes to express my own view as a Member towards the Bill. I have to admit that this is one of the most difficult bills that I have scrutinized in my long career in this Council. Nevertheless the process has been challenging and I might even say, at times, enjoyable. No Member can be unimpressed by being waylaid by my good friend Jackie CHAN,

and petitioned by Jackie CHEUNG, two of the most influential and, dare I say, sexy men in Hong Kong. But with all the razzmatazz, we must not lose sight of what this is all about.

Having spent a substantial part of my career in the creative industry myself, I cannot help but be a defender of copyright. On this my position is absolutely clear. Any unauthorized reproduction of a work and its exploitation through trade or performance, is an act of theft, a criminal act, and therefore deserves the same punishment as any other kind of theft.

But when it comes to parallel importation, the picture changes somewhat. Here we often are talking about the dealing of legitimate products in the realm of right assignments, licences and contracts. This question is how much should the law intrude into this layer of activities. I suspect this is why so many governments around the world find it hard to determine the rules. To my mind this is not about infringing copyright. It is about fairness and orderliness in a market. If the industry has established for itself a regime, such as the window system for the film industry, and rights have been licensed to parties in a territory, then it is up to those parties to exploit such rights without interference or intrusion. However these licences are not the rights owners. They are the bridge between the rights owners and the public and have the responsibility to fulfill their obligation as such, that is, to bring the product to the attention of the widest public and then to supply the products to where there is a demand. We in the Liberal Party have based our deliberation and final decisions on the Bill on these principles, and believe we have achieved the correct balance. But I worry that our preoccupation with parallel import has somewhat overtaken the very important attention that we must pay to pirated goods, which remains a headache to Hong Kong, especially in the context of our role in the world trade. In the last few years, I have repeatedly called for stronger action against piracy, requesting more resources and tougher laws. The Golden Arcade and such black spots are the living pillars of shame for Hong Kong, and high-profile and resolute action is necessary to demonstrate to the culprits as well as to the rest of the world our determination to stamp out these crimes. Hong Kong people should be told in no uncertain terms that although the law does not penalize consumers, that they are nevertheless partners in crime in buying such products. Feeding their business at the sacrifice of our own legitimate trades and industries is wrong. I am somehow disappointed that the Administration's efforts to persuade members, especially our Members who belong to the legal fraternity, to

put some responsibility on landlords to reject pirates as their tenants have failed. Government says this Bill when passed will help enforcement. I look forward to that, and pledge here and now to monitor the developments closely.

MISS MARGARET NG: Mr President, just a few words to support the Bill. This is a highly complex and technical piece of legislation. I would say, if I may, that it is a job well done by the Administration team. During the scrutiny in the Bills Committee, all efforts were made to ensure that affected groups and persons had a fair chance to voice their views. These groups and persons took great trouble over their representations which were listened to sympathetically.

Here, there is a great deal of conflict between rights and interests and among different interests. Everyone worked very hard to find the right solution, not least the Administration team. We were hard-pressed for time but, as a member of the Bills Committee and a keen participant in the process, I can assure Honourable Members that no corners were cut. I can say that the Administration has got it about right in the amendments the Secretary for Trade and Industry will move later today, and I recommend these to Members.

Mr President, I support the Bill.

11.25 pm

上午 11 時 25 分

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。

黃震遐議員致辭：代理主席，版權法是非常深奧而複雜的法律，亦如剛才兩位議員所說，是非常重要的。今次條例草案委員會召開了很多次會議來審議這項條例草案，亦花了很多時間來接見有關的業內人士。身為主席的周梁淑怡議員在這件事上的確花了很多心血，辛勞地工作。可是，總括來說，整個審議過程仍然給人一個草草了事的感覺。最後確定的條例草案，根本是在不夠時間深入研究的情況下制訂的，其中仍有很多缺陷，日後需要作出補救。大家當然知道為何情況會變得這麼差；根本的原因是，今屆立法局的 4 年任

期，被非法的腰斬了。不過，我不打算在此再花時間討論這個問題了。版權法的條例草案範圍非常廣濶，但到了最後，大部分的討論內容，都集中在平行進口的問題上；而另外的則是衛星問題，單仲偕議員稍後會提及。今天，其他主要的重要修正，都是圍繞着平行進口的問題。在這問題上，我想代表民主黨發言。

在開始的時候，我們其實是按照法律改革委員會的建議，希望將平行進口非刑事化，但同時亦增加版權擁有人和專用許可持有人的民事訴訟能力和勝訴機會。法律改革委員會一致認為，不應該以刑事的程序來干預合約權益的執行。因此，條例草案原本是希望在沒有刑事責任的前提下，令現行法律對版權擁有人和專用許可持有人更為有利。然而，政府在電影業和唱片業的游說和壓力之下，節節後退。最後，既增加了民事訴訟的保護，又恢復了刑事責任，變了較現行的法律更能保護版權擁有人和專用許可持有人。

我們首先不能混淆水貨和翻版貨。大家也很清楚，我們是非常反對翻版貨的，因為香港的國際形象會因為翻版貨而受到損害。可是，水貨並不是翻版貨；入口商所出售的水貨，仍然是版權擁有人所生產、製造的貨品，因此，並沒有侵犯版權擁有人的版權權益。不過，為甚麼會有水貨呢？理由是，同一種產品在不同的地區會有不同的價格，或不同的發行期，致令消費者可透過水貨較早或較便宜地購入貨品。這是水貨出現的原因。就好像當年的手提電話，初時在香港的售價是萬多元一部，但水貨入侵後，便一直下跌至現在數千元一部，令市民減少了很多負擔。當然，消費者希望貨多而便宜，故此，水貨商便可“搭順風車”，無須分擔專用許可持有人的推廣成本而售出貨品。這當然對許可持有人在商業上是不利的，而且他會覺得不公平，但同時，因為有水貨競爭，市場不被完全壟斷，對消費者權益就更有好處。因此，水貨商的確在市場上、經濟上佔有不可抹煞的重要性。另一方面，版權擁有人雖然生產在不同地方的成本是一樣，但他們當然亦希望在某些地區賺得較多的利潤。就專用許可持有人來說，他們當然也希望在壟斷的情況下，獲取最大的利益。在商言商，當然難怪他們有這個想法。可是，這卻令他們與消費者的權益明顯地出現對立。客觀地看，兩者之間的利益，是需要平衡，不應該是傾斜的。過分保護版權擁有人或專用許可持有人，消費者便要付出較高的價錢，或減少了選擇，又或等候更長時間。當然，若版權持有人或專用許可持有人全完沒有受到保護，連民事訴訟的權利都沒有，推廣活動便會減少，這亦不一定是件好事。因此，在這問題上，我們的重點必須放在如何取得平衡的問題上。

電影業和唱片業支持刑事規管基本上是由於他們的行業的一些運作特點。舉例來說，電影業除了電影外，還有鐳射碟、錄影帶等產品，在電影上演了一段時間後，便會推出後者。可是，由於香港的戲院的排期問題，亦由

於很多持有人不能即時取得分銷權，以致其他地區的鐳射和錄影版本出現後，電影卻仍未能在香港上演。若這些影碟影帶可以入口的話，電影必會受到打擊。唱片公司亦認為平行進口商是乘搭免費順風車，令他們推廣一些唱片的業績，受到打擊。本港的電影製造人亦承認，他們與其他地區的代理所簽訂的合約，會令其他地區有較香港更便宜的貨品。一旦這些貨品流入香港，自然會影響他們在港的利潤。有時候，雖然是香港片商拍攝的電影，但卻先於香港以外的地區上映。儘管他們可以利用一些特別的、特許的標貼等科技來控制市場，但是他們根本沒有這樣做。因此，他們才需要依賴刑事條文來保護他們。

其實，電影業和唱片業都應該要認識到，時代根本是在轉變，網上購物，根本是越來越普通。我相信七月一日後，香港和深圳的來往會逐年的簡化和方便，如果香港貨品價格過高，選擇不足，市民根本可以透過上網或往深圳購物，甚至租借。因此，平行進口商不再會是水貨唯一的來源，水貨亦不會是目前法律所能夠真正抵擋得住的。電影業和唱片業尤應預早思考，如何在一個更為龐大，包括香港在內的中國市場裏，推銷產品。

所謂水貨商搭免費順風車，當然是必須解決的問題，但是在中國的其他大城市裏，無論是上海、北京、廣州等，消費能力都較其他附近很多地區為高。如果在這些都市裏，價格定得太高，仍然會導致水貨的問題。但明顯，其他地區是沒有可能有這麼高的價格，而其他中國各城市，根本不是好像香港般有一條邊界。因此，如果香港的電影商和唱片商不放眼中國，只是希望透過刑事程序尋求保護的話，其實他們是忘記了如何打入中國市場、如何透過改善自己的市場策略和效率，來在這個市場爭取更多利潤。民主黨諒解電影業的處境，知道業內人士根本難以即時解決目前困難，因此，民主黨同意他們可以有 18 個月的刑事責任保護。但我們覺得其他出版商和版權者，根本只是應有其他 12 個月的刑事責任保護，而好像書本和軟件等，我們目前根本看不到為甚麼一定要有刑事責任保護。不過，由於我們根本沒有時間去詳細審議這方面，所以我們終於同意他們亦可以有 12 個月的刑事責任的保護。

代理主席，如我剛才所說，我們必須在版權擁有人 and 專用許可持有人的權益，與消費者利益之間取得平衡。因此，在作品產生 12 至 18 個月後，便不應再有刑事責任保護，而只可有民事訴訟，以便消費者能享有更多的選擇，及不至因為供應不足，而要付出不合理的價錢。因此，楊孝華議員和我都會提出修正，確定在甚麼情況下，應該容許平行進口，所謂水貨。我們希望一方面不會過分傷害專用許可持有人的權益，而另一方面亦不會傷害消費者的權益。

陳鑑林議員致辭：代理主席，條例草案委員會在過去十多次會議中，用了超過一半時間討論有關平行進口的問題，但對於這個極具爭議的問題，不但在國際上未能達致共識的標準，委員會由於立法時間緊迫，最後亦只能和政府達成一個妥協方案，決定以年期作為界定刑責的標準。

民建聯認為，這個結果並不是最理想的方案，只能夠說照顧到香港各方面的特殊情況，特別是對香港電影和唱片業的一個妥協方案；同時，有關方案亦間接約制版權的特許持有人，因為一旦持有人坐擁版權而不發行，或將貨品售價提高至不合理的水平的話，條例草案對平行進口的規限卻相對較為寬鬆，如此便可以防止版權持有人“買斷”一件作品，損害消費者利益。

對於平行進口的問題，我們反覆聽了正反雙方意見後，一方面同意零售商的說法，即平行進口貨品是在版權人同意下在海外合法製造的商品，不應與翻版貨品同樣被視為“侵犯版權複製品”，另一方面亦認為就一些外國的作品而言，假如香港沒有專用特許持有人，平行進口無疑可為消費者提供更多的選擇。

不過，對於零售商代表認為，平行進口貨品可以帶來價格的競爭，保障消費者的利益，我們則不敢苟同。我們認為，版權作品，尤其影音產品的零售價，除了包括代理商的批發價外，其餘部分是零售商的利潤，以目前兩間最大力支持平行進口非刑事化的唱片連鎖店為例，他們的唱片零售價格往往就較一般的行貨或正貨的價格高出一至兩成不等，而我們亦在有關的連鎖店中發現，同一張唱片的行貨及水貨的價格比較，也是行貨稍為便宜些。

大家都知道，發行商或代理商在推出一項影音產品時，都須要付出大量的資金，進行宣傳活動，這些廣告推銷的成本實際上佔去整體成本的很大部分，然而平行進口商卻無須為這些推銷或廣告作出任何的成本支出，然而可以坐享其成，經營成本自然大大降低，倘若其售價與行貨一樣的話，其實就已享有極豐厚的利潤；如果說到市場競爭的話，我們認為顯然這種情況是不公平的競爭。

因此，我們覺得有必要保障創作版權人以及專用特許持有人的權益，因為最終的目的亦是為了保障消費者的利益。

民建聯十分了解電影和唱片行業對於平行進口完全非刑事化的憂慮：由

於近年翻版的電影光碟和唱片極之猖獗，一些還未正式在香港公演的外國電影，好像日前海關就搜到大批未公演的《侏羅紀公園》續集翻版電影光碟一樣，因此，非刑事化可能會令這些翻版貨品偽裝成平行進口貨品，侵犯版權擁有人及特許持有人的權益，這種情況是絕對不應該存在的。

況且，我們亦同意，在一般的情況下，既然專用特許持有人已向版權持有人購入獨家發行權，如果他們不向市場提供有關的貨品或產品，對他們來說，是有害而無益的，因為他們須要承擔由此帶來的所謂市場風險和經濟上的損失；當然，我們亦要理解，作為代理商，在商言商，他們一定會揣摩市場的氣候和了解消費者的需要而推出電影或唱片，所謂“五窮六絕七翻身”，就差不多成為電影及唱片行業他們的行規。

對於工商司稍後將會在委員會審議階段提出有關平行進口的修正案，將一件作品在全球任何地方首次發行的首 18 個月定為刑事制裁的限制，原則上民建聯表示歡迎政府認同應對本地版權擁有人作出些保障，但我們對於 18 個月是否最適當的期間則有保留，因此，我將會在委員會審議階段內提出，將限期延長至 24 個月。

代理主席，目前香港可算是世界上影音作品創作出產的基地之一，也是本港外匯收入來源的其中一項本土工業，行業吸納了不少優良的電影、音樂、藝術創作者、表演者和幕後工作人員，不但為香港市民提供豐富的文化教育和精神糧食，而且亦是全球華人維繫中華文化不可或缺的橋樑之一。透過法例保障本地創作，在世界上，在其他國家政府亦都有相同的做法，因此我認為香港亦應保障本地創作行業的權益。

我認為，如果我們不對本地創作行業的版權作出有限度的保障，將會無可避免地導致本港電影及唱片行業受到一定打擊，走向萎縮，削弱競爭能力，而消費者最終亦同樣蒙受損失。

代理主席，本人謹此陳辭，支持二讀。

羅祥國議員致辭：代理主席，《版權條例》是涉及經濟活動的立法工作，主旨是保障創作者和版權擁有人的私有產權，是自由經濟制度的重要支柱之一。消費者權益不是孤立地存在的，它是在創作者的權益受到充分保障之下才能夠再發展出來的。在現行市場經營情況之下，版權擁有者普遍會採用分地區的版權特許持有人的安排來經營。因此，香港能夠保障本地的版權特許持有人的合法權益，不受水貨和翻版物品的影響，其實是保障創作者和版權

擁有權益的重要一環。香港有其成功的本土電影業和唱片業；這兩個行業不但創造了不少財富、就業機會和歡樂，更將香港的優良文化發揚光大，推廣至全球各地。在制定版權法時，本地電影業和唱片業的權益，以及如何推動它們的發展應該是考慮的重點。因此，我認為就水貨入口方面安排一個較為長期的刑事責任保護期，例如是 24 個月，其實是合理的。由於在目前的法律之下，版權的特許持有人要控訴水貨商是非常困難的，而政府在新的法例方面，亦沒有明顯的改善，因此，在這一方面，我們支持政府略為簡化的程序，方便版權特許持有人提出控訴。我們希望這安排能更有效地打擊非法水貨入口的問題。

最後，有議員要求作出法例修正，以便一旦版權特許持有人未能合理地提供產品，零售商可以在合理安排下，採用平行進口。在這方面，我和民協都是支持的，希望能對消費者權益提供適當的保障。儘管如此，我必須指出，不少水貨商都用一個藉口，強調他們入口的水貨能使消費者和市民有更多的選擇，亦必定能大大降低價錢。但在觀察市場情況後，我們發覺這未必是一定的結果，因為一些水貨，事實上是比較原裝的貨品更昂貴。因此，水貨商的經營安排是否一定令消費者得益，我們是有保留的。

謝謝代理主席。

單仲偕議員致辭：代理主席，政府今次在比較遲的時間才提出《版權條例草案》，實在令我們參與審議這項條例草案的同事疲於奔命，感到極為吃力。坦白的說，我們覺得根本沒有足夠時間來仔細審議這項條例草案。因此，我們希望政府在法例通過後，例如一年之後或在其他適當的時候，能再作出較緊密的檢討，因為我相信政府可能仍須做一些其他額外的補救工作。雖然如此，正如剛才多位同事所說，政府的工商科和知識產權署在這項條例草案方面提供了很大的支持和合作，這是很好的合作精神。民主黨支持這項《版權條例草案》，這亦是繼 **TRIPS**、《外觀設計條例》和《專利條例之後》，最後一條有關知識產權的條例。我們認為，這些條例對香港將來工商業的發展是非常重要的。因此，制定《版權條例》之後，政府工商科和知識產權署實應思考一下策略性的工作，以便提高香港人或香港工商界對版權的尊重。

我們覺得現時香港的市民，甚至工商界部分人士，對版權的尊重程度可能仍不足夠。中國侵奪產權的情況在某些時候是比較普遍，因此，政府尤應考慮，在過渡期之後應該怎樣在這方面尋求與中國的合作，一起打擊侵奪知識產權的行為。《版權條例草案》非常複雜，而版權這個概念本身亦是在演進中。在演進過程裏，政府實在須要不斷提出一些檢討的方案。舉例來說，

政府應檢討將來“internet”的發展，對版權的影響會有多大。這事實上是政府應該深入研究和深入監察的。今次的《版權條例草案》提出一個嶄新的概念：相同的一種行為在今天不觸犯刑事罪行，但 18 個月之後卻變成了刑事罪行。我相信政府在實行了這個嶄新的概念以後，一定要做檢討，因為一些發展中的國家，或其他的國家，可能會觀察香港的實施情況；香港在這問題上，可能會發揮示範作用。所以，我覺得工商科作為保護知識產權的政府部門，應該在這方面執行更緊密的監察。

這幾項條例其實仍不足夠保護知識產權。我們仍然可以在香港見到很多翻版活動和侵權活動。最顯著的例子便是大家應該很熟悉的黃金商場和港島的幾個商場。在那裏，翻版活動仍然肆虐。政府今次修訂條例來打擊翻版，我相信會產生一些效果。但我強調，政府應繼續多做工夫。

文康廣播科成立了特別的隊伍，打擊淫褻及不雅物品，在過去幾個月裏，收到不少成效，政府應以此為藍本。在通過《版權條例》之後，政府應採取適當的措施來配合，以打擊翻版活動，大力掃盪的目標應包括電腦軟件、電影光碟，甚至唱片光碟。我們今天是辯論平行進口等問題，我們當然要平衡兩方面的利益。可是，以香港目前的情況來說，最影響版權擁有人或專利特許人（exclusive licensees）的卻是翻版活動。所以，政府在有了這幾項條例後，便一定要運用它們所賦予的權力，並研究是否足夠，然後在 1 年之後，進行較有力的掃盪，我相信這方面一定要配合海關和政府的資源。在辯論條例草案的過程中，政府拒絕成立一個“central registry”。這是一個影碟或光碟登記和註冊的地方，使不同界別的人士可以查詢版權擁有者是誰，或專利特許人是誰。政府在這個問題上的態度令我大惑不解，因為版權持有人和零售商都很希望政府做這件事，但最不希望政府做的，卻是政府自己。在今次有關平行進口的爭論中，如果政府肯設立中央登記處的話，其實是可以幫助雙方紓解一些矛盾的。所以，雖然政府今次因時間倉卒而辦不到，但我仍希望政府在將來能重新考慮這件事。

最後，我想談一談香港的影音行業。當然，我同意剛才幾位同事所說，影音行業在香港作出了很大的貢獻。可是，我們亦要考慮制定法例的真正精神。我們要想一想，我們的法例是否應該保護香港個別行業，還是廣泛地保護知識產權。在過去幾個月，我們作出很大的努力，亦試圖保護香港的影音行業。可是，我卻認為，制定一些法例去特別保護香港的影音行業，是不大適當的。我們應該提出一些法例，保護知識產權擁有人或版權持有人，而不是特別去眷顧或照顧某一個行業，這才適當。我們應該制定法例，創造空間，讓真正從事創作的人在知識產權受到保護之下，能夠在香港從事創作的

工作。我們不應特別眷顧某個行業，因為一旦某個行業不能夠在新的國際競爭環境裏參與競爭，則無論是立了甚麼法例，這個行業將來始終也會式微。所以，現在問題的焦點是，政府應該製造一個更能保護知識產權的環境，而不應特意保護某個行業。

代理主席，我很多謝政府在過去兩年做了很多落實保護知識產權的工作和將法例本地化，但我亦再次促請政府，由於這條例草案通過得比較急，政府應在 1 年之後，看看有甚麼遺漏要作出補救，然後再向立法局提出。

本人謹此陳辭，支持條例草案。謝謝代理主席。

楊孝華議員致辭：代理主席，早在政府提出這《版權條例草案》之前，我與本局很多位同事，亦當然包括自由黨很多位議員，都已經被各方面游說得十分厲害。除了小組委員會的會議外，差不多隔天便與不同的代表及代表不同利益的團體見面，聆聽他們力陳通過這條條例草案的利害及如何會影響他們自己各自的行業。

自由黨的宗旨一直是希望有個公平競爭的環境。自由黨希望能夠通過法例使版權持有人、產品製造商、零售商、專用特許持有人及消費者的利益得以平衡。

零售商 — 無論是從他們自己行業的利益，還是他們時常所引用的顧客及消費者的利益角度出發，一般來說，都贊成以一個比較開放寬鬆的態度去修訂法例。以我本人代表的旅遊業的角度來看，旅客在香港旅遊時總少不免四出購物。故此，選擇越多，便越能吸引旅客來港購物，又可以切實表現出香港作為“購物天堂”的美譽。

另外，如果要發展本港的電影、音樂事業，當然要努力維護知識版權，打擊翻版。本地的電影及音樂人士認為，連水貨亦應立法受管制。本地藝人近年衝出香港，衝出亞洲，在歐美等地的電影節、音樂頒獎禮上都相繼贏得獎項，可見本港的電影及音樂確實已經開始受到國際的認同。

為增強香港在海外旅客心中的形象及盡量提高香港對旅客的吸引力，目前旅協及港府正研究本港是否須要加添各種新旅遊點，其中包括興建一個有關本港電影事業的“電影城”或電視城。要為這個計劃鋪路，本港一定要

有一個健全的保護版權制度。主席，本人稍後在委員會審議階段，準備就《版權法條例草案》提出修正案。本人提出修正案並不違反政府提出的修正案的原則，只是補充政府提出的修正，用清晰條文澄清並保證包括權持有人，專用特許持有人，零售商及消費者等各方面的利益得到平衡。

本人稍後所增加的條文，亦包括有關合理理由，即(reasonable ground)及免責辯護(defence)等方面的內容。

本人的修正亦準備在附表 2 加入一個過渡性安排。這些過渡性安排十分重要，但亦可能具爭議性。對於在新例實施以前已透過不違法途徑輸入香港的貨品，即現時存貨，我們認為不應因新法例的通過而立即受影響，馬上變成違法或違反刑法的貨品。我相信加入這一點，可以解決有關目前數量有限的現成存貨的疑慮，亦可以使零售商放心，不會“無端端”因為有存貨而觸犯新法例。

目前，這條條例草案的措辭使零售商肩負主動查究貨品有否侵犯版權，或是侵犯版權的複製品的責任；不過，卻沒有很清楚說明版權持有人及專用特許持有人是否有責任要提供有關版權的任何資料。這一點我們認為對零售商並不十分公平。所以，亦導致我們提出一部分的修正。事實上，我與黃震遐議員的修正措辭也是一致的。

香港的成功，很大程度上是由於它是一個不受政府干預的自由商埠。為免受政府過分干預，以及令商業活動可以正常及自由運作，確實有必要修訂法例要求有關版權持有人及專用特許持有人，必須向零售商提供有關版權的足夠資料，使零售商得到資料能夠分析有關貨品是否符合版權法例。

代理主席，除此之外，我亦想簡單提及他幾位議員對這法案相繼提出的、有些與本人相似，或甚至無關的修正。首先是關於非刑事化及刑事化，最後落實的期限應是多少個月。我們自由黨支持政府提出的 18 個月，因為我們覺得這能夠取得平衡。最初是說完全非刑事化，後來有人提出的期限是 1 年，但 12 個月對某些行業，尤其是電影，會造成一個困難，而 24 個月又似乎是太長。至於黃震遐議員則建議分開種類，電影是一類，其他又是另一類。可是，有人卻會問，如果這樣，有些根本不需要刑事化或非刑事化期限的產品，例如書籍，電腦軟件，又如何分類呢？技術上又能否做得到呢？我們覺得是有困難的，所以，我們覺得最好能夠使政府建議的 18 個月獲得通過，另外，對修正內關於一個我與黃震遐議員非常相似的修正，主要在新的第 35A 條內有些條款。我們自由黨本來只是希望在政府的原本修正加多一條 subclause，這與黃震遐議員的修正措辭也是一樣，大家亦完全接受政府的原本修正，唯一不同的是黃震遐議員對政府修正其中我們不想接觸的一項條文，即第 4 條，略有改動，我們希望爭議可照政府的建議，集中在版權持有

人及專用特許持有人的範圍，不要將問題擴濶了，因為我們未有足夠時間來進行研究，究竟我們這樣修正的利弊在哪裏。所以，在這情況下，我們是支持不要更改政府的第 4 點修正。

SECRETARY FOR TRADE AND INDUSTRY: Mr Deputy, I am deeply indebted to the Chairman, the Honourable Miss Selina CHOW, and members of the Copyright Bills Committee for the time, patience and insight given to the Bill.

The Bills Committee met 19 times between late March and early June and has been receiving countless representations from parties representing copyright owners, exclusive licensees, retailers, consumer lobbyists, and so on. This must be a record in itself. The hours spent and parties involved are indicative of the vital importance we all attach to the Copyright Bill.

I must thank all for adopting a pragmatic and flexible approach in trying to reach a consensus view on many of the often controversial issues for it is imperative for us to agree on and put in place a copyright law before the transition. Failure to do so would give rise to a lacuna in copyright protection. This is not something Hong Kong could afford to have.

The Copyright Bill is not a mere replication of our existing largely United Kingdom-based legislation. We have proposed new provisions which have been widely welcomed. Let me highlight some of these before turning to the more controversial issues.

Firstly, broadened scope. Copyright protects the expression of ideas and as such is important to our maintaining a vibrant and competitive economy. Our existing legislation already offers protection for various categories of copyright works from literary, dramatic, musical and artistic works to sound recordings, films, broadcasts, cable programmes, published editions and the rights of performers. The Copyright Bill extends the scope of protection to cover those persons having exclusive recording contracts for public performances. We will also protect copyright works made public in the Internet and digital environment. We will offer a new moral right to object to the derogatory treatment of works in addition to the existing right to be identified as author and right against forced arbitration. These changes are all in line with the latest and best international

trend.

Secondly, open policy. In line with other intellectual property laws and our open trade policy our new copyright regime will feature an open qualification system. Any original works created or published by anyone anywhere in the world would qualify for copyright protection in Hong Kong. This effectively extends copyright protection to, for instance, broadcasts originated outside but down-linked in Hong Kong.

Thirdly, more effective enforcement tools. Proof of copyright subsistence is often the stumbling block in civil and criminal proceedings against copyright infringements. To facilitate enforcement efforts we have reinforced provisions in the Copyright Bill that allow courts to accept an affidavit as a basis of proof. We have introduced a provision that allows customs officers the discretion to seize and forfeit suspected pirated goods. We have also doubled the penalties for first offenders of copyright infringement to increase the deterrent effect.

Fourthly, greater transparency. We have introduced a voluntary registration system for the collective copyright administration societies to ensure that essential information such as scales of royalty charges will be available to the public. We have also proposed to re-establish the Copyright Tribunal with extended jurisdiction to handle copyright licensing disputes to ensure balance of interests. I hope all these serve to demonstrate that the new copyright law will be a more comprehensive, modern, fair and effective tool to protect the interest of copyright owners and deter infringing activities at all levels.

Mr Deputy, I will now turn to the more controversial issues in the Copyright Bill. Given the degree of public concern I shall start with the regulation of parallel imports.

When the Copyright Bill was introduced into this Council in February we had proposed to decriminalize the act of parallel importing copyright works. We believed civil remedies would suffice to discourage any form of free riding on the hard work and substantial investment of copyright owners and exclusive licensees. Since the publication of the Bill, copyright owners and exclusive licensees have lobbied intensively for retaining criminal sanctions against parallel imports.

Representatives from the film industry have argued that their copyright

cannot be exploited commercially and adequately unless they have exclusive distribution rights in the local market. They have further made known that they are very much constrained by the established international practice of a sequential release of films in different formats. The normal release sequence is first to arrange for theatrical release followed by home video release, release on video-on-demand programmes, pay-TV and eventually free TV, taking about eighteen to 24 months time in total. A forceful argument has been made that parallel importation would disrupt this conventional trade practice and seriously undermine the film market.

Representatives of the sound recording industry have also submitted that parallel importation of licensed products from developing countries would undercut and seriously damage the local market for recorded music. They have claimed that right holders would very rarely be able to obtain effective civil remedies against parallel importation. Together with representatives of the film industry they have asked to retain criminal sanctions for at least two years from the first release of their products anywhere in the world.

On the other hand, importers, retailers and consumer groups have voiced strong objection against any restrictions on parallel importation. Their concern is that restrictions on parallel importation will distort the market and restrict free trade, competition and consumer choice. They want to see the removal of all criminal and civil sanctions against parallel imports.

We have reviewed our proposal in the light of the representations made. We accept that the economic exploitation of a copyright work is usually most critical during the period immediately after the work is first published or released in the market. We acknowledge that criminal sanctions, though rarely exercised, have a practical deterrent effect. We accept that complete decriminalization could be misconstrued as the Government relaxing controls against intellectual property infringements. We also accept that consumer interest should not be compromised as a result of failure of copyright owners or their exclusive licensees to provide certain demanded products.

Since there is a clear wish amongst all parties to strive towards a compromise, and since we are not bound by any international standards on this matter, we have proposed an alternative package. I underline the word "package" which covers three elements.

Firstly, retain criminal sanction against the parallel importation of goods within 18 months of the first publication or release of the copyright products anywhere in the world. Civil remedies will still be available throughout the copyright term but an exclusive licensee can only proceed with civil actions when the copyright owner has joined as a plaintiff. This change meets the concerns of the copyright owners and exclusive licensees.

Secondly, introduce a defence provision for a person to parallel import a copyright product even without a licence from the copyright owner or exclusive licensee if the latter has acted unconscionably. That is, by withholding supply on unreasonable grounds or by agreeing to supply but on unreasonable terms. This defence only applies when the importation takes place 18 months or more after the first publication or release of the product anywhere in the world.

Thirdly, as an additional safeguard for importers and retailers, introduce a new provision to deter groundless threats for civil proceedings against alleged parallel imports and to provide remedies for such unwarranted threats.

Mr Deputy, we believe this carefully-constructed package strikes the right balance between the rights of copyright owners and exclusive licensees to exploit their works and investments on the one hand, and the interests of the importer and retail traders and expectations of consumers on the other. We believe it is a pragmatic compromise. I will be moving Committee stage amendments to effect this compromise.

I urge Members to support my amendments. In doing so I recognise that different affected parties would each have wanted more. However, to modify any elements of this carefully-constructed package would upset the delicate balance and risk unravelling the whole package.

Another controversial issue is whether licensees of satellite master antennae television, hereafter referred to as SMATV systems, should continue to be exempted from seeking copyright clearance. In the Bill gazetted, we had proposed to remove this exemption so that television and sound recording broadcasters could either withhold copyright permission to re-transmit unencrypted signals or impose royalties or conditions for such re-transmission. We considered this to be consistent with our commitment as well as the best international norm to protect intellectual property rights.

Nevertheless, the SMATV operators have submitted to the Bills Committee that, under the existing broadcasting policy and the terms of their licences, they are debarred from either collecting subscriptions from users of their systems or indirectly charging fees for the right to receive programmes. Therefore much as they are prepared to pay the broadcasters they would not be allowed to do so. The Copyright Bill, as originally drafted, would thus create conflicting obligations on the SMATV operators should the copyright owners exercise their rights. As a consequence the SMATV operators might have to discontinue their service abruptly. This would also disrupt the viewing habits of the many SMATV subscribers.

In seeking to balance the concerns of the broadcasters on the one hand and the practical constraints of SMATV operators on the other, the Bills Committee has asked us to review the matter. Our alternative approach, which the Bills Committee has supported, is to state in law that unless otherwise notified, SMATV operators would be deemed to have been licensed by the broadcasters to re-transmit their programmes. The latter can give notice to revoke the implied licence by putting up an advertisement in one Chinese and one English newspaper in Hong Kong. However, pending a review of the Television Broadcasting policy in 1998, we will not activate this revocable implied licence provision. Doing so would expose the SMATV operators to conflicting obligations and probably cause disruption to existing services. I will be moving Committee stage amendments to pursue this alternative approach.

A third controversial issue relates to whether de-compilation of computer programmes should be allowed. De-compilation is the process of translating the more or less intangible object codes to ordinary programming languages or source codes. In the gazetted Copyright Bill, we have proposed to allow some limited degree of de-compilation when it was indispensable to facilitate inter-operability between different computer systems. This right to compile would itself be subject to agreements to the contrary. In the light of representations from the software industry, we accept that the de-compilation provision as drafted would be so limited as to be of little practical help to software companies wanting to de-compile.

On the other hand, as an exception to copyright restriction the provision has aroused serious concern amongst leading software companies. They assert that the provision suggests condoning piracy in computer programmes.

We have reviewed our policy intention on de-compilation. We would like to encourage competition in the information technology industry by facilitating timely access to information and ideas underlying computer programmes. Doing so is necessary for the independent creation of new products that attach to or compete with the programmes under study. We accept that the incidental copying of a computer programme by a lawful user during the course of de-compilation or other reverse engineering performed to understand the operation of the programme under study, or to develop a product inter-operable with the programme under study, need not be absolutely restricted by copyright nor should it be completely de-regulated.

In determining whether the act should be allowed we believe the overriding test is whether such act conflicts with the normal exploitation of the work by the copyright owner and unreasonably prejudices the legitimate interests of the copyright owner. If it does it would not be a fair use.

With this objective in mind we have reviewed the language adopted in the gazetted Bill. We have concluded that the de-compilation exception clause should be deleted and that the provisions on fair dealing should be modified. The object is to allow de-compilation to be deemed a fair use provided it does not conflict with the normal exploitation of the rights and legitimate interests of the copyright owner.

Drawing from the relevant provisions in the United States we propose that other factors, including the purpose and nature of the dealing, the nature of the copyright work and the amount and substantiality of the portion dealt with in relation to the copyright work as a whole, will also be taken into account in determining what constitutes fair use. We are pleased that the Bills Committee and the software industry have both found the proposal acceptable. I will be moving Committee stage amendments later on to achieve this.

A fourth issue arousing much debate relates to whether we should institute new and more powerful measures to seek to clamp down on copyright piracy. During the deliberations in the Bills Committee, we have proposed to amend a clause so that landlords who knowingly allow their premises to be used in piracy businesses should be subject to civil or even criminal sanction. While accepting the need to consider new measures to combat copyright piracy, the Bills

Committee has asked us to consider the implications more carefully. We will do so. We will wish to conduct a proper consultation exercise on the matter which will take time. When that has been done, we will as necessary refer the matter to Members for further consideration.

As Mrs Selina CHOW suggested a while ago, we have indeed been giving serious thought to new ideas to eradicate copyright piracy. Views may well be polarised on a few issues during our debate on the Copyright Bill, but combatting copyright piracy is not one of those. The Administration and Members are united in our determination to combat piracy which has been putting Hong Kong's reputation at stake. The Administration is actively considering the need to control the import and export of CD presses and to bring copyright piracy within the ambit of the Serious and Organised Crimes Ordinance.

We will continue our regular dialogues with the copyright owners and step up publicity against the use of pirated copyright products. We welcome constructive suggestions to help combat copyright piracy.

The last issue I wish to highlight relates to the transitional clauses in the Copyright Bill. It has been suggested to us that the transitional arrangements for deeming whether certain acts infringe copyright are not clearly drafted, and that they should be amended such that goods legitimately imported before the commencement of the new copyright law should be allowed to continue to be sold.

It is a well-established legal principle that acts done before the commencement of a new law would only be subject to the provisions of the previous law in force, if any, when those acts concerned were done. Clearly goods imported after the commencement of the new law would be subject to the new provisions. Goods imported legitimately under the existing copyright framework will no doubt remain legitimate after the enactment of the Copyright Bill.

However, goods imported illegitimately under the existing law will not and should not be sanitised retrospectively. An infringing copy will not simply cease to be infringing with the passage of time, and any subsequent dealings in the copy may still be sued upon. This is precisely the purpose for which the transitional clauses have been drafted following well-established and well-tested legal principles. I would strongly advise against any tampering with the

transitional clauses as they appear in the gazetted Copyright Bill.

Mr Deputy, I have spoken at some length in order to elucidate those issues of common interest and concern in the Copyright Bill. Other than those Committee stage amendments I have highlighted just now, there are some other technical, textual or translation-related refinements which I will not flag up in the interest of time. Most of these have been considered and agreed by the Bills Committee.

The Copyright Bill as drafted and amended reflects the collective wisdom of Members and that of leading representatives of various trades in Hong Kong. We have worked hard to make it as comprehensive and effective as possible. The Administration is grateful for the recognition given by Honourable Members to its efforts. Throughout the exercise the Administration has one fundamental objective in mind, and that is to put in place a protection regime for copyright which meets the highest standards in the world and which Hong Kong can be proud of.

Mr Deputy, with the support of this Council, I hope we can enact the proposed legislation in time for bringing it into force on 27 June 1997. The enactment of the Copyright Bill prior to the transition is essential to maintaining continuity in copyright protection.

With these remarks, I recommend the Bill to this Council, subject to the Committee stage amendments that I shall move shortly. Thank you.

12.26 pm

上午 12 時 26 分

THE PRESIDENT resumed the Chair.

主席恢復主持會議。

Question on the Second Reading of the Bill put and agreed to.

條例草案二讀之議題經付諸表決，並獲通過。

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。

Committee stage of Bill

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。

COPYRIGHT BILL

《版權條例草案》

Clauses 2, 4, 5, 10 to 13, 16, 17, 18, 20 to 25, 27, 28, 30, 31, 32, 34, 39, 40, 41, 43 to 48, 50, 52 to 58, 62, 63, 64, 66, 67, 69 to 75, 77 to 81, 83 to 86, 88 to 104, 106, 107, 109, 111, 112, 114, 116, 117, 120 to 126, 128, 130 to 146, 148 to 159, 161, 162, 163, 165, 167 to 192, 204, 207, 213, 217, 220, 221, 227, 229, 230, 232, 233, 236, 237, 238, 240 to 243, 245, 248, 257, 261, 262, 263, 266 and 271 to 276 were agreed to.

條例草案第 2、4、5、10 至 13、16、17、18、20 至 25、27、28、30、31、32、34、39、40、41、43 至 48、50、52 至 58、62、63、64、66、67、69 至 75、77 至 81、83 至 86、88 至 104、106、107、109、111、112、114、116、117、120 至 126、128、130 至 146、148 至 159、161、162、163、165、167 至 192、204、207、213、217、220、221、227、229、230、232、233、236、237、238、240 至 243、245、248、257、261、262、263、266 及 271 至 276 條獲得通過。

Clause 1

條例草案第 1 條

全委會主席：工商司及單仲偕議員已分別作出預告，表示擬就第 1 條動議修

正案。

本席建議進行合併辯論，一併辯論工商司及單仲偕議員分別就第 1 條提出之修正案。

本委員會現進行合併辯論，一併辯論工商司及單仲偕議員分別就第 1 條提出之修正案。本席會先請工商司動議修正案，因她是負責本條例草案之公職人員。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that clause 1 be amended as set out in the paper circularized to Members.

I have proposed this amendment in order that I can specify different dates for bringing different provisions in the Bill into force. My intention is to activate all provisions once the Bill is enacted and gazetted on 27 June with only two exceptions.

The first exception relates to the rights of broadcasters to revoke their implied licences that allows satellite master antennae television operators, or SMATV operators in short, to re-transmit unencrypted signals as I have explained in the Second Reading debate. Pending a review of the television/broadcasting policy in 1998, it would not be appropriate to activate the related clause 82 subclause 4 and clause 254 subclause 4(a). Doing so would expose the SMATV operators to conflicting obligations and probably cause disruptions to existing services.

The second exception relates to the setting up of the reconstituted Copyright Tribunal. I will activate the related provisions, that is, parts of clause 141 subclause 4, clauses 142 to 149, and section 5 of Schedule 4, as soon as the administrative formalities are completed.

The first exception has aroused concern from broadcasters on the ground that deferring the commencement of clause 82 subclause 4 and clause 254 subclause 4(a) of the Bill would compromise their right to restrict re-transmission of their signals. The Honourable SIN Chung-kai has moved an amendment so that these sections would come into operation along with all other key provisions. The Administration does not support this amendment because the licences of the SMATV operators stipulate that they can only charge for the setting-up and

maintenance of the physical facilities but not a programme fee. Pending the review on broadcasting policy it will not be fair if the SMATV operators are obliged to pay broadcasters for the right to transmit on the one hand but are debarred from charging their subscribers for the cost incurred on the other.

Although this is not my policy area, I have been authorised by the Secretary for Broadcasting, Culture and Sports to reassure Members that the broadcasting review will, as promised, take place in 1998 and the issue of making the copyright and broadcasting policies compatible in this area will indeed be examined. We would also add that the broadcasters will not be put in a worse-off position as compared with existing arrangements. Quite on the contrary, their rights will be explicitly recognized in the Copyright Bill.

Mr Chairman, I urge Members to support the Administration's amendments to clause 1 and vote against Mr SIN Chung-kai's amendment.

Proposed amendment

擬議修正案內容

Clause 1 (See annex X)

條例草案第 1 條（見附件 X）

全委會主席：本席會請單仲偕議員就工商司動議之修正案以及其本身之擬議修正案發言，但除非工商司之修正案遭否決，否則本席不會請單議員動議修正案。倘工商司之修正案獲可決，即表示單仲偕議員之擬議修正案不獲通過。

單仲偕議員致辭：我促請各位同事否決工商司的修正。其實，工商司的修正與我的修正大部分相同，唯一不同的是生效日期，關於能夠廢除 SMATV operator 版權的問題。

在此，我想向政府提出一點：在政府提出藍紙條例草案時，是賦予權力給廣播者或版權持有人，這令版權持有人很高興。但後來，於十分後期的階段，在六月時，工商科又突然提出這方面的修正。事實上，在這方面的修正交到我們手上時，已經是很遲的時候，令我們無法有充分的時間來聽取雙方

面的意見。當然，我們有一段時間是聽了 SMATV operator 的意見，但後來，當有關的廣播商收到政府的修正之後，他們便聯合起來，四出遊說各位立法局同事，我們亦因此有機會詳細聆聽他們的意見。

我想強調，我們今天討論的是《版權條例》。《版權條例》的精神，是如何保障版權持有人。政府於藍紙條例草案中，其實已完全認同他們有版權的地位，問題是政府為何延至文康廣播科完成檢討後才工作。就這方面，我們可以說，兩個政策科已出現“不協調”的情況。這不協調的情況，我們該如何處理？我們認為，既然我們今天要處理的是《版權條例》，我們便一定要維持香港尊重版權的國際形象，尤其是我們正面對很多國際傳媒，我們更應充分表現香港對知識產權的尊重。

我們也細心聆聽了工商科和文康廣播科的意見。這幾天以來，我們會見了他們，亦充分聽取他們的意見，並將意見向有關方面澄清。我們覺得，現在很多國際性機構，並不採用“加碼”(encryption)形式運作；基本上它們希望其他人士亦可以透過衛星收看，以達到“free to air”的目的，容許人們自由接收節目。這精神本身是希望信息能夠廣播開去，當然，營運者也不希望有人藉着這個方式侵奪他們的版權。

事實上，我們發現不少“SMATV operator”濫收費用；部分“SMATV operator”收取每戶 6 元，有些則收取每戶 25 元。當我們將這個問題向電訊管理局局長提出時，他則表示會在收到投訴後處理，但其實這個問題已發生了很久。

主席，十多間國際傳媒機構已發信給各位議員，信內亦列出了有關理據。我們認為，我們必須平衡版權持有人的利益和公眾收看電視節目的利益。我們在聆聽雙方的意見後，並不覺得這個轉變會嚴重侵害觀眾的利益。在這大前提下，我們認為，既然今天要通過的是《版權條例》，而工商科的藍紙條例草案也已確認了版權持有人的利益，我們應該盡快實施有關條文，無需再等待文康廣播科完成其檢討。再者，完成檢討後，究竟何時才將法例再提出？快的可能要兩年，慢的則可能需要 3 年。

主席，本人謹此陳辭，提出我們的修正。

全委會主席：單仲偕議員，暫時未可以動議你的修正案。

單仲偕議員：如我開始時所說，我呼籲各位同事否決工商科的建議，因為我

的建議本身與工商科的建議一樣，唯一的分別只是生效日期而已。

全委會主席：各位委員現可就工商司動議之修正案，以及就單仲偕議員擬提出之修正案進行辯論。

周梁淑怡議員致辭：主席，有關工商司與單仲偕議員的兩項修正，我相信我們是要深入了解一下它們的含義及後果。絕無爭議的是，兩者都肯定了廣播機構未經編碼處理的節目的版權，分歧只不過是在哪時候起可以行使這樣權利而已，如果完全無須考慮現行的廣播政策或牌照條件，或現在的市場情況，當然是不會有問題的。

但事實上，現時衛星電視和共用天綫牌照是不容許牌照持有人向觀眾收取節目費的，剛才工商司亦說得很清楚。牌照持有人只可以收取輸送費用。這政策的用意何在呢？其實是要肯定牌照持有人只是扮演節目輸送者的角色，而不是提供收費電視服務，這是很重要的。

今次工商司的修正是考慮到文康廣播司現正進行檢討，並承諾明年對整體收費電視作出調整。所以，工商司將這條條文的生效日期配合整體收費電視的政策調改。這是合理的，能保證有秩序地讓市場作出適應，並不像有些人所說，完全無了期的剝奪了版權擁有者的版權，因為條例肯定了他們是擁有版權。單仲偕議員的修正旨在令這條文即時生效，但這會帶來一些混亂。在無緩衝期的情況之下，擁有版權的廣播機構將會立即行使權利，而政府將會被迫改變現時的政策。政府是無選擇的，它一定要改變現時的政策，而在匆忙及被迫的情況下作出改變，便肯定會造成混亂，亦可能引致觀眾受損，收看不到一些節目。如果根本沒有辦法作適當的過渡及安排，會引致觀眾收看不到某些節目。當然我們不能肯定到底受損害的觀眾為數有多少，但肯定會有觀眾受損。另一方面，衛星電視、共用天綫牌照持有人亦會受到一定的沖擊，這是不智的。有趣的是，民主黨經常說他們很關心消費者，但在SMATV 這方面，他們卻選擇遺棄保障消費者的利益，因為那些消費者的收視是可能被干擾。我對民主黨今次的立場感到莫名其妙。

剛才單仲偕議員說有許多廣播機構游說他，他可能便被說服，因為他們游說有方。不過，我認為一個合理及理性的解決方法，是由文康廣播科作為這政策的負責人，與兩方面，即廣播者及天綫牌照持有人，共同商討，大家達成一個公平而雙方都可以接受的日期來行使這新的條文。可惜，現在的情況卻不是這樣，而廣播公司亦已收到通知，政府已經作出決定。因此，我們

實在不能責怪他們的反應是比較強烈。但問題是出在處理方面，而不是在道理方面。廣播機構的反應不應該令我們支持單仲偕議員的修正，從而剝削了、剝奪了有秩序的政策改變。我們應給予合理時間及採取合理的步驟。因此，我希望各位議員能夠支持工商科的修正，因為我們不能忘記，任何的新法例，必須要有合理的過渡期，並且要在保障利益之餘，同時顧及公眾服務不可能受損。另一方面，我亦促請文康廣播科盡快完成檢討，並且在一九九八年內實施這條文。

謝謝主席。

鄭家富議員致辭：主席，我發言支持單仲偕議員代表民主黨提出的修正案。

主席，我想澄清民主黨在文康廣播方面的觀點。首先，正如剛才單仲偕議員所說，當這藍紙條例草案呈交立法局時，我們覺得很明顯地，文康廣播科與工商科在這修正案方面是不協調的。大家必須記着這條藍紙條例草案是一條官方提出來的官方條例草案。官方在草擬條例草案時，根本沒有清楚理解到，我們立法局多年來一直都要求文康廣播科盡快制訂切合實際而目光遠大的廣播政策。如果要等待至一九九八年，我們認為實在是非常遲。今屆立法局與上屆的立法局，已就此批評了無數次，我不相信工商科會毫無所聞。

在這問題上，假若自由黨的周梁淑怡女士批評我們忽視消費者的權益保障，則我感到失望及遺憾。我認為我們已平衡了消費者的權益及保障。這條例的焦點是版權（copyright）。數星期前周梁淑怡女士聽到了很多戲院商就《公眾娛樂場所條例草案》的修正所反映的意見，她便從業界的憂慮出發，作出緊急呼籲，召開特別的會議。我希望提醒她，我們每一個政黨都要平衡消費者的利益和業界的利益。就今次而言，我認為民主黨已聽取了業界的意見，亦同時關注到消費者的權益。當然，我們聽完文康廣播科官員的意見後，我們確實有些憂慮，所憂慮的是會否令人覺得九七過渡之後，SMATV的很多消費者，可能突然收不到很多香港以外的資訊。這會否令人覺得政治上有改變，造成言論自由的改變，自由言論受到箝制？但我們與業界討論完後，亦知道有12個廣播機構，促請否決《版權條例》修正案。主席，我很希望周梁淑怡議員不會對這意見不問不聞。我們希望政府在這問題上，了解到今次很明顯是工商科與文康廣播科的失調，致令我們議員受到壓力。這壓力是不公平的，主席。

因此，在檢討和了解整條條例草案後，我們覺得，我們應該尊重現在這條條例草案基本的精神。正如單仲偕議員剛才已提過，我不想重複，這既是

版權的問題，亦涉及消費者的權益。我們很希望文康廣播科盡快落實廣播政策，我相信如果真的通過單仲偕議員的修正案，是更能給予文康廣播科壓力，令它盡快完成這檢討。因為在這一刻，我仍很懷疑文康廣播科的檢討能否真的在一九九八年落實。

主席，本人謹此陳辭。

周梁淑怡議員致辭：主席，因為鄭家富議員提及我的名字兩三次，所以，我覺得我有必要作出回應。剛才他將我今次就這問題的考慮，作出了一個比較，提及關於戲院商如果無牌應否在 1 年內，受到封閉的問題。我相信我不須要作這樣的比較，因為我們作為議員，經常都面對各方面的壓力。無論是業界或市民各方面，都時常給我們很大的壓力。我覺得我們議員最重要的是從道理方面作出考慮，我們不是一定是維護某一方面的利益，但我們要考慮道理，而我們千萬不要對事物產生誤會。

現在工商司提出的修正，不是剝奪了廣播機構的版權。我知道有些廣播機構寫信給議員，表示工商司的修正無了期地剝削他們的版權。這是不正確的。若沒有這條條例，他們的版權是沒有確認，但現在有這條條例，卻肯定了他們的版權，問題只是在何時才能行使而已。至於過程方面，我要作一些澄清。我們條例草案委員會的所有會議是公開的，**SMATV** 的牌照持有人來到我們條例草案委員會表達意見，過程是公開的，任何其他的廣播機構都應該留意到。之後政府因應這些向我們表達的意見，作了內部諮詢，便刊印藍紙草案。為何要藍紙條例草案呢？因為內容可以修改，因為其中內容可能錯，可能有問題；即使政府內部也可能有不協調，藍紙條例草案是可以更改的。在聽了着公眾向我們表達意見後，政府內部可再看看內容是否有問題，發覺有問題便作出修改，這是天公地義的事。所有人，所有對這件事有興趣的公眾人士，都可以來旁聽，旁聽後亦都可以來向我們表達意見。因此，說這是草率修改是不當，是不對的。

事實上，政府在五月中，大概五月二十日之前，已經決定修改政策，而我們條例草案委員會是支持的。當時無人表示異議，直至六月，工商科將委員會審議階段修正（**CSA**）交給我們時，還沒有甚麼人表示反對。後來可能因為出了 **CSA**，一些廣播機構便開始有意見，還越來越強烈，這是無可否認。不過，我始終認為，反對聲音的大小不應是決定的因素，因為事實上，有很多消費者，他們正在收看 **SMATV**，但他們根本無法組織起來發表意見。他們無可能發出聲音，但我們議員要考慮的是道理。我們到底是否真的剝削了版權擁有人的版權呢？不是的，我們現在說的是如何有個合理過渡期

來行使版權。所以，我希望大家認清楚到底這是甚麼的一回事，及認清楚後果，然後支持工商司的修正。

單仲偕議員：主席，我的答辯是很簡短。

全委會主席：在講稿有“本席會請單仲偕議員第二次發言”，在委員會階段，委員可以第二次發言，所以我完全沒有讀那一句話，那句話是不正確的。但如果單議員想發言，你可以發言。

單仲偕議員致辭：我想回應周梁淑怡的意見。基本上，藍紙條例草案亦表示尊重廣播者的版權，正如她剛才所說，問題只是生效日期。因此，尊重版權才是大原則和大前提。在這前提之下，工商科和文康廣播科之間，也許出現了一些不協調，因此，它們就作出一些技術性的修正。事實上，即使這條例獲得通過，文康廣播科還有 6 個月的時間，如果政府要做事的話，是仍有 6 個月時間的。我認為，我們並不是用這個方法去威迫政府，催促它加快工作，我們絕無這個意思。問題是大原則。我們的理據是，既然我們是談論《版權條例》，而我們亦尊重版權，我們便應以此為主導，其他的技術問題應列為次要。在制定條例前，工商科應該與文康廣播科取得共識，就藍紙條例草案裏面，同時徵詢有關業界及甚至“SMATV operators”的意見。現在面對的問題是，“SMATV operators”表達了意見後，工商司提出修正，但是有關業界卻沒有足夠時間陳述兩方面的理由。這點我覺比較遺憾，因為本局同事沒有足夠的時間去聽。剛才辯論裏被提及的平行進口問題和零售商的意見，遠較我們花在這方面的時間為多，而我們亦能聽到兩方面的意見。主席，我想再一次提出，我的修正與工商司的修正，其實只是有一點不同，其他的則全部一樣。不同之處就是生效日期。有關生效日期方面，我認為，既然我們覺得要尊重版權，既然部分人士應該擁有版權，為何政府還要拖延一段的時間？

謝謝主席，我促請各位同事否決工商司的修正。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, very briefly, I just want to put on the record that the proposal incorporated in my Committee stage amendment on clause 1 was first put to the Bills Committee in late April, which allowed the Bills Committee some one and a half months to consider the proposal behind the Committee stage amendment I have just moved.

As the Chairman of the Bills Committee has just said, the Bills Committee was an open forum. The Bills Committee, indeed any Honourable Member and any member of the Administration, is constantly in a listening mode, is constantly reacting and responding to comments voiced by members of the public as well as comments and opinions expressed to us by interested parties.

Thank you, Mr Chairman.

Question on the Secretary for Trade and Industry's amendment put.

工商司之修正案之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他以為否者佔多。

Mrs Selina CHOW claimed a division.

周梁淑怡議員要求點名表決。

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，現付諸表決之議題為：工商司就第 1 條動議之修正案，予以修正。

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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mr Allen LEE, Mrs Selina CHOW, Mr Edward HO, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Miss

Christine LOH, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Miss Margaret NG voted for the amendment.

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, 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 LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 16 votes in favour of the amendment and 34 votes against it. He therefore declared that the amendment was negatived.

全委會主席宣布贊成修正案者 16 人，反對者 34 人。他於是宣布修正案遭否決。

全委會主席：由於工商司就第 1 條提出之修正案遭否決，本席現請單仲偕議員就第 1 條動議修正案。

梁智鴻議員致辭：主席，我根據《會議常規》第 37 條第 4 款提出議案，若有委員就《版權條例草案》之其餘的各項修正案要求進一步點名表決之時，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，謝謝。

Question on Dr LEONG Che-hung's motion proposed, put and agreed to.

梁智鴻議員議案之議題經提出待議，付諸表決，並獲通過。

單仲偕議員致辭：本人動議修正第 1 條，修正案內容已載列於發送各位議員之文件內。

Proposed amendment

擬議修正案內容

Clause 1 (See annex X)

條例草案第 1 條（見附件 X）

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 clause 1, as amended, put and agreed to.

經修正的條例草案第 1 條之議題經付諸表決，並獲通過。

1.06 pm

下午 1 時 6 分

全委會主席：本席現暫停會議，以便各位進午膳，午膳時間為 1 小時，本局將於 2 時恢復會議。

Sitting suspended.

會議暫停。

2.05 pm

下午 2 時 5 分

全委會主席：本局現恢復會議，本局現為全體委員會。

Clauses 3, 6 to 9, 14, 15, 19, 26, 29, 33, 36, 37, 38, 42, 49, 51, 59, 60, 61, 65, 68, 76, 82, 87, 105, 108, 113, 118, 119, 127, 129, 147, 160, 164, 166, 193 to 203,

205, 206, 208 to 212, 214, 215, 216, 218, 219, 222 to 226, 228, 231, 234, 235, 239, 244, 246, 247, 249 to 256, 258, 259, 260, 264, 265 and 267 to 270

條例草案第 3、6 至 9、14、15、19、26、29、33、36、37、38、42、49、51、59、60、61、65、68、76、82、87、105、108、113、118、119、127、129、147、160、164、166、193 至 203、205、206、208 至 212、214、215、216、218、219、222 至 226、228、231、234、235、239、244、246、247、249 至 256、258、259、260、264、265 及 267 至 270 條

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

The amendments proposed by the Administration for these clauses are all technical in nature. Most of the changes needed are to deal with the consistency of the Chinese and English texts of the Bill.

Thank you, Mr Chairman.

Proposed amendments

擬議修正案內容

Clause 3 (See annex X)

條例草案第 3 條（見附件 X）

Clause 6 (See annex X)

條例草案第 6 條（見附件 X）

Clause 7 (See annex X)

條例草案第 7 條（見附件 X）

Clause 8 (See annex X)

條例草案第 8 條（見附件 X）

Clause 9 (See annex X)

條例草案第 9 條（見附件 X）

Clause 14 (See annex X)

條例草案第 14 條（見附件 X）

Clause 15 (See annex X)

條例草案第 15 條（見附件 X）

Clause 19 (See annex X)

條例草案第 19 條（見附件 X）

Clause 26 (See annex X)

條例草案第 26 條（見附件 X）

Clause 29 (See annex X)

條例草案第 29 條（見附件 X）

Clause 33 (See annex X)

條例草案第 33 條（見附件 X）

Clause 36 (See annex X)

條例草案第 36 條（見附件 X）

Clause 37 (See annex X)

條例草案第 37 條（見附件 X）

Clause 38 (See annex X)

條例草案第 38 條（見附件 X）

Clause 42 (See annex X)

條例草案第 42 條（見附件 X）

Clause 49 (See annex X)

條例草案第 49 條（見附件 X）

Clause 51 (See annex X)

條例草案第 51 條（見附件 X）

Clause 59 (See annex X)

條例草案第 59 條（見附件 X）

Clause 60 (See annex X)

條例草案第 60 條（見附件 X）

Clause 61 (See annex X)

條例草案第 61 條（見附件 X）

Clause 65 (See annex X)

條例草案第 65 條（見附件 X）

Clause 68 (See annex X)

條例草案第 68 條（見附件 X）

Clause 76 (See annex X)

條例草案第 76 條（見附件 X）

Clause 82 (See annex X)

條例草案第 82 條（見附件 X）

Clause 87 (See annex X)

條例草案第 87 條（見附件 X）

Clause 105 (See annex X)

條例草案第 105 條（見附件 X）

Clause 108 (See annex X)

條例草案第 108 條（見附件 X）

Clause 113 (See annex X)

條例草案第 113 條（見附件 X）

Clause 118 (See annex X)

條例草案第 118 條（見附件 X）

Clause 119 (See annex X)

條例草案第 119 條（見附件 X）

Clause 127 (See annex X)

條例草案第 127 條（見附件 X）

Clause 129 (See annex X)

條例草案第 129 條（見附件 X）

Clause 147 (See annex X)

條例草案第 147 條（見附件 X）

Clause 160 (See annex X)

條例草案第 160 條（見附件 X）

Clause 164 (See annex X)

條例草案第 164 條（見附件 X）

Clause 166 (See annex X)

條例草案第 166 條（見附件 X）

Clause 193 (See annex X)

條例草案第 193 條（見附件 X）

Clause 194 (See annex X)

條例草案第 194 條（見附件 X）

Clause 195 (See annex X)

條例草案第 195 條（見附件 X）

Clause 196 (See annex X)

條例草案第 196 條（見附件 X）

Clause 197 (See annex X)

條例草案第 197 條（見附件 X）

Clause 198 (See annex X)

條例草案第 198 條（見附件 X）

Clause 199 (See annex X)

條例草案第 199 條（見附件 X）

Clause 200 (See annex X)

條例草案第 200 條（見附件 X）

Clause 201 (See annex X)

條例草案第 201 條（見附件 X）

Clause 202 (See annex X)

條例草案第 202 條（見附件 X）

Clause 203 (See annex X)

條例草案第 203 條（見附件 X）

Clause 205 (See annex X)

條例草案第 205 條（見附件 X）

Clause 206 (See annex X)

條例草案第 206 條（見附件 X）

Clause 208 (See annex X)

條例草案第 208 條（見附件 X）

Clause 209 (See annex X)

條例草案第 209 條（見附件 X）

Clause 210 (See annex X)

條例草案第 210 條（見附件 X）

Clause 211 (See annex X)

條例草案第 211 條（見附件 X）

Clause 212 (See annex X)

條例草案第 212 條（見附件 X）

Clause 214 (See annex X)

條例草案第 214 條（見附件 X）

Clause 215 (See annex X)

條例草案第 215 條（見附件 X）

Clause 216 (See annex X)

條例草案第 216 條（見附件 X）

Clause 218 (See annex X)

條例草案第 218 條（見附件 X）

Clause 219 (See annex X)

條例草案第 219 條（見附件 X）

Clause 222 (See annex X)

條例草案第 222 條（見附件 X）

Clause 223 (See annex X)

條例草案第 223 條（見附件 X）

Clause 224 (See annex X)

條例草案第 224 條（見附件 X）

Clause 225 (See annex X)

條例草案第 225 條（見附件 X）

Clause 226 (See annex X)

條例草案第 226 條（見附件 X）

Clause 228 (See annex X)

條例草案第 228 條（見附件 X）

Clause 231 (See annex X)

條例草案第 231 條（見附件 X）

Clause 234 (See annex X)

條例草案第 234 條（見附件 X）

Clause 235 (See annex X)

條例草案第 235 條（見附件 X）

Clause 239 (See annex X)

條例草案第 239 條（見附件 X）

Clause 244 (See annex X)

條例草案第 244 條（見附件 X）

Clause 246 (See annex X)

條例草案第 246 條（見附件 X）

Clause 247 (See annex X)

條例草案第 247 條（見附件 X）

Clause 249 (See annex X)

條例草案第 249 條（見附件 X）

Clause 250 (See annex X)

條例草案第 250 條（見附件 X）

Clause 251 (See annex X)

條例草案第 251 條（見附件 X）

Clause 252 (See annex X)

條例草案第 252 條（見附件 X）

Clause 253 (See annex X)

條例草案第 253 條（見附件 X）

Clause 254 (See annex X)

條例草案第 254 條（見附件 X）

Clause 255 (See annex X)

條例草案第 255 條（見附件 X）

Clause 256 (See annex X)

條例草案第 256 條（見附件 X）

Clause 258 (See annex X)

條例草案第 258 條（見附件 X）

Clause 259 (See annex X)

條例草案第 259 條（見附件 X）

Clause 260 (See annex X)

條例草案第 260 條（見附件 X）

Clause 264 (See annex X)

條例草案第 264 條（見附件 X）

Clause 265 (See annex X)

條例草案第 265 條（見附件 X）

Clause 267 (See annex X)

條例草案第 267 條（見附件 X）

Clause 268 (See annex X)

條例草案第 268 條（見附件 X）

Clause 269 (See annex X)

條例草案第 269 條（見附件 X）

Clause 270 (See annex X)

條例草案第 270 條（見附件 X）

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 3, 6 to 9, 14, 15, 19, 26, 29, 33, 36, 37, 38, 42, 49, 51, 59, 60, 61, 65, 68, 76, 82, 87, 105, 108, 113, 118, 119, 127, 129, 147, 160, 164, 166, 193 to 203, 205, 206, 208 to 212, 214, 215, 216, 218, 219, 222 to 226, 228, 231, 234, 235, 239, 244, 246, 247, 249 to 256, 258, 259, 260, 264, 265 and 267 to 270, as amended, put and agreed to.

經修正的條例草案第 3、6 至 9、14、15、19、26、29、33、36、37、38、42、49、51、59、60、61、65、68、76、82、87、105、108、113、118、119、127、129、147、160、164、166、193 至 203、205、206、208 至 212、214、215、216、218、219、222 至 226、228、231、234、235、239、244、246、247、249 至 256、258、259、260、264、265 及 267 至 270 條之議題經付諸表決，並獲通過。

Clause 35

條例草案第 35 條

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that clause 35(3) be amended as set out in the paper circularized to Members.

The proposed amendment is needed to clarify that an accessory work such as labels or instruction manuals for non-copyright products will not be considered an infringing copy under the Copyright Bill, and as such parallel importation of goods containing such accessory work will not be restricted under the Bill.

The amendment is technical in nature and I will move another Committee stage amendment to add a new subclause 6(a) to clause 35 to define the concept of an accessory work. The Bills Committee has discussed and endorsed the proposed amendments.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Clause 35 (See annex X)

條例草案第 35 條（見附件 X）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

全委會主席：工商司、黃震遐議員及陳鑑林議員已分別作出預告，表示擬就第 35(4)條動議修正案。

本席建議進行合併辯論，一併辯論工商司、黃震遐議員及陳鑑林議員分別就第 35(4)條提出之修正案。

全委會主席：本委員會現進行合併辯論，一併辯論工商司、黃震遐議員及陳鑑林議員分別就第 35(4)條提出之修正案。

全委會主席：楊孝華議員，是否規程問題？

楊孝華議員：主席，請問你剛才是說兩位議員動議修正第 35(4)條，還是第 34(4)條。

主席：可否重複一次。

楊孝華議員：剛才我聽到你讀出兩位議員動議修正第 34(4)條，我懷疑是否第 35(4)條。

全委會主席：是就第 35(4)條提出的修正案。本席會先請工商司動議修正案，因她是負責本條例草案之公職人員。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that clause 35 subclause (4) be amended as set out in the paper circularised to Members.

The Government's Committee stage amendment to clause 35 subclause 4 has two effects. It serves to maintain criminal sanction for the parallel importation of copyright products during the 18 months after their first publication or release anywhere in the world. It also clarifies that the parallel importation of accessory work is not subject to criminal sanctions. Only the first part of our amendment is subject to debate.

As I explained during the Second Reading debate, the 18-month criminal sanction is part of a carefully-constructed package to resolve the issue of parallel importation. It is designed to strike a balance between the rights of copyright owners and exclusive licensees to exploit their works and investments on the one hand, and the interests of the import and retail traders and expectations of consumers on the other. We believe that the proposed 18 month period for criminal sanction is the correct and pragmatic balance in the circumstances.

I would strongly caution against changing it. Shortening it, as proposed

by Dr the Honourable HUANG Chen-ya, would tilt the balance too much against the interests of the copyright owners and exclusive licensees. Prolonging it as proposed by the Honourable CHAN Kam-lam would be too much to the detriment of consumers, importers and retailers.

Mr Chairman, the Administration does not support Dr HUANG Chen-ya's amendment of stipulating different criminal sanction periods for different kinds of copyright products, that is, an 18-month period for films and a 12 month period for other kinds of copyright products. This would compromise our policy intention of offering copyright protection to all kinds of copyright products on a non-discriminatory basis.

Advances in technology also mean that copyright in one kind of product can very often be embedded in another kind. For instance, films are likely to contain literary works, sound recordings or even broadcast programmes that are themselves subject to copyright protection. Enforcement would be extremely difficult if the parallel importation of the film is no longer subject to criminal sanction but the underlying works are. I urge Members to vote in support of the Administration's amendments.

Proposed amendment

擬議修正案內容

Clause 35 (See annex X)

條例草案第 35 條（見附件 X）

黃震遐議員致辭：主席，我動議的修正案，建議刑事條文只適用於從作品發表的首天起計 1 年期間，而電影作品則有 18 個月期限。

其實，根據《版權條例草案》的原稿，我剛才已提述過，平行口水貨當時根本不須負刑事責任，但經過電影業游說後，政府提出要修訂，並設立 18 個月的刑事責任期，但為何要是 18 個月？因為電影行業有特別性質，跟其他版權擁有人不同。除了電影之外，該行業還有雷射影碟、錄影帶等，電影界擔心如果刑事責任期太短，雷射影碟和錄影帶可以進口到香港，便會減少到戲院看電影的人數。較長的刑事責任期，令電影公演時間較具彈性，電影界可以較容易作出安排。

電影業在運作上有其特殊之處，但行業內也有很多因欠缺效率而引致的問題，以致香港觀眾很多時候無法於首映期間或在短期內享受一部新片，甚至有時要等候整整 1 年或更長的時間，才有機會看到想看的電影。

現代人大多數十分繁忙，消遣時間喜歡從事個體化活動，究竟有多少人真正有興趣到電影院看電影呢？這是一個問題。很多人可能更願意在自己認為適當的時候播放影碟欣賞電影。所以，在刑事責任期內，只打算透過影碟或錄影帶欣賞電影的人便須要等候，因為戲院正播映有關電影，所以他們便要等。如果不存在電影正在戲院播映的問題，可能他們能夠更早欣賞到那部電影。

觀眾這樣等候可能只會是白等，因為世界上很多地方都有生產電影，只有一部分電影會在香港播映；如果某一齣電影不擬在香港播映，那麼觀眾等候多時也會沒有結果。可是，消費者無法知道一齣電影會否在香港播映，因此，過長的刑事期是對消費者不公平的。

事實上，假如沒有刑事責任的話，進口電影在戲院上演的機會可能會減少。但由於大部分觀眾根本可以透過影碟和影帶欣賞電影，相信製片商會因為擔心水貨問題，並希望在播映電影上賺取更多利潤，因而會在歐美出口電影期間，一早將電影送到香港播映，令消費者可以提早欣賞該部電影，這樣，對消費者其實更有好處。

然而，我們知道刑事責任期有十分重要的效果，就是可以幫助本地製片商。較早時候我已經說過，基於運作上的原因，會導致水貨回流，對製片商生意造成沖擊。所以，我曾經說，這項法例只能夠在一段時間內保護他們。我以前也說過，科技和邊境的轉變也會帶來更大沖擊。因此，我希望電影界可以考慮到這些變化，不要一直依靠法律來保障他們。

很明顯，電影業的效率不可能即時變更，為了避免香港電影業受到太大沖擊，民主黨覺得設這 18 個月期限是最大讓步，亦可以平衡電影業界和消費者的權益。我們覺得 24 個月則過分側重業界利益，忽略了消費者的需要。

至於，書籍、電腦軟件及唱片，我們根本看不出任何邏輯，為甚麼要 18 個月這麼長？我們覺得這是有問題的，亦看不到有需要設定這麼長的期

限，因此，我們覺得 12 個月已經足夠，也許可以設定更短期限。可惜，委員會當時根本沒有機會詳細討論這個問題。

因此，我希望政府再深入研究，調查其他版權是否真的須要有刑事責任，而不是民事訴訟的保護，怎樣才能達到適當的平衡？我希望日後政府會進行深入研究。

最後，至於表決次序和表決傾向的問題，一如工商司剛才所說，政府站在中間，而我則傾向於幫助消費者。民主黨傾向於幫助消費者，而陳鑑林議員的修正案則傾向於幫助業界，基於表決次序的問題，假如政府的修正案未能通過，民主黨也有可能會失敗，所以，民主黨在極不願意的情況下，會支持政府的修正案。

陳鑑林議員致辭：主席，民建聯支持工商司將一件作品在全球任何地方首次發行後某一個期間，定為刑事制裁限期的原則，但我們認為，將 18 個月的期限進一步延展至 24 個月是可行的，因為這個原則與政府的做法完全一致。

民建聯認為港府修正案的目的，是為了平衡版權擁有人、專用特許持有人，以及消費者的權益，而電影及唱片業的業內人士亦認為，如果就保障香港的專用特許持有人、尤其是電影業而言，18 個月的期限並不足夠，而最理想的期限應為 24 個月。

我們認為，既然港府同意刑事罰則較民事訴訟更具阻嚇性，就應同時尊重行業現時的運作情況及業內人士的意見，將期限延長，而不是按照自己的計算定出刑事責任保障期限。此外，業內人士要求有兩年刑事制裁期限，其實與港府的建議原則上完全一致，亦不損害公平交易或公平貿易的原則，事實上，現時國際上很多其他有版權法的國家，在這方面制訂的刑事責任是無期限的。主席，本人提出延長刑事責任期限，主要目的是讓創作者及版權擁有人得到更佳保障。這種保障不單止對香港知識產權擁有人有好處，而且國際上的版權擁有人亦會同樣得益。香港在國際貿易社會內，應該享有更佳聲譽。由於我們爭取設定最長刑事責任期限，所以，我會在政府動議修正 18 個月期限時，表決贊成。如果政府的修正案不獲通過，我很希望本局同事能夠支持我的修正案，將刑事責任期定為 24 個月。

主席，本人謹此陳辭。

楊孝華議員致辭：主席，除了工商司以外，民主黨及民建聯的委員都分別就同一條文動議修正案，自由黨卻沒有就這條文動議修正案。可是，我們有自己的見解。

記得有一次全體委員會開會時，大家曾經爭論究竟多少個月才適當呢？因為政府最初提出的條例草案訂明完全非刑事化，即完全開放，對零售商完全適合的。後來經過業界，尤其是唱片製作商及電影界的游說，政府覺得若一下子將事件非刑事化，將會對該行業會造成非常大的沖擊。從業界角度來看，最好的做法是永久性刑事化。後來從零至永久性的距離收窄了，政府進行了多番游說，政府亦曾召集業界、零售界一起召開圓桌會議，並邀請議員出席。當時，我也有列席，但沒有發言。那時候，出席會議的人似乎持兩種不同意見，但卻達致大家都可以接受的平衡。可是，這種平衡十分脆弱，若任何一方“反口”便會“一拍兩散”。

其實這次表決，更可能會“一拍三散”，為甚麼呢？如果我們反對政府提出的 18 個月期限，但表決支持民主黨提出的 12 個期限，很多人會覺得 12 個月期限太短，又會否決這項修正。接着，一些委員表決支持民建聯提出的 24 個月期限，但很可能又會有委員覺得 24 個月期限太長，結果修正案又會被否決；如果 3 項修正案都不會獲得通過，那樣，情況會十分滑稽，條例草案最後可能會恢復原來的完全非刑事化。

況且，我記得有一次我在全體委員會內表決時，發覺委員剛好分成 3 批，其中三分之一人認為 12 個月期限最好，三分之一人認為 18 個月期限最好，三分之一人則認為 24 個月期限最好。自由黨似乎覺得 18 個月期限最好，有人可以說我們是中間落墨。在全體委員會內，三分之一委員組成 1 組，3 組委員有不同意見。當時在場的人，其中三分之二支持期限應多於 12 個月，亦有三分之二支持期限應少於 24 個月的，換句話說，對於 18 個月的期限，各位委員可能略有共識，雖然委員並非百分之百樂意支持，在座可能有並未參與全體委員會的表決的議員。剛才我遇見黃震遐議員和陳鑑林議員時，他們也許為了顧存大局，都說會支持政府的修正案，我希望那些不屬於任何黨派的委員，或那些會在表決時進入會議廳的議員，以及凡民主黨或凡自由黨的建議都會反對的委員，將事情弄清楚，希望大家一致支持政府的修正案。

全委會主席：在本席將工商司之議案付諸全體委員會表決之前，本席想提醒

各位委員，倘工商司之議案獲通過，即表示黃議員及陳議員各自動議之修正案不獲通過。倘工商司之議案遭否決，本席會請黃議員動議修正案。至於陳議員是否可動議修正案，得視乎全體委員會對黃議員之議案所作出之決定，如黃議員之議案遭否決，才可由陳議員動議修正案，若黃議員之議案獲通過，即表示陳議員之修正案不獲通過。

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

全委會主席：由於工商司就第 35(4)條動議之修正案獲可決，黃議員或陳議員不可各自動議修正案，因這與已作出之決定不一致。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that subclause 4(a) to clause 35 be amended as set out in the paper circularized to Members.

The proposed amendment is technical in nature and clarifies that customs border measures do not apply to parallel imported copyright works.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Clause 35 (See annex X)

條例草案第 35 條（見附件 X）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move the addition of subclause 6(a) to clause 35 as set out in the paper circularized to Members.

As I have explained earlier, for the technical amendment to clause 35 subclause (3), subclause 6(a) defines an accessory work which will include labels,

packaging, instructional materials and so on, attached to a product. It is also stipulated that the economic value of such accessory works should not be a major proportion of the total economic value of the product.

Mr Chairman, the proposals have been discussed by the Bills Committee and I am pleased that the Bills Committee supported the proposed amendments.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Clause 35 (See annex X)

條例草案第 35 條（見附件 X）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that clause 35(7) be amended as set out in the paper circularized to Members.

The proposed technical amendment is to clarify that a copyright work is not lawfully made when it is made in a place where the copyright in the work has expired but may still enjoy copyright protection in Hong Kong. This proposed amendment has been endorsed by the Bills Committee.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Clause 35 (See annex X)

條例草案第 35 條（見附件 X）

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 clause 35, as amended, put and agreed to.

經修正的條例草案第 35 條之議題經付諸表決，並獲通過。

Clause 110

條例草案第 110 條

全委會主席：工商司及黃震遐議員已分別作出預告，表示擬就第 110 條動議修正案。

本席建議進行合併辯論，一併辯論工商司及黃震遐議員分別就第 110 條提出之修正案。

本委員會現進行合併辯論，一併辯論工商司及黃震遐議員分別就第 110 條提出之修正案。本席先請工商司動議修正案，因她是負責本條例草案之公職人員。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that clause 110 be amended as set out in the paper circularized to Members.

The Administration's Committee stage amendment to clause 110 seeks to clarify that, in relation to civil proceedings on parallel importation, exclusive licensees may not without leave of the court proceed with civil action against parallel importers unless the copyright owner is joined as a plaintiff.

This has already limited the rights of exclusive licensees because in civil proceedings for other kinds of copyright infringements exclusive licensees can take civil action when the copyright owner is either joined as a plaintiff or added as a defendant.

Dr the Honourable HUANG Chen-ya has proposed to change the word "proceed" to "commence". This may look innocuous. However, in practice, it translates into forbidding exclusive licensees to apply on their own for interlocutory injunctions against possible infringements to their rights in so far as parallel imports are concerned. We know all too well that one has to act fast in protecting one's intellectual property rights. It would not be fair to deprive an

exclusive licensee of speedy access to the useful remedy of interlocutory injunction when confronted with suspected parallel imports.

Mr Chairman, the Administration's amendment to clause 110 is part of the carefully-constructed package to resolve the issue on parallel importation. As I have explained during the Second Reading debate, all the concerned parties are prepared to accept the revised formulation as a pragmatic compromise. Dr the Honourable HUANG Chen-ya's amendment imperils the delicate balance that has been struck. It departs from the agreed consensus. Accordingly, the Administration does not support the proposed amendment.

Mr Chairman, I urge Members to vote for the Administration's proposed amendment.

Proposed amendment

擬議修正案內容

Clause 110 (See annex X)

條例草案第 110 條（見附件 X）

全委會主席：本席會請黃震遐議員就工商司之修正案以及其本身之擬議修正案發言，但除非工商司之修正案遭否決，否則本席不會請黃議員動議修正案。倘工商司之修正案獲可決，即表示黃震遐議員之擬議修正案不獲通過。

黃震遐議員致辭：主席，工商司已解釋過我的修正案的建議，就是專用特許持有人須聯同版權擁有人就侵犯版權開始提起訴訟，而工商司所用的字眼是“進行”。我的修正案會使專用特許持有人遇到更多困難，這是事實，但他其實仍然可以提起訴訟，而且也可以採取其他法律行動。專用特許持有人應一早作出安排，使版權擁有人為着保護自己的權益而跟專用特許持有人一起採取聯合行動，不用“臨急抱佛腳”，到那時候才去找版權擁有人，問他是否願意跟他一起採取法律行動。因此，我們認為這是應該做得到的。

《版權法》已經給予專用特許持有人長時期的刑事責任保護，剛才我們已通過期限為 18 個月。至於民事方面可以採取甚麼行動，我們認為在民事方面，現行法例已經給予充分的保護，所以，我們要留心不要令這權力過

大，以免被人濫用權力。而且普通許可持有人，我不是指專用特許持有人，或單一分銷商可能誤以為自己就是專用特許持有人，並以為自己的權力就是那麼大，所以，或會提起一些不適當的訴訟或採取一些不適當的法律行動。

這項修正案其實可以避免一些不必要的訴訟，所以，我請求各位委員反對政府的修正案，使我的修正案可以得到支持，因為，我認為這樣才可以保護及平衡消費者權益。

全委會主席：各位委員現可就工商司動議之修正案，以及就黃震遐議員擬動議之修正案進行辯論。

周梁淑怡議員致辭：主席，自由黨曾經詳細考慮這兩個不同的修正案。無可否認，一個很大的分別就是如果工商司的修正案獲得通過時，特許人（即“licensee”）便可以申請禁制令。業內人士，尤其電影業及唱片業人士都強調，當水貨運入香港時，如果他們不能申請禁制令，到了他們可以採取行動的時候，所有貨品可能已經售清，這是他們沒法阻止的。所以，對他們來說，這是一個非常重要的方法，他們可以以此方法對付非法或侵權的水貨。如果沒有這個方法，可能會造成相當大的影響。

一些合法入口商則應不受影響。我們也了解到特許商申請禁制令時，須要經過一些程序和繳付費用。所以他們不會隨意採用這種手段。但是如果不能申請禁制令的話，一些無良或“打游擊”的進口商，尤其鄰近香港的國家，可以迅雷不及掩耳地輸入侵權的水貨，這樣可能會對香港本地工業造成不利影響，也會對整個行業帶來很大的打擊。所以，希望大家能夠支持工商司的修正案。

2.40 pm

下午 2 時 40 分

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。

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。點名鐘將鳴響 1 分鐘。

2.41 pm

下午 2 時 41 分

THE PRESIDENT resumed the Chair.

主席恢復主持會議。

全委會主席：本席想提醒各位委員，現付諸表決之議題為：工商司就第 110 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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted for the amendment.

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, 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, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 28 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 28 人，反對者 23 人。他於是宣布修正案獲通過。

全委會主席：黃震遐議員，由於工商司就第 110 條提出之修正案獲可決，你不可就第 110 條動議擬議修正案，因這與已作出之決定不一致。

Question on clause 110, as amended, put and agreed to.

經修正的條例草案第 110 條之議題經付諸表決，並獲通過。

Clause 115

條例草案第 115 條

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that subclauses (1), (2) and (3) of clause 115 be amended as set out in the paper circularized to Members.

The proposed amendments are editorial changes which have already been endorsed by the Bills Committee.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Clause 115 (See annex X)

條例草案第 115 條（見附件 X）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

全委會主席：工商司及楊孝華議員已分別作出預告，建議於第 115 條增補第 (5A) 及 (5B) 款。

本席建議進行合併辯論，一併辯論工商司及楊孝華議員分別提出之建議，即於第 115 條增補第 (5A) 及 (5B) 款。

本委員會現進行合併辯論，一併辯論工商司及楊孝華議員分別提出之建議，即於第 115 條增補第 (5A) 及 (5B) 款。本席會先請工商司動議修正案，因她是負責本條例草案之公職人員。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that subclauses (5A) and (5B) be added to clause 115 as set out in the paper circularized to Members.

The Administration has proposed to amend clause 115 by adding two new subsections to clarify in relation to criminal proceedings against parallel importation, the circumstances in which a defendant might claim that he has no reason to believe he has been dealing with infringing copies.

I appreciate that retailers have expressed concern but they sometimes have difficulty identifying the right owners or exclusive licensees and would need clarification on what reasonable steps they are expected to take before they can establish that they do not have a reason to believe that the goods they are about to be trading in are infringing articles.

Much as we are against tying the hands of the court by prescribing what constitutes a reason to believe, we have elaborated on the concept and provided indicative non-binding guidelines on possible steps for making enquiries. The wording proposed for clause 115 subclauses (5A) and (5B) have been drawn up after careful thought. We do not agree with the Committee stage amendment

proposed by the Honourable Howard YOUNG to further extend the long list. This is neither necessary nor desirable. It risks tilting the balance too much in favour of the defendants and undermining the applicability of criminal proceedings on parallel importation.

Mr Chairman, I urge Members to support the Administration's amendments and to vote against Mr Howard YOUNG's amendment.

Proposed amendment

擬議修正案內容

Clause 115 (See annex X)

條例草案第 115 條（見附件 X）

2.44 pm

下午 2 時 44 分

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。

全委會主席：本席會請楊孝華議員就工商司動議之修正案以及其本身之修正案發言，但除非工商司之修正案遭否決，否則本席不會請楊議員動議修正案。倘工商司之修正案獲可決，即表示楊孝華議員之修正案不獲通過。

楊孝華議員致辭：代理主席，就新增的第 35A 及 35B 條而言，雖然其修正案看來很長，各位同事亦曾收到有關信件，但事實上，這修正案的前半部，即除最末尾的一段共 7 行的文字之外，前面部分是跟政府的修正案完全相同的。原本動議修正案的人，除了我之外，還有黃震遐議員，而我們所用的字眼都是一模一樣的。因為大家都覺得這次真的要在版權人、消費者及零售商之間作出平衡，不可偏幫任何一方。

我們剛才亦通過了兩項修正案，其中一項是關於決定 12 個月、18 個月或 24 個月的期限的。就 18 個月的期限來說，與原來的藍紙條例草案相比，版權人應該享有更多保障。剛才，大家都支持工商司提出關於“開始”或

“進行”的字眼的辯論，結果亦獲得通過，版權人從而得到更大保障。

到了這個時候，我們應該考慮是否應讓零售商亦得到一些好處呢？所以，我們覺得政府提出的一系列建議，是完全可以接受的，政府只不過提出額外的規定，即第(a)至(d)項說明在被告人根據這條例提起訴訟時，版權人須要提供一些資料。

我們不過希望令政府的建議變得更充實，我們認為版權人或版權擁有人是有責任提供資料的。既然他自稱是版權擁有人，他最少應該提供有關產品名稱、版權擁有人地址，及何時開始成為版權人等的有效證明，而不單止以口頭上說說便算。所以，我們希望加入這些條款，並不是反對政府先前提出的建議，但在技術上，我們不可以說，既然我們支持政府，不如加入我這 3 項修正案，因為在技術上我們須要重新對整條條款修正，所以，我的修正案是全部採用了政府的修正案，只是再加上一條尾巴，令修正案更清楚。

即使各位委員同意政府的修正案，我也呼籲政府忍痛 — 也許有人會把我的做法視作苦肉計 — 請各位接受我們要在技術上先走出第一步。假如各位委員先反對政府的修正案，然後支持我的修正案，結果便會十全十美。

2.46 pm

下午 2 時 46 分

THE PRESIDENT resumed the Chair.

主席恢復主持會議。

單仲偕議員致辭：主席，我們發覺版權擁有人、電影商及零售界都有共同的要求。剛才我發言時提過，他們都要求政府主動負責中央註冊，使版權擁有人或所謂專利特許人(exclusive licensee)或零售商有中央查冊的地方，這樣就能夠減低兩方面的對立矛盾。

剛才我說過，零售界及業界都想政府負責，但政府不想這樣做。今天，楊孝華議員提出(e)、(f)、(g)這 3 項修正，因為沒有這些規定，政府便不肯提供中央註冊的地方。

在某人提供所擁有版權的資料後，政府也應要求版權擁有人或專利特許人向零售界提供一些很基本的資料，我覺得有需要在這方面取得平衡。但即使有了這些規定，政府也不要放棄考慮成立有關註冊局的可能性，使版權擁有人可以以香港為註冊地，有一個中央註冊及可以迅速查冊的地方。

主席，民主黨支持楊孝華議員動議的修正案，所以，我呼籲大家反對政府的修正案。

周梁淑怡議員致辭：主席，我想略作補充的是，自由黨在考慮這個問題時，事實上很重視適當的平衡，所以，當零售界和我們提出，特許商向他們提供資料時，有需要包括合約細則時，我們覺得如果涉及商業秘密，他們沒有理由要求他人向其提供合約細則，根本沒有可能這樣做，特許商的要求並不合理。所以，我們在與零售商商討時，曾經表示不可以納入有關條文，所以，楊孝華議員的修正案內，實在並不包括這規定。我們認為其他要求，例如，要求提供特許人證明或首次發表作品日期證明等，都非常合理。

我們認為楊孝華議員的修正案是合理的，而且可以讓零售商，尤其是奉公守法的零售商，很清晰地知道可以索取哪些資料，所以，我呼籲各位同事反對政府的修正案，然後支持楊孝華議員的修正案。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I think it is appropriate for me to respond to the suggestion that has repeatedly been made by the Honourable SIN Chung-kai, which is the establishment of a central registry with statutory effect by the Hong Kong Government requesting copyright owners and exclusive licensees to register ownership or exclusive dealer-right of copyright works with the registry.

In the United States Library of Congress Copyright Registry, there is no up-to-date system to record copyright assignments or management arrangements. No country or economy to my knowledge has ever set up such a system. On the other hand, the representatives of the film and music industries in Hong Kong do have an up-to-date database covering some 90% of the repertoire available here.

In view of this particular situation, the Administration does not consider it is cost-effective to use taxpayers' money to set up such a central registry as has

been proposed by Mr SIN Chung-kai.

Thank you, Mr Chairman.

Question on the Secretary for Trade and Industry's amendment put and negatived.

工商司之修正案之議題經付諸表決，並遭否決。

全委會主席：由於工商司之修正案遭否決，本席現請楊孝華議員動議於第 115 條增補第 (5A) 及 (5B) 款。

MR HOWARD YOUNG: Mr Chairman, I move the addition of subclauses (5A) and (5B) to clause 115 as set out in the paper circularized to Members.

Proposed amendment

擬議修正案內容

Clause 115 (See annex X)

條例草案第 115 條（見附件 X）

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 clause 115, as amended, put and agreed to.

經修正的條例草案第 115 條之議題經付諸表決，並獲通過。

Heading before New clause 35A

新訂的第 35A 條之前的標題

New clause 35A

新訂的條例草案第 35A 條

Defences

免責辯護

Defence for the purposes of sections 30 and 31

就第 30 及 31 條而言的免責辯護

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。

全委會主席：工商司、黃震遐議員、楊孝華議員及陳鑑林議員已分別作出預告，建議本條例草案應增補新訂的第 35A 條之前的標題及新訂的第 35A 條。

本席建議進行合併辯論，一併辯論工商司、黃議員、楊議員及陳議員分別作出之建議，即本條例草案應增補新訂的第 35A 條之前的標題及新訂的第 35A 條。

楊孝華議員致辭：主席，你剛才說我們 3 人都動議了修正案，但我發覺 3 個人的修正案內容都是一樣，因為我動議的修正案剛才已獲通過，這是否等同工商司的修正案呢？現在只提出加上標題，而標題是適用於任何一項修正案的，那麼，究竟分別進行表決及辯論有沒有意思呢？或在技術上有沒有分別？

全委會主席：若剛才本席說是修正案，這是錯誤的，應是建議，是 4 位議員各該建議，本席簡化它們的提法而已。它們是 4 項互相排斥的建議，即就同一項事情，若選擇（一）的話，即表示不要（二）、（三）、（四），如果你選擇（二），便要否決（一）。即 4 項選擇：甲、乙、丙、丁。甲由工商司動議，本會先作表決，若遭否決，才到乙，若希望通過丙、丁，則要否決乙，如此類推。在這情況下，一個合併辯論是完全合適的。

MR HOWARD YOUNG: Mr Chairman, you said that the Secretary for Trade and Industry, Dr HUANG, myself and CHAN Kam-lam have separately given notice to propose the addition of heading before new clause 35(A) and new clause 35(A) to the Bill, which we have already just passed. Is it so that we are only talking about the heading, in which case I think it is only one word and all four of us seem to have the same word? I just want to know whether by voting for the Secretary for Industry and Trade's heading, which goes on to my amendment which is passed, whether that has any implications which will render either of them void.

CHAIRMAN: We vote on the clauses, the content of the clauses. But we do not read out the clauses, we read out the number and the heading of the clause. So, it is a technicality. The vote will be on the contents of the clauses — that

we add a new clause 35A to the Bill. But there are four alternative propositions as to how and what contents to add as new clause 35A. Is that clear?

全委會主席：本席會先請工商司發言及動議二讀其擬議修正案，因她是負責本條例草案之公職人員。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the Heading before new clause 35(A) and new clause 35(A) as set out under my name in the paper circularized to Members be read the Second time.

The insertion of the new heading is non-controversial and appears in the proposal to be moved by the Honourable Howard YOUNG, Dr the Honourable HUANG Chen-ya and the Honourable CHAN Kam-lam.

The new clause 35(A) is proposed by the Administration to offer two new defences in civil proceedings against parallel importation. The first defence described in our new clause 35(A) subclause (1) and (2) clarifies the circumstances under which a defendant may claim that he has no reason to believe that he has been dealing with infringing copies. The second defence described, in our new clause 35(A), subclauses (3) and (4) stipulates that it shall be a defence for a person who imports a work without the licence of the copyright owner or exclusive licensee if the latter has acted unconscionably, that is, by withholding supply on unreasonable grounds or by agreeing to supply but on unreasonable terms.

Mr Chairman, the Bills Committee has deliberated long and hard on both provisions and heard numerous submissions from all the relevant parties. As a result of the Bills Committee's hard work and the co-operative approach adopted by all concerned, we have already achieved broad consensus in support of introducing the two defences. What remains is a matter of fine-tuning.

On the first defence relating to reason to believe, I have already explained in responding to Mr Howard YOUNG's Committee stage amendment to clause 115 subclauses 5(A) and 5(B) why we cannot agree to elaborate on the list of circumstances in which a defendant might claim that he has no reason to believe he has been dealing with infringing copies.

Mr YOUNG and Dr HUANG Chen-ya have moved similar Committee stage amendments to clause 35(A) to extend the very long list as applied to civil rather than criminal proceedings. I do not agree with these Committee stage amendments. Extending the list risks tilting the balance too much in favour of the defendants and undermining the applicability of civil proceedings on parallel importation.

On the second defence relating to unconscionable acts, the Administration has set out in clause 35(A) subclause 4 that in considering what constitutes an unconscionable act, the court shall take into consideration the established practices of the copyright owner or exclusive licensee for the orderly distribution of copies of that category of work. We consider this appropriate since this is, after all, a Bill to protect copyright owners and exclusive licensees which has been so repeatedly stressed this morning and up to now this afternoon.

Mr Howard YOUNG and HUANG Chen-ya have proposed inserting an extra section to oblige the court to have regard to the reasonable requirements of the retail traders and public. Dr HUANG Chen-ya has also proposed to amend the wording "established practices of the copyright owner or the exclusive licensee" as the "established practices of the particular trade". The Administration does not support these changes. They are not necessary. They upset the delicate balancing of the interests of copyright owners and those of the retailers. They overly and unnecessarily fetter the discretion of the court.

Separately, Mr CHAN Kam-lam has also proposed to amend clause 35(A) subclause 3(c) to the effect that the defence relating to unconscionable acts would not apply until after the expiration of 24 months of the first publication of a copyright work. This is meant to be in line with the other Committee stage amendments that Mr CHAN Kam-lam has intended to move to clause 35 subclause (4) were the Administration's Committee stage amendment to be defeated. This amendment or this proposal by Mr CHAN Kam-lam should no longer be necessary as the Administration's Committee stage amendment on the 18-month criminality period has just been voted in favour of by Members.

Mr Chairman, the Administration has already drafted clause 35(A) subclause 3(c) in such a way that the defence against unconscionable acts will automatically apply after the period of criminal sanction stated in clause 35 subclause 4(b), so there is no need to specify this period separately.

Mr Chairman, I urge Members to support the Administration's amendments to clause 35(A) and to vote against the amendments by Howard YOUNG, Dr HUANG Chen-ya as well as, Mr CHAN Kam-lam.

Thank you.

全委會主席：本席會先請黃震遐議員就工商司之議案及其本身之建議，以及就楊孝華議員及陳鑑林議員各自提出之建議發言。待黃議員發言後，本席會請楊孝華議員及陳鑑林議員發言。兩者均可就四項建議發言。不過，黃震遐議員、楊孝華議員或陳鑑林議員不得在此階段動議二讀議案。

黃震遐議員致辭：主席，免責辯護是經過多番爭論得出的結果，我感謝政府最後仍肯加入一項修正案，因為這樣做會比較公平，不會偏重任何一個行業而忽略了消費者，以及進口商。這項修正案的基本精神無意侵犯專用特許持有人的權益，使進口商不會誤入禁區，而且他們既然已經做足工夫，避免侵犯版權擁有人，或專用特許持有人的版權，所以不應該受到懲罰。

在處理這事的時候，我們也發覺有關行業很合作。修訂條例的原意是增加透明度及建立檔案等。業內人士均加以合作，我們應該向他們致謝。

我的修正案與政府的修正案唯一不同的地方，其實是在第四段——以“個別行業”代替“版權擁有人”或“專用特許持有人”，及增加了第五段，以及我們剛才辯論過的，楊孝華議員的修正案的(e)、(f)、(g)段。唯一不同之處是楊孝華議員寧願保留政府原有版本。在法庭考慮版權擁有人或專用特許持有人的行為是否合情理時，不應一面倒地只考慮版權擁有人或專用特許持有人的利益，也應客觀地考慮這行業的慣常做法。這樣做，進口商可以按照一般慣常做法及從正常商業角度來考慮可不可以將貨物輸入，而消費者亦不會受制於個別版權擁有人或專用特許持有人隨意、與眾不同或很獨特的行為，以致消費者的權益受損。

我們覺得政府的修正案，對消費者權益的保障仍然不足夠，所以，我認為我的修正案較好。另外，加入第五段的主要原因是，我覺得法庭除了考慮版權擁有人及專用特許持有人的利益外，亦應該考慮公眾的合理要求。所以，我在第五段加入這些字眼，使消費者的角色及權益不致受到剝削而無法

申冤。

楊孝華議員致辭：主席，我們正在討論加入標題，及一些附帶內容。我們已經就這些修正案內容進行辯論和表決，其中關於 12 個月、24 個月及 18 個月限期的爭論已成過去。據我了解，陳鑑林議員建議的標題與 24 個月期限有關，但剛才我們已經接受 18 個月的期限，若現在再就 24 個月期限表決，在邏輯上似乎有問題。

此外，雖然政府不同意加入第 35 條的一些條文，但經過表決後，大家已經接納一些更清晰的條款，大家剛才亦已就政府建議的標題作決定。

剛才黃震遐議員解釋過他的修正案，而我們亦已就第(4)款進行辯論。在我們未清楚後果會如何的時候，我們並不想修訂原來的第(4)款。

在這情況下，因為表決順序的關係，似乎現在比較多人接受我剛才動議的修正案，所以，在程序上，如要就我建議的標題表決，須要先否決政府及黃震遐議員的修正案，然後才可以表決贊成我的修正案。因此，我認為各位應表決反對政府建議的標題。

全委會主席：楊孝華議員，本席不大明白為何你說“標題”？因為四者都是第 35A 條，新增第 35A 條之前的標題是“免責辯護”，而第 35A 條本身的標題就是“就第 30 及 31 條而言的免責辯護”，然而四者的內容是不同的，所以某人，譬如工商司，動議二讀，就是二讀他的建議，雖然是同樣的標題，但是內容不同，你明白嗎？

剛才本席說這些增補新訂條文的建議不是修正案，意思是說就條文來說不是修正案，但是就條例草案來說是修正案。將某條例草案中的條文修改其中某些字，刪去某些字，代以某些字等，或將條文刪除，那一類就是修正案，但是增補新訂條文的建議就條例草案而言，都是修正案，因為它將原本的條例草案中沒有的條文，加進該條例草案中。因此，目的都是修正整項條例草案，這一點或須向大家澄清。

陳鑑林議員致辭：主席，我們制定版權法的主要目的，是保障創作者的版權權利，所以，我認為所有條文應該賦予版權擁有人最佳的權利保障。18 個月期限在某程度上是可以接受的，但我們總是覺得有點不倫不類。

部分委員提出制定版權法是要保障消費者的利益，但我覺得我們倒不如制定一條版權法與消費者平衡法，這樣做會將整條版權法弄得非驢非馬。事實上，我們談到版權擁有人或專用特許持有人時，應該從整體利益考慮，不單止談論消費者的利益，因為兩者的利益都是一致的。

在這個問題上，民建聯認為應兼顧創作者和消費者的利益，並首先保障創作者版權權利。黃震遐議員覺得我們側重業界，我完全不同意他的看法。目前香港越來越少創作工業，在電影、唱片行業，或零售行業內有數萬人以此維生，版權法對他們具有非常大的影響。

如果我們不給予他們適當保障的話，最終亦會影響消費者的利益。所以，我對於剛才通過的 18 個月期限，仍然感到遺憾，但卻認為可以接受。謝謝主席。

周梁淑怡議員致辭：主席，有關陳鑑林議員的修正案，他提到版權擁有人或專用特許持有人作出的不合情理作為，是在作品於香港或其他地方發表首天起計 24 個月屆滿之後進行的，即如果有關人士在那 24 個月期限內作出不合情理作為也沒問題，只有超過 24 個月之後作出的不合情理作為才真的被視為不合情理作為。這件事本身也有點不合情理，陳鑑林議員可能須要考慮一下，而我希望大家不要表示支持。

我知道條例草案內有那麼多修正案，是會令委員感到有點混亂，也許我可以澄清一下。楊孝華議員及政府的修正案基本上差不多完全沒有分別，除了 subclause(5)以外，對不起，主席，subclause(5)的中文怎麼說？

主席：應稱為款，clause 是條，subclause 是款，跟 section 和 subsection 一樣。

周梁淑怡議員：究竟為甚麼要加入第(5)款呢？我們接受了零售界向我們提供的部分意見。零售界方面曾提及想將業內一般做法，例如 5 天供應也應納入條文內。我們考慮過這一點，但我們覺得不應該在法例上作出這麼硬性及狹窄的規定，所以，我們不接受這意見。可是，我們接受原則上應該加入第(5)款，為甚麼呢？

在第(4)款中，政府肯定了版權人的權利，清楚說明“須將版權擁有人或專用特許持有人在有秩序地分發該類別作品的複製品.....”。換句話說，考慮維護版權擁有人及專用特許持有人的權益，但是，零售商會覺得有關條文沒有說明哪些是不合理理由或條款，便失去了平衡，所以必須有類似規定。我們接受這說法，因此覺得有需要加入第(5)款。

黃震遐議員動議修正第(4)款，在政府剛才提到的條文中，加入對個別行業的慣常做法的考慮，來代替對版權擁有人既有的慣常做法的考慮。我們覺得如果在第(4)款中刪去對版權擁有人及專用特許持有人既有的慣常做法的考慮，便會失去平衡。

因此，我很希望各位同事可以支持楊孝華議員的修正案，並反對政府的修正案，贊成在條例草案內加入第(5)款。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I would like to appeal to Members to support the Administration's motion on clause 35(A) and I would like to highlight a feature that has just occurred to the Administration. And that is, if the Administration's motion is rejected, the voting will then go to the motions to be moved by Dr the Honourable HUANG Chen-ya, the Honourable Howard YOUNG and the Honourable CHAN Kam-lam. If the voting is split between Dr HUANG Chen-ya and Howard YOUNG's motions, Members will then have to vote on the third motion to be moved by Mr CHAN Kam-lam.

Since Mr CHAN Kam-lam's motion incorporates a 24-month criminal sanction period for parallel importation which is blatantly contradictory to what Members have just supported in the context of the Committee stage amendment to clause 35 subclause (4), we would have an extremely difficult and precarious situation. Were Members to vote in favour of Mr CHAN Kam-lam's motion, we would end up with an ordinance with two sections which are contradictory to each other because section 35 (4) would stipulate a criminal sanction period for parallel importation of 18 months whereas this particular new clause 35(A) would incorporate the sense that the criminal sanction period for parallel importations should be 24 months.

I fear and I apologize that this particular complication has only occurred to myself and my colleagues sitting here listening to Members' speeches just now.

I would therefore like to take this opportunity to urge Members to avoid enacting a piece of legislation that contains blatant and inherent inconsistencies, and I appeal to Members to avoid this situation from happening by voting in favour of the Administration's motion on the new clause 35(A).

Thank you, Mr Chairman.

全委會主席：在本席將工商司之議案付諸全體委員會表決之前，本席想提醒各位委員，倘工商司有關二讀其建議之新訂的第 35A 條之前的標題及新訂的第 35A 條之議案獲可決，即表示黃震遐議員、楊孝華議員及陳鑑林議員各自提出之建議不獲通過。倘工商司之議案遭否決，本席會請黃震遐議員動議二讀其建議之新訂的第 35A 條之前的標題及新訂的第 35A 條。至於楊孝華議員及陳鑑林議員是否可動議二讀他們的建議，得先視乎全體委員會就黃震遐議員之議案所作之決定。

Question on the Second Reading of the Secretary for Trade Industry's new clause and heading put and negatived.

工商司之新訂條文及標題二讀之議題經付諸表決，並遭否決。

全委會主席：由於工商司之議案不獲可決，本席現請黃震遐議員動二讀其建議之新訂的第 35A 條之前標題及新訂的第 35A 條。

黃震遐議員致辭：主席，我動議的修正案已載列於發送各位議員的文件內。

Question on the Second Reading of Dr HUANG Chen-ya's new clause and heading put.

黃震遐議員之新訂條文及標題二讀之議題經付諸表決。

Voice vote taken.

聽取聲音表決。

Dr HUANG Chen-ya claimed a division.

黃震遐議員要求點名表決。

全委會主席：本局現進行點名表決。

全委會主席：謹提醒各位委員，現付諸表決之議題為：黃震遐議員建議之新訂的第 35A 條之前的標題及新訂的 35A 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，請各位核對所作表決。是否有任何疑問？現顯示結果。

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, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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 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, Miss Margaret NG and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 28 votes in favour of the motion and 26 votes against it. He therefore declared that the motion was carried.

全委會主席宣布贊成議案者 28 人，反對者 26 人。他於是宣布修正案獲通

過。

Clause read the Second time.

條例草案條文經過二讀。

全委會主席：由於黃震遐議員有關二讀其建議之新訂的第 35A 條之前的標題及新訂的第 35A 條之議案獲可決，楊孝華議員或陳鑑林議員不可動議二讀其各自提出之建議。

黃震遐議員致辭：主席，我動議將新訂的第 35A 條之前的標題及新訂的第 35A 條，加入條例草案內。

Proposed addition

擬議的增補

New clause 35A (See annex X)

新訂的第 35A 條（見附件 X）

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。

Heading before New clause 85A

新訂的第 85A 條之前的標題

New clause 85A

新訂的條例草案第 85A 條

Designs

外觀設計

Corresponding design

相應外觀設計

New clause 85B

新訂的條例草案第 85B 條

Effect of exploitation of design derived from artistic work

利用從藝術作品衍生的外觀設計的效力

New clause 85C

新訂的條例草案第 85C 條

Things done in reliance on registration of design

依據外觀設計的註冊而作出的事情

New clause 123A

新訂的條例草案第 123A 條

Protection of informers in criminal proceedings

對在刑事法律程序中的告發人的保障

New clause 182A

新訂的條例草案第 182A 條

Groundless threat of proceedings in relation to parallel import

以提起與平行進口有關的法律程序作無理威脅

Clauses 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。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the heading before new clause 85(A) and new clause 85(A), new clauses 85(B), 85(C), 123(A) and 182(A) as set out in the papers circularized to Members be read the Second time.

The Administration's proposals seek to clarify the relationship between copyright and the rights for registered designs. It is stipulated that registerable but unregistered designs shall enjoy copyright protection for 15 years from the date of the first industrial application of such a design, whereas for a registered design the copyright protection for the design will run concurrent to the term of protection under the Registered Designs Ordinance to a maximum of 25 years. This proposal has been discussed and endorsed by the Bills Committee on both the Copyright Bill and the Registered Designs Bill.

Clause 123(a) is designed to protect the identity of informers in criminal proceedings and clause 182(A) to protect innocent parties from unwarranted and groundless threats of civil action. Both of these provisions have been discussed and endorsed by the Bills Committee.

Thank you, Mr Chairman.

Question on the Second Reading of the clauses proposed, put and agreed to.
條例草案條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Clause read the Second time.
條例草案條文經過二讀。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the heading before new clause 85(A) and new clause 85(A), new clauses 85(B), 85(C), 123(A) and 182(A) be added to the Bill.

Proposed additions
擬議的增補

Heading before new clause 85A and new clause 85A (See annex X)
新訂的第 85A 條之前的標題及新訂的第 85A 條（見附件 X）

New clause 85B (See annex X)
新訂的第 85B 條（見附件 X）

New clause 85C (See annex X)
新訂的第 85C 條（見附件 X）

New clause 123A (See annex X)
新訂的第 123A 條（見附件 X）

New clause 182A (See annex X)
新訂的第 182A 條（見附件 X）

Question on the addition of the Heading before new clause 85A and new clause 85A, new clauses 85B, 85C, 123A and 182A proposed, put and agreed to.
增補新訂的第 85A 條之前的標題及新訂的第 85A 條，以及新訂的第 85B、85C、123A 及 182A 條文之議題經提出待議，隨即付諸表決，並獲通過。

Schedules 1 and 5 were agreed to.

附表 1 及 5 獲得通過。

Schedule 2

附表 2

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that Schedule 2 be amended as set out in the paper circularized to Members.

The proposed changes are all editorial in nature and deal mainly with the consistency of the Chinese and English texts of the Bill.

Thank you, Mr Chairman.

Proposed amendment

擬議修正案內容

Schedule 2 (See annex X)

附表 2 (見附件 X)

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

MR HOWARD YOUNG: Mr Chairman, I move that Schedule 2 be further amended as set out in the paper circularized to Members.

Mr Chairman, when we were discussing all the amendments related to this Bill at a rather late stage we did have representations from influential members of the retail trade. They said to us that they had existing stocks in Hong Kong which they had already imported quite legally, but they were afraid that should this Bill be passed then immediately these existing stocks that they had would immediately come under this new Bill and therefore bear the risk of infringing the copyright law.

Whereas it can be argued, and I believe the Secretary for Industry and

Trade did argue this morning that legislation is not retroactive, and by passing a law today you cannot relate back to existing stocks, the retail trade was still not very much relieved or content with this explanation. They said that if we do not add in something, like the subclause 4(A) which I am proposing, that provides clarity, then they said to one extreme they might have to pull out about 50% of this existing stocks from their stores now for fear of infringing the law.

As this request from the retail trade came up at a rather late stage, we do not have too much time to really go into details of whether this is a real threat or were they exaggerating the situation. However, they did put it to us very strongly and lobbied many Members to ask for some clarity and protection for what is really only existing old stock that had been imported into Hong Kong before this Bill comes into effect. Therefore that is the reason for my moving this clause.

Proposed amendment

擬議修正案內容

Schedule 2 (See annex X)

附表 2 (見附件 X)

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I really cannot over-emphasize the objectionable nature of the Honourable Howard YOUNG's amendment, not only on copyright protection grounds but on legal policy and legal principle grounds.

In the consideration of the Copyright Bill there have been repeated requests that we should amend the transitional provisions as drafted and gazetted in Schedule 2 of the Copyright Bill to clarify the position of parallel importation under the existing law.

I would like to put the matter beyond doubt once and for all. I would like to state for the record that the transitional provisions as gazetted have been drafted in full accordance with established legal principles and legal policy. They stipulate clearly that acts committed before the commencement of the new law will be bound by the existing law. Acts committed after commencement will be subject to the new law. This is totally equitable and fair.

Therefore, a copyright article which has been imported before commencement of the new law and which has not infringed copyright under the law existing at the time of importation will remain not infringing. The subsequent possession and dealing in that article will also remain non-infringing notwithstanding the commencement of the new law. On the other hand, a copyright article which was imported under the existing law as an infringing copy cannot and should not be made non-infringing through a provision in the new law. The subsequent possession and dealing in this article should also remain infringing notwithstanding the commencement of the new law.

Whether an article has infringed copyright under the existing law is for the courts of Hong Kong to decide, having regard to how that law was drafted. It would be a grave mistake for the legislature to attempt to impose on the courts an interpretation of the existing law in favour of a particular category of parties through an amendment to Schedule 2 of the Copyright Bill, and this is exactly what Mr Howard YOUNG's Committee stage amendment would bring about.

I understand this amendment has been triggered by the consideration that the existing law is not clear on whether goods imported in breach of the terms of exclusive licence agreements constitute an infringing copy. That may be so but we still have to leave the interpretation of the existing law to the courts. The legislature should not legislate retrospectively to the effect that the terms of exclusive licence agreements should be disregarded. This unfortunately would be exactly the outcome if the Committee stage amendment on Schedule 2 of the Copyright Bill introduced by the Honourable Howard YOUNG was approved.

As retrospective legislation this would have significant and far-reaching consequences. I am duty-bound to explain the impact in some detail for Members' careful consideration. To legislate in the way proposed by Mr Howard YOUNG could be ruled unconstitutional because it amounts to taking away vested property right from exclusive licensees retrospectively. It amounts to legalising the existing stock of infringing copyright articles retrospectively. It means that parallel importers need not be answerable to their widely-believed potential civil liabilities and their potential criminal liabilities.

Having just voted in favour of clause 35 of the Copyright Bill which subjects parallel imports which are in breach of exclusive licence agreements to limited term criminal actions and full term civil actions, it would be irrational and

contradictory for the Council to support Mr Howard YOUNG's amendment. This is because the amendment has the effect of asking the courts to disregard the exclusive licensee's existing interests and to exempt parallel imports from both civil and criminal liabilities.

I suggest to Members that the courts would be extremely confused about the contradictory provision in clause 35 of the Copyright Bill as approved by this Council just now and that in Mr Howard YOUNG's amended Schedule 2, should it be approved. This is because clause 35 explicitly states that exclusive licence agreements are relevant to the determination of what constitutes an infringing copy. However, the proposed amended Schedule 2 suggests exactly the opposite. It suggests that the terms of exclusive licence agreements are to be disregarded when clause 35 and the proposed Schedule 2 are read together. The courts will not know what the legislative intent is.

Mr Chairman, we accept that the existing law may not be too clear on whether an article imposed in breach of an exclusive licence agreement is to be caught as an infringing copy, but the new law, and clause 35 of the Bill in particular, will put the Government's policy intention which is supported by this Council, beyond doubt. We have made clear that parallel imports which are in breach of exclusive licence agreements should be restricted. Schedule 2 to the Bill also draws a clear dividing line between acts done under the existing law and those to be committed under the new law. As explained, acts done under the existing law will be subject to the ruling of the existing law, not the new one. Further amendments to this Schedule will only cloud the issue. They are not necessary and they are extremely unfair.

Mr Chairman, I appeal in the strongest terms to Members to support the Schedule 2 to the Bill as proposed by the Government and to vote against Mr Howard YOUNG's amendment.

3.44 pm

下午 3 時 44 分

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

代理全委會主席梁智鴻議員暫時代為主持會議。

周梁淑怡議員致辭：代理主席，工商司言重了，事情並不如她所說般嚴重，其實，若楊孝華議員的修正案，即附表 2 的修正案不獲通過，在條例草案未通過之前一直存在的疑問，便會繼續存在。例如，根據英國法例，未經特許人特許或違反特許人的合約而進口貨品是否侵權行為呢？這方面是存有疑問的。現在的情形並不是法例原來肯定這是侵權行為，但現時在新法例通過後，就不算是侵權行為，情況絕對不是這樣。我們正在討論究竟在法例下，以往的侵權行為還算不算是侵權行為呢？

這疑問使進口商及零售商惶恐終日，反覆思量他們以前進口的貨品到底有沒有侵權。工商司剛才說，有了第 35 條的規定，以前的疑問就不再存在。現在，只要違反他人的特許合約，便已經是侵權行為。可是，以前進口的貨品是不受這定義限制的，所以，我們要明確說明，在條例草案通過之前，已經進口的貨品不受這定義限制，令商人不用再受疑慮困擾。事實上，他們有很多已經進口的貨品仍然存放在貨倉中。

根據政府的說法，雖然這些商人進口貨品的日期是在條例草案獲通過之前，但當他們售賣這些商品時，又會否抵觸法律呢？所以，在新法例生效之後，他們仍然會有疑問。

如果我們接納楊孝華議員的修正案，可以澄清這種不清晰或可能引致訴訟的情況。從比較務實的角度來看，現在很多已進口的貨品，是以平行進口方式進口的。到目前為止，沒有人根據現行法例指稱他們侵權，也沒有人控告他們。為甚麼我們不可以在新法例內，將不清晰或令人存疑的事解決呢？到目前為止，沒有人採取法律行動，也沒有人提起訴訟，也沒有特許商到法庭去討公道。既然如此，為甚麼不在法例內清晰地載明一些過渡性條文，將適用於條例草案通過之前進口的貨品的規定，清晰地列明，方便大家遵循？

工商司提到追溯力問題，我覺得既然現在已經可以根據原有法例肯定這些貨品已經侵權，所以，並不涉及追溯力問題。我們應將疑問澄清，根據新的規定做事。

謝謝代理主席。

MRS ELIZABETH WONG: Mr Chairman, I would like to say I entirely agree with the Secretary and appreciate very much the strength of her argument, the clarity of her view, the comprehensiveness of her understanding and her moral rectitude, and I find her arguments entirely convincing and intellectually

powerful, with particular reference to retrospectivity.

黃震遐議員致辭：代理主席，原本民主黨聽過業界意見後，亦覺得有需要有過渡條文的安排，所以，我們原本支持楊孝華議員的修正案。昨天下午，政府官員面見民主黨同事，提及剛才工商司發表的意見。政府官員提到這可能有違憲法精神，可能令法例規定失去追溯性，令版權擁有人及專用特許持有人沒法就侵犯版權的複製品討公道。所以，民主黨覺得一定要正視這個問題。

昨天下午，我曾對楊孝華議員說，民主黨要重新考慮這個問題，所以，昨天晚上，我們立即尋求法律意見，徹夜研究這條文。我們得到的法律意見是，這條文其實沒有剝削版權持有人或專用特許持有人的原有權益。其實，這修正案說明了，在條例生效之前已經輸入但沒有侵犯版權的複製品的問題。因此，民主黨會繼續支持楊孝華議員的修正案。

楊孝華議員致辭：代理主席，剛才我十分留心聽有關工商司的修正案的辯論，我比較願意從現實角度來面對怎樣解決有限的存貨的問題。我覺得未必必須要上綱上綫地說這是憲制或憲法問題，我認為由立法局按照法定程序通過的法律，都是合乎憲制的。

這項修正案的原意並不是想將過去不合法的事合法化，剛好相反，是希望將過去沒有違反法律的事不會無故變為不合法，以免零售商無所適從。

除了法律界和律師曾向我們解釋之外，很多在香港有影響力的大零售商，都哭喪着臉對我們說：“如果通過這條例草案，但有關規定仍不清楚的話，我們不敢冒險做犯法的事，恐怕我們真的要將店舖內現有存貨銷毀。”他們覺得這做法對他們非常不公平，他們只要求條例草案能作出十分清楚的界定，說明以前合法進口的貨物，並不會因為通過本條例草案而變成不合法。

剛才周梁淑怡議員也正確地指出，直至現在為止，都沒有任何一宗訴訟是由政府控告進口商進口侵權水貨的。如果有人因此受政府控告，我們還可以說這條例草案能協助法庭作出裁決，但事實上現時並沒有這類個案，而過

去也沒有人因此被控。不過，零售商仍然十分希望本條例草案對其現存有限的存貨，作出清晰的界定。

因此，我們仍然堅持，希望大家支持通過這修正案。

3.53 pm

下午 3 時 53 分

THE PRESIDENT resumed the Chair.

主席恢復主持會議。

Question on Mr Howard YOUNG's amendment put.

楊孝華議員動議之修正案付諸表決。

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，現付諸表決之議題為：楊孝華議員動議之修正案，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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG

Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr LAU Chin-shek, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr NGAI Shiu-kit, Dr LEONG Che-hung, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr IP Kwok-him, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG, Mr NGAN Kam-chuen and Mrs Elizabeth WONG voted against the amendment.

Dr Philip WONG abstained.

THE CHAIRMAN announced that there were 39 votes in favour of the amendment and 14 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 39 人，反對者 14 人。他於是宣布修正案獲通過。

Question on Schedule 2, as amended, put and agreed to.

經修正的附表 2 之議題經付諸表決，並獲通過。

Schedules 3 and 4

附表 3 及 4

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that Schedules 3 and 4 be amended as set out in the paper circularized to Members.

All the proposed amendments are editorial or technical in nature and have been endorsed by the Bills Committee.

Thank you, Mr Chairman.

Proposed amendments

擬議修正案內容

Schedule 3 (See annex X)

附表 3 (見附件 X)

Schedule 4 (See annex X)

附表 4 (見附件 X)

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 Schedules 3 and 4, as amended, put and agreed to.

經修正的附表 3 及 4 之議題經付諸表決，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

THE SECRETARY FOR TRADE AND INDUSTRY reported that the
工商司報告謂：

COPYRIGHT BILL

《版權條例草案》

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

經修正後已通過全體委員會審議階段。她動議三讀上述條例草案。

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

條例草案三讀之議題經提出待議，隨即付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

Resumption of Second Reading Debate on Bill

恢復條例草案二讀辯論

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

《條例草案》

Resumption of debate on Second Reading which was moved on 23 April 1997

恢復於一九九七年四月二十三日動議二讀辯論

MISS CHRISTINE LOH: Mr President, I rise to speak as chair of the Bills Committee on the Smoking (Public Health) (Amendment) (No. 2) Bill 1997. This Bill seeks to introduce further measures to control the use, sale and promotion of tobacco products. In parallel our committee also studied a Member's Bill introduced by the Dr the Honourable LEONG Che-hung. This Bill seeks to extend the prohibition of all forms and manners of tobacco advertising and to extend the scope of the designated no-smoking areas.

The Bills Committee held five meetings, four of which were attended by the Administration. The Bills Committee received over 100 written submissions, many lobbying postcards and signatures from a campaign. We also met deputations from 38 organizations. These included representatives from smoking prevention groups, medical and health associations, the tobacco industry, advertisers, the media, sports and arts groups, event marketing agents, restaurant owner associations as well as other parties.

Members note the strong support for Dr LEONG's Bill from both local and overseas smoking prevention and medical groups. Members also note the opposition to Dr LEONG's Bill from the tobacco and advertising industries in particular. The Committee also recorded the concerns by other organizations regarding the possible difficulties created for them in the implementation of both the Government's and Dr LEONG's Bills.

In view of the time constraint, and to facilitate discussion of the two Bills, Dr LEONG proposed at the beginning of our deliberation that the Government's Bill should be used as the basis for discussion, and he would propose amendments to make the Bill more effective and that he would consider withdrawing his Bill if he was satisfied with improvements to the Government's Bill. Members supported his suggestion and to this end Dr LEONG and other Members will be raising various amendments today.

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

The first issue concerned whether both Bills contravened the Bill of Rights as they both seek to restrict advertisement. Members noted a 1995 Canadian court case cited by the tobacco industry in support of their claim that the Bills interfered with freedom of expression. The Administration argues that its Bill does not contravene Article 16(3) of the Hong Kong Bill of Rights Ordinance. Our own legal advisor agrees for two reasons. Firstly, the Government's Bill does not seek to ban advertisement completely, and secondly, under Article 16, the freedom of expression may be subject to restrictions which are provided by law and are necessary for the protection of public health.

The Committee notes that the Canadian case concerned a total ban on advertisement which is not the case with the Government's Bill. The Committee further notes that the Canadian Supreme Court was unanimous that the protection of health of young persons from inducement to use tobacco products were of sufficient importance to warrant overriding the freedom of expression provision in the Canadian Charter of Rights and Freedoms.

Some Members highlighted that even in the case of imposing a total ban on advertising there are existing legitimate businesses which are not allowed to advertise because of public interest or professional ethics. Thus, even for Dr LEONG's Bill it cannot be said for sure that it contravenes our Bill of Rights.

The second issue, Mr President, concerns designation of no-smoking areas. Currently cinemas, theatres, concert halls, public lifts and amusement game

centres are designated no-smoking areas. Clause 3 of the Bill empowers the manager of any premises specified in Schedule 4 to designate any such premises or part thereof as a no-smoking area.

The premises included in Schedule 4 are restaurants, department stores, shopping malls, supermarkets and banks. The Administration explains that the present proposals are targeted at sizeable enclosed areas open to the public. In response to a proposal made by Dr LEONG the Administration will move an amendment to add schools and other educational institutes in the proposed Schedule 4. Some Members consider that karaoke establishments should be included alongside restaurants. Some Members believe that supermarkets, department stores and restaurants should be included in Schedule 2 instead of Schedule 4.

Members generally share the view that the designation of no-smoking areas will be a problem for small restaurants with only a few tables and they should be exempted. In order to protect the health of non-smokers, Members of the Democratic Party consider that for restaurants exceeding a certain size at least 50 percent of the public area should be designated no-smoking area unless the whole restaurant is used for a private function, such as a banquet. Function rooms with separate air-conditioning units may also be exempted. The Democratic Party will move an amendment in this regard. The Administration considers that more time is required to refine the concept of designated no-smoking areas and will consider any further proposals for future implementation only.

The third issue concerns tobacco advertisements in printed publications. Clause 10 repeals the exemption granted under section 11 to local newspapers with a circulation in Hong Kong of less than 10 000 copies and which constitutes not more than 20 percent of the paper's total circulation. In addition to the health warning already required the advertisements will also be required to show the tar and nicotine yields instead of just the tar group designation.

Dr LEONG considers that the proposed arrangement will not be able to meet the tobacco advertising-free target by the year 2000 set by the World Health Organization Western Pacific Region. The Administration indicates that it prefers to adopt a gradual approach with no specific time table set for the next move. In view of the lack of commitment on the part of the Administration to meet the 1999 deadline, Dr LEONG will move an amendment to prohibit tobacco

advertisement in printed publications by the 31 December 1999. The exemptions under the existing section 11(3)(A) will be retained. In addition those publications printed in Hong Kong but are for circulation outside Hong Kong will also be exempt.

The next main issue concerns prohibition of display of tobacco advertisement. Clause 11 amends section 12 to prohibit the display of any tobacco advertisement in writing or in other permanent or semi-permanent form. The Administration proposes that this clause takes effect 24 months after the passage of the Bill. Members have divided views on the effective date. In this connection Members note from examples in countries such as China, Mongolia, Norway and New Zealand the usual lead time for tobacco control legislation to implementation is six to 12 months.

A few Members consider that as most advertisement sign contracts are for three years, a three-year period should be allowed to avoid contractual difficulties. Both the Administration and the Bills Committee's legal advisors have pointed out that under common law any contracts rendered illegal or unenforceable due to change of legislation will become voidable contracts with no legal obligations on either side. The Administration maintains the view that two years is a reasonable period, however Dr LEONG believes the period is too long since the usual lead time in other countries is six to 12 months.

A Member considers that the requirement for health warning and tar and nicotine yields should extend to tobacco advertisement in the premises of any manufacturer of tobacco products or any wholesale dealer of tobacco products in order that the staff concerned may also be made aware of the warnings and for consistency with other improvements. Some Members support his view in principle, but some envisage that it will cause operational difficulties.

Mr President, the next main issue concerns display of advertisement at point of sale. Members note that small individual cigarette retailers are hard-hit by competition from contraband cigarettes and they need the six to seven thousand dollars monthly subsidy in the form of small advertisement gifts and for displaying flags or an umbrella showing the brand name at their stalls. Members are sympathetic to their plight and one Member has proposed that

display of advertisement at point of sale should be permitted. As point of sale includes convenience stores, supermarkets and department stores as well, most Members consider that the term is too wide.

The Administration points out the display of an umbrella showing the brand name will be considered as an advertisement. It considers that such an exemption will give rise to many loopholes and will reduce the effectiveness of the ban. To accommodate the small group of small individual retailers, the Honourable Mrs Selina CHOW will move an amendment to allow the display of tobacco advertisement in or upon a retail outlet where tobacco products are sold. Dr LEONG will move amendments to exempt advertisement at any stall or pitch of a licensed hawker selling tobacco products in or upon any premises of a retail dealer dealing in commodities including tobacco products and employing less than two persons, provided that it bears a health warning in the prescribed form and manner.

Members are also concerned about the proposed amendments to section 14 to refine the meaning of tobacco advertisement and to provide for exemption. In response to the concern expressed by the electronic media the Administration has reviewed the provisions in new sections 14(1)(c) and (2), but it considers that new section 14(3) already provides sufficient protection to address their concerns as it states that, and I quote, "any accidental or incidental appearance of any tobacco product or the trade mark, trade name, brand name or logo of any tobacco product where no valuable consideration has been or is intended to be given for such appearance is not a tobacco advertisement".

The Democratic Party expressed concern regarding the provision in new section 14(2)(iii) which allows the name of any company or any name associated or identified with any tobacco products to be used as the sponsor of any event, or in congratulating another person or some thing on an achievement, and asked the Administration to review the need for the provision relating to messages of congratulation. While the Administration wishes to retain the provision, Dr LEONG proposes to limit it only to the name of the company or body corporate as the sponsor of an event and will move an amendment to this effect.

Finally, the Honourable LEUNG Yiu-chung is presenting an amendment which the Bills Committee did not have any opportunity to discuss with him. This was an amendment that was put through at the very last minute, so I am

unable to make any comment on it on behalf of the Bills Committee as a whole.

I would like to take this opportunity to thank Members of the Bills Committee, the Administration and Legislative Council Secretariat for their hard work in completing the task of scrutinizing this quite contentious Bill within a very tight time table. I would like to, of course, thank all the interested organisations and individuals who wrote to us profusely and who were willing to come before the Council for many hours to help us scrutinize the Bill.

Before I close, Mr President, I would like to add a few of my own personal remarks. I know that Members were wary of the generality of Dr LEONG's original Bill when it was first introduced. It should be clear, however, that much has happened since then. The Bill before us today is a carefully formulated proposal which contains measures that are already widely implemented elsewhere. It is by international standards, Mr President, a very mild Bill. The fact has been underscored by the settlement reached in the United States America only a few days ago in which the tobacco companies agreed to many of the most stringent measures imposed by this Bill.

There is probably no other legal product that kills so many people with such grim regularity as tobacco, and Mr President, I would advise you to stop smoking yourself! Though we may not be accustomed to think of it in these terms, tobacco is in fact both addictive and toxic and the anomaly is that it remains a legal product at all rather than a strictly regulated one. It poses an international health problem of terrible magnitude, the cause of which is well established and yet in Hong Kong we are only beginning to take the first serious steps to combat it.

What steps should we take? This is the crux of the Bill of Rights argument made against this Bill. Even the tobacco industry does not have the temerity to argue that their right to commercial speech overrides the public health hazard posed by their product. Instead they argue that the effectiveness of advertising bans has not been established and that such bans, therefore, cannot be regarded under the Bill of Rights as necessary to protect public health.

It is a clever argument. It suggests that we need to know exactly why people take up such a fatal habit before we can take action to stop them doing so. This raises questions about human motives that are perhaps best left to

philosophers. Certainly science cannot provide absolute answers in this area. No one will ever run a controlled test, for example, in which they expose young people to advertisements for a lethal product and count how many become addicted. There would, therefore, always be room for the tobacco industry to cast doubts on the evidence.

But we must not allow ourselves to be paralysed by such well-funded doubts. We do not need absolute evidence before we can do something. Nor is there any realistic alternative to advertising restrictions. Public health education by itself simply cannot work so long as the social environment remains saturated with direct and indirect tobacco promotions. Realistically the measures contained in this Bill are a prerequisite to effective public education. Whilst I take the Bill of Rights very seriously I do not believe that the Bill of Rights' objection to this Bill merits serious consideration.

I urge Members to support Dr LEONG's and other Members' amendments to the Bill.

陳榮燦議員致辭：主席，我們明白無論是吸煙還是吸入“二手煙”，都會同樣損害身體健康。為了保障非吸煙人士或吸煙人士，以至孕婦和小孩子的健康，工聯會贊成“反吸煙”。

現時，政府一方面作出宣傳，忠告市民認識吸煙的害處；另一方面則減低香煙廣告誘使市民吸食的機會，對香煙類商品的包裝、銷售，以至廣告宣傳等，都有嚴格的規定和限制。政府提出的《1997年吸煙（公眾衛生）（修訂）（第2號）條例草案》，引入了一些措施，要進一步管制煙草產品的使用、售賣和推廣。基本上，工聯會對這一點也表示贊同。

由於“反吸煙”涉及飲食行業，因此我準備就該行業的關注和憂慮講述一些意見。政府的條例草案第3條賦權酒樓食肆等處所的管理人，可指定該等處所或其任何部分為禁止吸煙區，表示食肆的管理人可彈性地處理設立禁煙區的事宜。飲食業對這一點表示歡迎，認為是實事求是的做法。可是，羅致光議員動議的修正案卻建議“豁除作私人事務獨有佔用的室內席位，提供多過200個席位的餐館，其管理人需指定不少於三分之一的面積作為禁止吸

煙區。”否則，管理人便屬違法，一經定罪，可處第四級的罰款。若我沒有記錯的話，根據現行標準，即是罰款港幣 25,000 元。

主席，本人代表酒店及飲食業表示強烈反對！羅致光議員可能不太清楚和了解飲食行業的情況，所以貿然建議實行新措施，立法強制食肆設立禁煙區以推廣或推動反吸煙。羅議員根本沒有考慮到具體運作的困難和照顧該行業的生存問題，以及對飲食業的經營所帶來的不利影響。食肆想做生意，必須以客為先，讓顧客感到舒適滿意、不受打擾，因此經常要地盡其利，物盡其用。但羅議員建議要求提供多過 200 個席位的食肆劃定不少於三分之一的面積為禁煙區，與食肆的實際運作並不配合，且難以實行，將會影響食肆的正常運作。對於食肆的管理人而言，受地方所限，經營定會有困難；而對於食客來說，也沒有急須立法強制的必要。

雖然羅議員在動議上述修正之前曾向本人作過諮詢，但當時並沒有確切的修正案內容和規定。我曾向羅致光議員提出，希望他高抬貴手，在動議修正時對飲食業的影響盡量縮窄，立例強制飲食業規定劃設禁止吸煙區一事應循序漸進，一步一步的走。例如營業面積較大的食肆才規定需要設立禁止吸煙區，使中小型食肆不致因條例草案通過而即時遭受影響。

羅議員的修正案提出凡有 200 個座位的食肆便須要設“禁煙區”的規定，正好影響了為數眾多的中型酒樓食肆。近期本人不斷收到飲食業界人士的意見，他們對羅致光議員的修正案表示強烈反對。他們指出，用座位數量來釐定是否須要設立禁煙區是不可行的，因為在執行上有一定的困難。我會在全體委員會審議階段發言時特別指出這一點。

主席，希望別人減少吸煙，或推行“反吸煙”應採取說服、教育、多作宣傳，指出吸煙對健康的害處。本人是讚賞政府這條條例草案的，因為它可讓飲食業有彈性地劃定禁煙區。其實政府的《吸煙（公眾衛生）條例》自實施以來，加上各種宣傳教育大力推廣，本人相信，而也許亦有實際的數據，顯示近年來吸煙的人數明顯下降。也許專家可以給予一些意見，例如據我所知，現時 59 位立法局議員中，吸煙者只有兩位。主席，這方面的人數你會比我更清楚，因為你在本局很清楚各議員的一些嗜好。

在電影戲院仍劃分一半為非吸煙區的時候，本人也經常購票看電影，本人雖然不是吸煙人士，但我喜歡劃位坐到吸煙區去。主席，我不是喜歡“吸二手煙”，而是因為吸煙區一望無際，很少人阻擋視線，購票坐在“吸煙區”的人寥寥可數，所以我很喜歡在那邊坐。現時有些餐廳設有“吸煙區”，同樣在“吸煙區”內的客人人數也是比例極少的，只有在生意旺的時候客人才會滿座，有吸煙者和非吸煙者歡叙一堂的現象。這是大家也有經驗

的，不用我多說。看來立例強行規定飲食業要劃出禁煙區或吸煙區是不必要的，亦不須太急，因為作用不大，徒增飲食業經營者的困難和員工的麻煩而已。此外，在現時租金昂貴的情況下，若酒樓一部分的座位空置，不能充分利用，對飲食業來說是一種打擊！現時酒樓食肆大多數在門口貼上本店設有吸煙區或本店設有非吸煙區的標誌，給顧客自由選擇是否光顧這間食肆；這方法一向運作良好，實在沒有必要改變現時的運作模式。

主席，我代表飲食業說話，飲食業並不是反對設禁煙區，而是應有寬鬆和清晰的法例。同時，飲食業也擔心，如果有食客不理會罰則警告，也不接受食肆夥計或執法人員的勸喻，堅持吸煙，隨時會挑起磨擦和糾紛。這既加重了飲食業從業員的工作負擔，而且還會害苦了食肆的經營者。

主席，現時經營飲食行業已經非常困難，大家也知道現在要割價傾銷才有些好轉，因為是九七臨近，特區首長又選出了，政治氣氛穩定，連帶飲食業也興旺了一些，不過，經營仍然困難。如果食客和食肆之間的和諧關係遭到破壞，造成食客流失，勢將令飲食業的生意受到沉重的打擊，大幅降低營業額，間接打擊工人就業機會。本人懇請各位議員反對羅致光議員的修正案。

主席，本人謹此陳辭，反對修正案。支持政府的條例草案。

羅致光議員致辭：主席，這條於今天恢復二讀的《1997年吸煙（公眾衛生）（修訂）（第2號）條例草案》以及稍後的一連串修正所涉及的眾多立場、看法、分析，以及種種問題，本局在較早前通過梁智鴻議員所提出的議案辯論時其實都已經一一講述過，所以，在今天這次恢復二讀辯論內，我希望能夠盡量精簡去闡析我們對於這問題的一些基本立場。

我們民主黨對於反吸煙問題，或是如何限制某些場所內吸煙而引致其他人吸“二手煙”的問題，基本上是有兩個原則。第一是廣告方面的原則。我們原則上希望盡量減少廣告對不吸煙人士的吸引，特別是對青少年的吸引，以免增加他們吸煙的機會。第二個原則是盡量減少“二手煙”對不吸煙人士的影響。對於如何執行這兩個原則，在考慮時其實是相當複雜的。我們要考慮的第一個問題是廣告限制，就是我們在實施限制時會否影響一些有關的營業者，以及會否在短期內帶來不必要的適應問題或難以適應的困難，例如可能涉及合約和員工的聘用等問題。另一方面，我們要考慮的是我們是否把吸煙等同於吸毒呢？現時醫學界已經可以很肯定吸煙對吸煙者及吸“二手煙”

的人在健康上有壞的影響，但整體社會至今仍未視吸煙是吸毒的行為，所以我們在制訂整體的政策時必須保持適當的平衡。

本條例草案除了涉及廣告問題外，也涉及禁止吸煙區或非吸煙區等問題；關於後者，民主黨原則上認為所有公眾的場所，如果是室內的話，基本上是應該全部禁止吸煙。如果這些室內場所能夠有一間獨立而分開的房間，設有獨立的空氣調節，才可以劃為吸煙區，正如我們的立法局大樓是有另外闢有房間可讓同事在其內吸煙，而整座大樓則禁止吸煙一樣。我們認為應該朝着這精神方向走；不過，在討論條例草案時，我們了解到如果在現階段就政府的條例草案動議修正案，將會是一個差不多 180 度的改寫，涉及更多的研究以及可行而值得考慮的方案。因此，我們這次並沒有動議修正案，不過，我們很希望在日後有關非吸煙區或吸煙區的問題上，發展的方向都是在公眾場所內全面禁止吸煙，而在法例上容許有部分的地方劃為吸煙區。正如剛才陳榮燦議員多次提及，設立吸煙區的問題比設立禁止吸煙區的問題還要多。由於今次的條例草案有很多的修正案，為了避免重複，我在現階段不會再詳細講述我們對每一項修訂事項的立場和看法，直至那些修訂正式動議時，我才會解釋我們的立場。不過，剛才陸恭蕙議員在提交報告時提出了一點，我希望作少許澄清。實際上，陳榮燦議員已經講述了我們有關在食肆內設立非吸煙區問題的基本立場；初期我們的確是希望在一些較為大型的食肆內把不少於一半的地方設立非吸煙區，不過，經考慮陳榮燦議員的意見後，我們已將之調整為三分之一，希望循序漸進的去推行。此外，我們初期的構想並不是 200 個座位的。我們最初的想法是 50 個座位；不過，經考慮其他人的意見後，我們認為也應該合理地加以調升，使規模較小的食肆不會受到不必要的困難或面對困境。

整體來說，民主黨支持政府這條條例草案所提出的限制廣告與擴闊非吸煙區範圍的建議，並希望各位立法局的同事能夠支持條例草案恢復二讀。謝謝主席。

MR PAUL CHENG: Mr President, I have been criticized by the tobacco and advertising companies for not representing the commercial interests of my constituency because I raised a question of conscience during one of the Bills Committee's sessions. I represent the Commercial First Constituency, a constituency made up of the Hong Kong General Chamber of Commerce.

Member companies are involved in a wide variety of businesses and deliberating any particular issue I must take into consideration divergent views and then decide what is best for the community. As legislators, our primary allegiance must be for the well-being of the community and not just the interests of one functional constituency, not to speak of one specific sector within the constituency.

Today, we are talking about health as well as life and death. It cuts across all sectors and all walks of life. It is proven beyond doubt that smoking is harmful, not only to smokers but also to those exposed to the polluted environment created by smokers. This is why governments around the world require tobacco packages and advertising materials to carry warning statements. When it comes to health no amount of profit is worth protecting. There can be no economic justification.

The tobacco industry, in using the Bill of Rights and freedom of expression to argue its case, simply shows how desperate the industry is. The Attorney General has stated that the proposed Bill does not violate Hong Kong's Bill of Rights. The recent settlement between the United States Government and the tobacco industry only underscores the fact that even the industry itself had to admit they were involved with not only a harmful product but also a product which can be addictive.

As legislators, it is our responsibility to discourage our young people to pick up this dreadful habit. We need to do everything possible to decrease the number of smokers over time. How fast we should phase in the laws and regulations and the scope of coverage colleagues in this Council will need to decide for themselves. We are dealing with our health and the health of future generations. We cannot be hypocrites. We must vote with our conscience.

I should mention that I have received close to 150 deputations supporting total ban on all forms of tobacco advertising and promotional activities. In representing the General Chamber of Commerce I am also obligated to report that the General Committee of the General Chamber of Commerce unanimously supported the ban on tobacco advertising at its last meeting earlier this month. The majority of the members of the General Committee, however, supported allowing tobacco brands to continue to sponsor arts and sports events.

With these comments, Mr President, I intend to support the Bill and most of the Committee stage amendments.

MR MARTIN LEE: Mr President, I seldom see eye to eye with the Honourable Paul CHENG on many, or on any, controversial issues in this Chamber, but on this occasion not only do I see eye to eye with him, I like to think lung to lung, clean lungs to clean lungs.

But, Mr President, I have been urging Honourable Members not to smoke in this building at all. My vision is to see this building smoke-free, not even one or two or three rooms now, at least, even though in law there should be only one smoking room. I am afraid the President's Room is also, has somehow become, a smoking room.

Mr President, I have actually appealed to the Chair, shall I say, by even demonstrating before you I inhale smoke and thereby injure myself. I exhale smoke and thereby injure others. But if I inhale smoke it is a free choice, but if I exhale smoke I am not giving anybody any chance. So, how long should we continue to smoke? Until we die of lung cancer or heart disease? But perhaps before that happens there would be many around us, those dear to us, who may come to an untimely death even before us.

So, Mr President, I hope, I pray, that this will not only become a smoke-free chamber and a smoke-free building, but that everybody in it will not smoke. Perhaps it is ironical that our Deputy Chairman is a non-smoker and has been fighting all his life against smoking, and on this occasion I agree with him and not you, Mr President. Now, I switch over to the Chinese channel.

主席，其實我以往也曾採用這樣的形式作解釋。每當我們吸煙，我們是有選擇地傷害自己；但當我們噴煙的時候，我們所傷害的卻是身邊的其他人，他們可能是我們的至親、朋友，或同事。可是，我們並沒有給他們機會作選擇，因為他們根本就沒有任何選擇。我吸煙，我害自己；我噴煙，我害別人。我還要作這些害己害人的事到何時才停止呢？是不是一定要到自己死於肺癌或心臟病才停止呢？但在這期間，我們很多親友都可能已經離世了。

主席，所以我很希望各位同事可以盡我們所能支持政府這條《1997年吸

煙（公眾衛生）（修訂（第2號）條例草案》，因為這樣起碼可以盡量減少年青人被吸引成為吸煙者的機會。我們也明白，如果這條條例草案獲通過，可能會有一些老人家會因此而失業。對於這些老人家，我們當然是十分同情的，但我們又怎能夠通過他們可能是無奈的手而造成這樣多的痛苦、傷害那麼多的年青人呢？

主席，我謹此陳辭，支持二讀。

DR LEONG CHE-HUNG: Mr President, I thank the Honourable Martin LEE for his usually very eloquent speech. But I would like to remind him that the only way that he could have lung to lung contact with the Honourable Paul CHENG is something that perhaps you, Mr President, will not allow in this Chamber.

Mr President, I would like to thank the Chairman of the Bills Committee, the Honourable Miss Christine LOH and all those who actually appeared in this Chamber and at the Bills Committee expressing one way or the other either lobbying for tobacco smoking or otherwise. Members would agree that we had a very good educational session. And I think all of us left the Bills Committee much richer not in tobacco smoke but richer in our knowledge. I, personally, of course, would like to thank all those who supported strongly against tobacco as some of them are obviously in the gallery watching our progress. Well, I am sure Members are aware that we are now looking at actually two amendment Bills on anti-smoking before the Council today. Both ask for one thing and one thing alone, that is, do not allow the public, in particular, the young non-smokers to be lured into this despicable habit of smoking and the indisputable bodily harm that smoking will bring. But, let me clarify to Members in this Council that what we are looking at today at this point in time is the Government's Bill, not the Bill that I put forward that Members are so worried or afraid about. Mr President, I would like to quote that "the tobacco industry has the most irresponsible corporate record of any industry in the United States". I did not initiate these words although I would gladly do so. It is actually a summary report of the recent settlement between the United States Attorney General and the Tobacco Industry where the tobacco industry has to pay something like 360 billion US dollars over 25 years and something like 60 billion dollars more in lieu of punitive damage for past conduct. I like that word "punitive" damage for past conduct. Why does the report make this remark? It is very simple. For

years the industry knows that smoking is a cause of cancer of the lung. Yet they deliberately shielded off the incidences. For years, the industry realizes that the nicotine content in tobacco is addictive. Yet it is only recently that the industry concedes in the face of mounting litigations. Let me stress, nicotine in tobacco is addictive — similar to heroin. Now the industry says that tobacco advertising aims only to lure smokers to switch brands, do not smoke Marlboro, smoke Kent, not to induce non-smokers to smoke. They want proof. But have we not heard this before?

Hard Facts of Smoking Addiction

Mr President, let me repeat to ad nausea that the following facts are indisputable and agreed even by the tobacco industry:

1. Smoking is a cause of lung cancer.
2. Nicotine in tobacco is addictive — the United States Attorney General has actually authorized the Food and Drug Agency to eventually eliminate nicotine entirely from tobacco products, if it is possible.
3. There is a rising trend and number of smokers among young people, and females, round the world and also in Hong Kong. Yes, the Honourable CHAN Wing-chan was right that perhaps the adult population has decreased as far as adult smoking population is concerned. But, we are looking at an increased number of young people. People who has never smoked before, are now picking up the habit.
4. The health of non-smokers are affected by second hand smoking. It has been known that lung cancer is actually higher in women who do not smoke but whose husbands do. Perhaps that is a way to kill one's wife.

Tobacco Ads recruit New Smokers

Mr President, I am sure the tobacco industry and its advocates will say — hey, we are talking about tobacco advertising and our aim in advertising is to

induce people to switch brands only, not to lure non-smokers to smoke. Prove it, LEONG Che-hung, if you think otherwise.

Mr President, but what nonsense is this? There are more than 300 scientific studies round this world to prove "otherwise". We have reports to show that even tobacco company executives admit that they are targeting non-smokers, in particular, young children. Not too long ago, we had, in this very Chamber, a former consultant of a large tobacco company who openly admitted that the claim that advertising is only for switching brands is only part of the truth but not the whole truth. I salute him. I commend him for his bravery to save the world after having seen the dark side of the tobacco industry. Mr President, I have with me letters, one of them, a letter from the Minister of Health of the Royal Norwegian Ministry of Health, and I quote: "there is no doubt that the Norwegian advertising ban has had a clear and substantial positive influence both on total tobacco consumption in general and smoking rates among school children in particular." I have also a letter from the Ministry of Health from the British Government and I quote what it said, "it is anachronistic to continue to allow media advertising to create a false image which links tobacco to healthy activities and suggest social acceptance".

Yes, it can never prove possible as we have just mentioned in our reality world to conduct a scientific study using a double blind method to prove that tobacco advertising induces smoking, which requires comparison of two groups of children — one being exposed repeatedly for a long time to all sorts of tobacco advertising, whilst the other being barred from any contact with tobacco ads. This is neither physically nor morally possible. Nor should this be ever done by any responsible government or society!

Furthermore, if the tobacco industry is responsible, even inducing people to switch brand is wrong. Instead, they should curtail people from smoking entirely now that they subscribe to the fact that smoking is equivalent to lung cancer; smoking is addictive.

Economy and Livelihood Not Affected

Mr President, the advocates of tobacco advertising will bring in the economic issue and the emotional livelihood issue as they have done over the last

two days outside our carpark. But most of these are misrepresentations and in many areas the industry are pulling wool over the eyes of the public and the legislators here.

To wit, in December 1990, when the Government banned tobacco advertising in television — a very good thing, advertising agencies cried wolf, saying that Hong Kong's TV stations would lose \$100 million. Yet, in the years that followed, revenues from advertising for our two TV stations surged. Revenues in the year of 1993, for example, was already up by 50% than in 1990. In Singapore and Thailand, when tobacco advertising were banned completely, within months, revenues from advertising increased. Mr President, where tobacco advertising leaves, others quickly come in to fill the vacuum! Why should it be different in Hong Kong.

Mr President, the tobacco industry has brought on a whole team of old grannies and small retailers this morning and yesterday to apply an emotional approach to influence legislators. The tobacco industry however has pulled wool over these same small vendors' eyes. The industry has not told them that at least in my amendments, I have specifically exempted the control of display advertisements from those hawkers and small vendors. This is to balance the need to curtail smoking and the immediate livelihood of these small vendors involved. This demonstrates yet another irresponsible act of the tobacco industry!

Tobacco Ads in Disguise of Sponsorship

Finally, the industry recruited the support of sports and cultural organizations, and shamefully, even rehabilitation organizations, tricking them into believing that the Bill bans sponsorship. Mr President, nowhere in this Bill nor in any of the amendments suggested banning sponsorship. What is suggested is to ban parts of sponsorship advertisements, or more accurately, advertisements under the blatant disguise of sponsorship, call a spade, a spade if they want to do so!

Mr President, this Bill before us and its amendments address one thing and one thing alone — health for us, for all of us and our future generations. It asks for curtailing young people from smoking; it asks for protecting non-smokers from the deleterious effect of smoking; it asks for improving our

endangered environment. Vote for this Bill and my amendments, and you will be proud in the years to come that you have contributed to the improvement of our society.

Finally, Mr President, I was asked repeatedly why I did not move to ban tobacco smoking completely. I would have gladly done so and I am sure any government would have done likewise, if when tobacco was first introduced, the cancerous effect and the addictive effect were known and not shielded by the tobacco industry. It has been wrong to label tobacco and cigarette as a legal product! The least we can do now is to protect those who are not yet influenced by the luring effect of attractive but expensive advertisements brought forward by our Goliath — the Tobacco Industry!

Let us vote, and I quote the Honourable Paul CHENG's words, "with our conscience". May I also take this opportunity to salute Mr Paul CHENG and the General Chamber of Commerce. With those remarks, I support the Second Reading.

莫應帆議員致辭：主席，我非常高興梁智鴻議員動議私人條例草案，因為這樣才能迫使政府動議《1997年吸煙（公眾衛生）（修訂）（第2號）條例草案》；否則，真的不知今年或本屆的立法局能否有機會處理這條有關限制吸煙的條例草案。對於政府這條條例草案，民協基本上是支持的，因為這能夠使香港在反吸煙運動這方面有進一步的發展，並且也是符合我們民協一直以來比較同意的一個進程，就是循序漸進、較溫和地推行反吸煙運動。

最近，我自己留意到很多年青人吸煙，特別以女性為多，不過，我要在這裏申明一點，我並非性別歧視。我自己比較擔憂，因為我看見很多十三、四歲的女孩子四出拿着香煙，在公園、尖東等地方出現。很明顯，這情況已經變成香港現時的趨勢和潮流，也可能某些年青人認為這是很“有型”的表現。這是非常值得我們香港人或立法局警惕的。事實上，醫學界在九五年曾經進行一項調查，發現香港的3萬死亡人數中，19%或大約5600人是與吸煙有關的，而估計每年大約要用三、四十億元醫治那些因為吸煙或與肺病有關的病人。因此，民協一直都認為反吸煙行動是應該推行的。

不過，有時候我對吸煙人士，例如主席，也有少許替他們擔憂和有少許同情，因為吸煙既影響身體，而且很多時候吸煙人士也好像犯罪一樣，在很多地方都不受歡迎。我記得看過一部由許冠文主演的電影，他在電影中吸煙時要通過伸展至屋外的塑膠喉管把煙噴出去，給我的印象就好像吸煙是犯罪

一樣。正如剛才羅致光議員說，現在的社會並沒有視吸煙為吸毒，市民可以自由吸煙，也可以在街上買到香煙，但吸煙卻又好像被人視為不好的行為。有時候這樣也很矛盾，原因是吸煙也算是人類有史以來悠久的一種生活習慣，也可以說是煙草商的成功，正由於他們也確實財雄勢大，因而可令吸煙這習慣一直延續至今，似乎仍沒有退減的趨勢。雖然香港反吸煙運動委員會努力了數十年，但到現在我們卻看到一個情況，就是青少年吸煙的人數似乎比老人或年紀較大的人還要多。對於立法方面，我們民協認為應該有一個循序漸進的過程，通過立法以及教育，逐步推展反吸煙的意識。我們是同意和支持這方向的，也希望通過這條例草案，使一些商業，特別煙草商不要讓煙草繼續泛濫。

自我參加立法局的條例草案委員會以來，以這條條例草案的委員會所收到的意見為最多，真的是非常之多。所收到的意見是來自各方面的，正反兩方面的意見都有。當然，反對吸煙的人有反對吸煙的意見，支持的人有支持的意見，實際上是非常分歧的。因此，我們民協將會基於數個大原則就稍後的二讀表決作決定，而我們是一定會支持二讀的。至於條例草案內各項修正，我們也會以這數項原則作為表決的取向。第一個原則是循序漸進的推廣反吸煙信息；第二是適當照顧商業或小型零售商現有的利益，我們不希望有一個很急促的改變，使他們在突然間遭削減利益；第三個原則是關乎文娛康樂活動或體育活動的贊助，我們仍然希望給予煙草商一個適當的空間，而我們是會支持這方面的修正的。我們很希望本局能夠在一個很健康、很清新的情況下，即在有進展的情況下，通過這條條例草案。最後，我希望在這裏向主席奉勸一句，希望你能及早戒煙。

謝謝主席。

黃震遐議員致辭：主席，“吸煙危害健康”是不爭的事實，如果香煙是一項新產品，我相信這種會引致別人上癮，使人患心臟病、腦中風，引起喉癌、肺癌等癌症的產品，一定會被禁，或列為衛生署必須監管的危險藥品。因此，當我們考慮容許香煙有多少廣告的時候，問題並非是一般的資訊自由問題，或一般的商品問題，而是一種本應該受管制的藥品，也有可能是將來受管制的藥品，應該獲得多少的宣傳和廣告。我們不會容許藍精靈、ecstasy 或大麻賣廣告，香煙應獲多少的廣告空間也該用同一尺度來看。

數天前，美國的煙草商和聯邦政府達成協議，煙草商願意付出賠償，而且接受 FDA 藥物管理局的監管以及在公眾地方禁止吸煙這項規定，可見歐美煙草商已經窮途末路，現在整個策略便是將死亡輸入亞洲，好像 150 年前鴉片戰爭的時代，將鴉片煙運來亞洲賺錢，不惜危害亞洲人民的健康一樣。

除了直接的廣告外，煙草商更想通過贊助各項活動，令煙草與成功、瀟灑、高貴、雅緻等形象聯繫一起，因為煙草商知道很多人吸煙是因為相信吸煙“有型”。禁止香煙廣告是否能夠真正減少吸煙？證據是十分明顯，禁止這些香煙廣告是有幫助減少吸煙的。條例草案委員會已收到很多這些證據，在此無須再重複。但明顯而言，煙草公司並非單靠正接廣告引誘別人吸煙，而是同時通過間接的廣告而進行的，如贊助高檔產品或活動，聯繫起來堆砌成吸煙是“係威係勢”的“有型”形象，留存在青少年人的社群中。這些形象意念不會隨着廣告被禁而馬上消失，因此，禁止各種煙草廣告只是多種減少吸煙方法的其中一種，效果亦要與其他措施配合，而且必須假以時日才會顯著。尤其是現時很多煙草商希望打入中國市場，將 12 億人民變成煙民；香港在國內人的心中是有一定地位的，所以煙草商更加希望通過將香港這個形象與香煙聯繫起來而令國內同胞認為吸煙“有型、有款”。所以，如果大家真的對中國有感情、對中國人民有感情，就更應重視反吸煙；這樣不但可幫助香港，也可幫助中國。因此，我們無法支持梁耀宗議員動議的修正案。因為這並非資訊自由的問題，而根本是明目張膽地通過贊助來宣傳香煙產品牌子的廣告。

數間電視台曾經表示擔憂這項《1997 年吸煙（公眾衛生）（修訂）（第 2 號）條例草案》通過後，有些製作便可能觸犯法律的問題，例如劇情中有吸煙的人、有關煙草業的新聞片、曾經吸煙的人的故事、歷史故事，或是在新聞片和紀錄片中出現與吸煙有關的鏡頭時會觸犯法例，令傳媒運作困難。我知道政府已承諾稍後在演辭中解釋清楚，意外或附帶出現，並且沒有付出代價的鏡頭，不算是廣告。稍後衛生福利司應該會解釋清楚，讓傳媒可以減少這方面的擔憂。

“二手煙”明顯是會傷害健康的，越多公眾地方禁止吸煙，對市民的健康越好，因此民主黨認為銀行、超級市場、商場，以及其他公眾地方都應該禁止吸煙，最好是像美國一樣，全部公眾地方皆禁止吸煙，以免在這些地方的市民健康受損。

可是，在食肆方面，民主黨認為當局的修訂事項不能算是理想，因為未能充分保護非吸煙人士的權益。但飲食業提出了執行上的困難，在某些餐室內，吸煙人士不一定肯尊重其他人的健康，因此造成爭論、爭端。民主黨動議的修正可以說是提出了最低要求，而且我希望大家明白，這只是給予空間，令飲食業可以適應改變，以便日後增加設立更多的非吸煙區，達致全面反吸煙。因此，民主黨就食肆設非吸煙區動議的修正是已作出最大的讓步，是充分聽取了陳榮燦議員所提出的意見後作出的讓步。如果還要作更多的讓

步，我們認為是會犧牲了非吸煙人士的利益的。

現在一些商品與香煙同名、同商標、同形象設計，所以通過這些商品亦可幫助香煙推銷。我相信禁止這些產品與香煙有雷同的包裝不會傷害這些產品的行銷，可惜這次條例草案委員會的時間實在太匆忙，無法在這方面進行更詳細分析，因此很難寫出適當的法律條文，希望可留待下次修訂時提出。

因為吸煙習慣的確有多年歷史，禁止煙草廣告和設立非吸煙區也無可避免影響不少依靠售賣煙草維生的人的生計，所以今次立法的最大困難，就是要處理反吸煙的一些經濟後果和民生影響，因而無法可順利達致全面禁煙的作用。現時無法全面禁止在公眾地方吸煙，無法全面禁止煙草廣告，亦正是因為這項困難。

因此，我希望政府不會滿足於今天的結果，而應每年檢討、每年加緊禁止煙草廣告、禁止於公眾地方吸煙。我更希望政府於檢討期間會：第一，考慮將煙草視為藥品，歸衛生署規管；第二，追討煙草業引起對公共醫療費用的支出。

謝謝。

梁耀忠議員致辭：主席，其實我與本局很多同事一樣，都是非常反對吸煙的。我媽媽上月因病要進急症室，主要原因是甚麼呢？是因為她氣喘，不能呼吸，我們沒有辦法便要立即把她送到急症室。醫生說她最主要的病因是肺功能已經失去了大半，導致氣管呼吸非常困難。她患這病的原因，我們其實早已知道了，最簡單的是她過去不斷的煙不離手。雖然最近這數年已經戒了煙，但很可惜，由於長期吸煙的關係，她的肺功能真的已壞得很嚴重，不可以再用任何藥物挽救回來，所以現在她要不斷的面對氣喘這種令她感到很辛苦的病症。我相信，很多經常吸煙的人在晚年很多時候都會遇到這問題，我在醫院也見到很多情況如此的病人。我其實也替這些人感到十分難過，因為他們年輕時沒有想過吸煙對他們的影響，因而不斷的吸煙，導致身體日益損壞，沒有辦法可以挽救過來。所以，在這經驗上，希望現時的吸煙人士真的要警覺，他們今天可能仍然健康，但將來便可能會出現同樣的弊病；暫時可能還察覺不了，因為是隱藏的、無法知道的，但到知道的時候可能已為時已晚。

主席，我本身是教師，我上課時經常勸學生關注青少年問題，我鼓勵他們真的不可吸煙，因為吸煙真的會影響他們終生；就好像現在的廣告勸青年人不要吸毒一樣，兩者同樣都是會影響終生的。我很多時候不但鼓勵學生不

要吸煙，還帶領他們參加反吸毒活動，鼓勵他們不要吸毒。我認為吸煙與吸毒都會危害健康，是非常嚴重的。當我們考慮到問題是這樣嚴重的時候，我們便會考慮應該怎樣幫助他們。剛才很多同事也提出過，而我也很同意，我們應該以大眾的健康角度來考慮如何限制吸煙。我自己非常贊同規定在公眾場所內設有一些吸煙區，以及要求香煙廣告必須附有“吸煙危害健康”或“吸煙可以致命”等警告字句的。不過，我們在作出各樣限制時必須小心，不能夠削減《人權法》有關言論和表達自由的保障。即使某些限制是有合理目的，例如為了公眾健康等，也應該注意限制範圍不可以過大或超越了原來的目的，特別是涉廣告及煙草公司贊助活動等方面尤其要小心。雖然政府在條例草案委員會中多番強調本條例草案合符《人權法》的保障，剛才也有多位同事提及這點，但我仍然認為無論如何，我們在某些地方還是須要深入考慮和商榷的。就有關香港人《人權法》第十六條規定：

- (一) 人人有保持意見不受干預之權利。
- (二) 人人有發表自由之權利；此種權利包括以語言、文字或出版物、藝術或自己選擇之其他方式，不分國界，尋求、接受及傳播各種消息及思想之自由。
- (三) 本條第(二)項所載權利之行使，附有特別責任及義務，故得予以某種限制，但此種限制以經法律規定，且為下列各項所必要者為限 —
 - (甲) 尊重他人權利或名譽；或
 - (乙) 保障國家安全或公共秩序、或公共衛生或風化。

主席，《人權法》第十六條所保障的言論以及表達自由，包括以任何形式傳播任何的信息。外國的案例清楚指出，有關的條文保障範圍同時是適用於商業性的資訊，例如廣告等。商品廣告的效用，除了吸引消費者購買所宣傳的產品外，在高度競爭社會當中，也可以藉宣傳內容而反映出不同牌子的商品的長短優劣之處，這是消費者特別注意的重點，也是非常有用的。當然，大家可能會以公共衛生為理由而將有關的限制合理化；我不是要反對保障公共衛生，我只是要問清楚，這些限制是否真的與公共衛生有重大關係，因而必須加以限制的呢？這些限制其實是否一定與公共衛生有關，要因此而施加限制，以至打擊表達自由的權利呢？當然，我極不希望青少年人加入吸煙者的行列，我也要防止無辜者因吸入“二手煙”而導致身體健康受損；但

當我們要設立各項有關限制措施時，我始終要問，我們是否真的須要嚴格限制香煙廣告和煙草商不得贊助某些活動，或在某些活動中進行廣告宣傳呢？如果要這樣做，其實對公共衛生和公眾健康會帶來甚麼真正有效的幫助呢？我實在看不到兩者之間有任何必然的關係和結果。

主席，正因為上述原因，我打算在全體委員會審議階段動議一項較為溫和的修正，使煙草商在贊助文康活動時，可以為該項活動進行宣傳，使條例草案原來的限制更符合《人權法》。我相信《人權法》一經實施，即表示人人均可以享有該等權利，無論你贊成或不贊成某一類信息或觀念，其他人都有自由傳播各類信息的自由及權利。我要重申，任何對言論或表達自由的限制，是必須符合一個比例，並且不應該太過分。過於限制某些宣傳或廣告活動，我認為只會造成一個效果，就是只有那些已經出名或規模很大的煙草公司所出產的香煙才可以繼續生存，而“二價煙”則可能會被排擠。不過，這樣還是未能完全解決吸煙的問題。

我認為，除非大家真的像剛才黃震遐議員所說一樣，把吸煙看為與吸毒完全一樣，否則都不能解決吸煙問題。如果大家真的要這樣限制的話，我便無話可說。我們現時不可以說吸煙完全像吸毒一樣，但卻又不斷限制煙草商的廣告活動，我認為這實在是過分剝奪了他們的權利。此外，我還再強調剛才曾經提出的一點，就是即使限制煙草商不得進行宣傳活動，對於那些流行的牌子來說，吸該種香煙的人會不斷宣傳那牌子，使其光顧者不斷增加，這只會令其他牌子倒閉，並不能幫助解決吸煙問題，那又有甚麼好處呢？所以，我希望大家能夠從多方面考慮這個問題。反對吸煙是人人都贊同的，但本條例草案所提出的是否真的是最好的方法呢？希望大家重新再考慮一下。

主席，本人謹此陳辭。

顏錦全議員致辭：主席，政府這條《1997年吸煙（公眾衛生）（修訂）（第2號）條例草案》雖然是在議員的極力敦促下提出的，但也可算是近年來對沒有法律效力的議案辯論一次較為積極的回應。

民建聯關注到吸煙對香港市民，特別是青少年的健康的影響。在這些關注點上，條例草案對煙草廣告，以及對使用、售賣煙草產品施加更多限制，進一步推進反吸煙工作。但是，在禁止直接香煙廣告、擴大禁煙區這些措施方面，民建聯認為政府所做的措施仍然未夠進取，而在涉及一些小商販的權益方面，又有考慮不周的地方。

正如我們在年初的議案辯論中所說，民建聯贊同全面禁止直接香煙廣告。香港政府作為世界衛生組織的成員，為了達致西太平洋區於公元二零零零年建立無煙草廣告區的行動目標，對禁止煙草產品作直接廣告是責無旁貸的。但港府在今次條例草案中卻一再拒絕為了達致這個目標定下具體切實的工作計劃，尤其是限制本地報刊刊登煙草廣告方面，尚且沒有定出時間表。這些未免令人引以為憾。

在擴大禁煙區方面，條例草案的安排和現行的根本出入不大，對於保障公眾的健康，避免受“二手煙”的茶毒並未能起實質效用。民建聯認為應該進一步擴大禁煙區的範圍，而對於那些青少年經常出入的場所，例如學校、公眾遊樂場地，應該有機制設立法定禁煙區。

如果通過政府的條例草案，最直接受影響的會是一些售賣香煙和其他小商品的小販，他們的日常收入有一大部分是由於展示和香煙有關的標誌而得到煙草公司的資助。如果一刀切禁止一切形式的展示廣告，則這些小商販的收入將大受影響。制定法例並不應罔顧民生，因此豁免限制這些小商販是順理成章的。

民建聯在稍後的全體委員會審議階段將會依照以上所提的原則決定支持哪部分的修訂事項。

主席，香港要在二零零零年達致無煙草廣告區的目標仍然有一大段路要走。但是，我們在立法促進反吸煙的同時，不能過於急切而忽略了社會教育的工作。因此，民建聯借這個機會再次敦促政府加緊工作，提高反吸煙的社會意識，在良好的社會基礎和大眾的支持下，法例的執行自然水到渠成。

主席，本人謹此陳辭。

周梁淑怡議員致辭：主席，本局每次就吸煙這個問題進行討論，一定會引起很多激烈的對比意見。我記得很多年前，李柱銘議員與當時仍在世的張鑑泉議員，本來一般也算是談得來的朋友，但每當討論吸煙問題時，他們便吵得面紅耳熱，其中一個甚至會走出會議房間，就是這樣大吵大鬧的。

不知為甚麼，吸煙問題是一個相當感性直覺，令人很容易變得不理性，流於衝動地考慮的問題。我們今天討論的問題，基本上並非說吸煙是否好，或是否讓誰吸煙。剛才我聽到梁智鴻議員用“可耻”這個詞；我知道他的反

應是十分強烈的，因為他既是醫生，也對我們的健康非常關注。不過，如果說吸煙是“可耻”的，這便是道德的批判、道德的判斷；吸煙不好，我們不喜歡它，但不至於“可耻”吧。我相信大家也同意，我們不想青少年吸煙，不想他們因為受人誤導便養成這種大家認為是不好的壞習慣。可是，我們不能忘記在這個崇尚自由的香港——真的是非常崇尚自由的社會——有很多成人，我們經常說如何尊重這些成人自己的選擇，也說我們如何珍惜言論自由、發表自由、資訊自由、商業自由、各種自由等，但當我們一談到這件對你無益的事的時候，卻甚麼自由也不要想了。

直至目前為止，我們的社會也容許吸煙，亦並未視吸煙為犯罪。吸煙未致犯罪，但也差不多了。莫應帆議員也如此說，差不多是讓你感覺似在犯罪，但未致於引據法例說你在犯罪而已。香煙不是違禁品，不過，即使不是違禁品，我們卻想勸喻他人不吸煙，應該如何取得平衡呢？我認為我們的社會已接受一個事實，就是有力的媒介如電子媒介，可能在意識形態上有巨大影響力，所以我們已將這些媒介引導人吸煙的影響力加以限制。不過，也有其他認為不應吸煙的人，包括梁智鴻議員在內，說這些限制不足夠，應該完全讓人看不見香煙才是最好。問題是我們一方面又崇尚自由，一方面又有這些那麼強烈的意見的情況，我們是否應該真正弄清楚對廣告的強烈禁制能否達到我們所希望的效果？在此，我不想談數字方面的問題，但事實上也有例子可以提出來；據我所了解，有一些地方已經禁止展示煙草廣告多年，例如挪威自七五年開始已開始禁止展示煙草廣告，但以九五年的數據為例，該國的青少年吸煙人數百分比比較香港高很多，香港仍然有限度地有煙草廣告，挪威雖然沒有，但卻有 26% 的青少年吸煙，香港的數字只是 3.8%。我提出了這些數據，反吸煙的人自然也有大量數字可以提出，以說明情況剛好是相反的。我提出這些數據的目的，是要指出不可絕對地說因為有煙草廣告便導致青少年吸煙。

有關廣告方面，在電子傳媒展示煙草廣告已經是全面禁止了，但廣告方面，如果有一些是特別向青少年招手，特別要引誘他們吸煙的，我當然絕不贊成。但與此同時，我認為我們也要保障成人接受信息的自由。就以美國為例，大家也知道最近美國的煙草商要拿三千多億元代價出來，但美國有沒有禁止刊物刊登香煙廣告呢？沒有。加拿大是一個非常注重環保和公眾衛生的國家，但也不能絕對禁止香煙賣廣告。因此，我認為大家始終是須要找到一個平衡的。

事實上，香煙是我們現實生活的一部分，而遭其影響的不單止是吸煙者，還有吸“二手煙”的人，這是我絕對同意的。在能夠給予一個平衡的時候，限制是應該有的，但當達到現時般要在酒樓加以限制的程度，便會影響

酒樓的經營了。不知為何，飲食業總是那樣可憐，甚麼事也拿酒樓來“開刀”，污水處理問題已經令飲食業痛苦非常，現在又給拿來“開刀”。然而民主黨動議的修正案是否真的那麼有效和可行呢？還有一大問題，是否 enforceable，即能否執行呢？這是我們須要考慮的。

但另一個更重要、更值得考慮的問題是對飲食業的經營的影響。事實上，因為有關的限制缺乏靈活性，所以對飲食業的影響可算是相當大的，而該行業代表也在這方面向我們表達了很多意見。

我作為零售批發界的代表，當然要代他們發言，尤其是零售商方面的意見。按道理在零售點展示一些廣告，不過是印刷品、海報等，基本上會否因為展示了這些印刷品，便會使從不吸煙的人變成吸煙的呢？你前往那些零售點，自然是因為你吸煙；況且也有法例限制商販不准售賣香煙予 18 歲以下的青少年，其實已是足夠的保障。再者，這些廣告還要加上吸煙會危害健康等各方面的忠告，已經不會吸引到新的吸煙者；但若你加以限制，那肯定會對商販造成重大的困難。在此，我不打算詳細說明，因為稍後還有機會再說。不過，我希望大家討論零售點時，不要再按人數或面積來劃分，因為基本上現時很多零售店的規模都是很小的，但若於法例上太硬性規定人數各方面，就會有一些比法例所規定的稍大一點的小規模商販受損。我希望大家稍後可以支持我在這方面的修正案，不要支持梁議員的修正案。

總括而言，我始終希望大家能夠了解，我們一定要有適當的平衡，以及兼顧社會各方面的需要，不能在明知未見其利先見其害的情況下，仍然採取一些措施危害其他附帶受嚴重影響的人士。

謝謝主席。

黃偉賢議員致辭：主席，本來我並沒有準備發言的，不過，由於剛才陳榮燦議員發言時有一段說話，我怎樣想也想不明白，所以現在要拿出來跟陳榮燦議員談一談。他剛才提及他反對羅致光議員的修正案，即是多於 200 個席位的餐館便要把不少於三分之一的面積劃為禁止吸煙區的建議。陳議員認為，此舉是對現在已經市道不太好的飲食業來說，可算是進一步的打擊。我相信陳榮燦議員是為飲食業界爭取權益，這點我們都很清楚。不過，他這套理論卻未必能幫助飲食業，因為他剛才曾說過，他上餐館時很喜歡坐在吸煙區，不過，他強調他不是喜歡去吸那些“二手煙”，也不喜歡那些“煙味”，而是他喜歡那裏有很大的空間。

陳榮燦議員：主席，我並沒有說過坐在食肆的吸煙區，而是電影戲院的吸煙區；我只是說電影戲院。主席，黃偉賢議員引用錯誤。

主席：本席代陳榮燦議員澄清，他說在戲院裏。

黃偉賢議員：對不起，可能是我聽錯了，對不起。那麼我使用電影院作為一個例子吧。陳榮燦議員說他上電影院喜歡選擇吸煙區的座位，因為那裏很少人。但是陳榮燦議員有否想過，究竟為甚麼吸煙區這樣少人呢？很明顯是大部分人不喜歡坐在那區裏，不喜歡坐在那區的原因是那些人不喜歡“吸二手煙”，因此吸煙區便只有很少人，這正好顯示我們香港的市民是很害怕“吸二手煙”的。我相信陳榮燦議員剛才也有提及，本局只有數位議員吸煙，而據他所引述，社會上也不是有太多人吸煙。因此，我們認為應該要保障市民不被“二手煙”侵害。

主席，吸煙者在公眾場合是有自己的選擇的，他們可選擇吸煙，也可以選擇不吸煙。如果他們喜歡吸煙，他們可以找一個只是屬於他們的地方，一個密閉的房間，可以在內裏“吸到夠”、“大吸特吸”，進行他們的慢性自殺行為，沒有人會干涉他們。但不吸煙的人，被迫“吸二手煙”的人卻沒有選擇權，他們坐在那裏並沒選擇權，除非他們選擇離開該場所。但在公眾場合，這樣對他們是否公平呢？所以，最近有很多人都說吸煙其實是損人而不利己的行為。我相信本局同事都不希望做一些損人而不利己的行為；正如陳榮燦議員剛才引述電影院作為例子，其實同樣的情況也可以出現在任何公眾場合，包括食肆在內。如果有很多市民不喜歡與吸煙者坐在一起，而該食肆內有很多座位是劃為吸煙區的話，非吸煙者可能便不會到那裏光顧；這樣，對該食肆的生意來說，也會造成一定的不良影響。現在羅致光議員的修正其實是經過妥協的，他最初的構想是有 50 個座位的食肆已經要設禁煙區，並且是要把一半地方劃為禁煙區，現在已經是有所妥協的了。我們的同事，包括陳榮燦議員，如果真的希望幫助飲食業，其實不單止要支持劃定禁止吸煙區，更應該支持全面禁止吸煙，這樣可以吸引更多害怕“吸二手煙”的市民去光顧那些食肆。因此，我在這裏希望各位同事支持有關的條例草案和修正案。主席，本人謹此陳辭，支持條例草案。

鄭家富議員致辭：主席，對於今天這條《1997 年吸煙（公眾衛生）（修訂）（第 2 號）條例草案》恢復二讀，我相信很多人都會批評民主黨在自由資訊或廣告方面的立場，說我們一方面支持民主，要有資訊自由，但是談到這個

問題的時候就批評我們往往只是一種選擇性。

我想就自由黨的周梁淑怡議員的發言作回應。當董特首提出那份還原惡法的諮詢文件的時候，董特首強調要以社會安定行先，個人自由就要稍為放下。現時社會並沒有重大的動盪，自由黨卻支持董特首這個還原惡法的建議，要箝制個人自由；但是在現時有無數的科學根據證實吸煙會危害健康的時候，有國際人權公約認為公眾衛生應該行先的時候，我們認為應該略為放棄一點個人自由來換取公眾健康的時候，他們卻說要尊重個人自由。

我只是希望，各位議政的同事，對於一些問題作取捨的時候，能夠取得一個重點，就是為我們的大眾民生着想。顏錦全議員說這是小商販的問題，我們不應該罔顧小商販的利益。我想請問顏議員，他既然提及民生，他說的民生是指小商販的生計我們也要兼顧，我想問他究竟民生的定義是甚麼呢？我則認為民生是不是兼顧一小撮的小商販的經濟利益而要放棄大部分人的健康，甚至寶貴的生命呢？主席，我們很多時候說“不自由、無寧死”。就這個議題，我想說一句，“不健康、很快便會死”；連健康也沒有的時候、連生命也沒有的時候，再有多少經濟效益也沒有用了。

我認為今天這個辯論有一點感情化，因為是關乎每個人的健康，我們的健康受到嚴重影響的時候，大家一定會有點感情用事。黃秉槐議員去世，我們誰不傷感呢？剛才梁耀忠議員提及他母親入醫院，誰不會因為老人家一直吸煙導致健康有問題而有點傷感呢？主席，我看見你在看鐘，我知道我們都會去黃秉槐議員的追思彌撒，我會很快結束演辭。我主要有兩個論點，剛才梁耀忠議員已經論及《人權法》，另一就是《公民權利和政治權利國際公約》。公約的序文已經寫得很清楚，公民權利和政治權利都是為個人而設立的，而發表自由則不應該包括任何商業意見，保障人權和基本權利的條約也認定若牽涉到健康的時候，自由就需要受限制。

主席，我從新聞報道知道保守黨的財相離開他的官邸後，工作人員須要用很多瓶噴霧劑來清潔該官邸，讓工黨的財相能舒適入住。主席，你也快要離開這個立法局，我曾經到過你的辦公室一、兩次，每次我都感到很難受，不知道未來的主席有何感受。或許你有機會再任主席就沒有問題，但是未來的主席可能也需要用很多瓶噴霧劑才能消除那種氣味。始終，吸煙是會令周圍的環境受影響的，如果我困在電梯內時還有人在吸煙的話，我便真是很想發明一種叫做“放屁機”的東西跟他比拼一番。我認為，這種噴出來的“二手煙”令別人受傷害，不論是在情感上還是健康上來說，我都認為我們要加以制止。

主席，本人謹此陳辭。

5.37 pm

下午 5 時 37 分

主席：本局暫停會議，於七時十五分恢復。

Sitting suspended.

會議暫停。

7.22 pm

下午 7 時 22 分

Council then resumed.

本局會議恢復。

謝永齡議員致辭：主席，作為民主黨環保的發言人，我想作出 3 點簡單的回應。

第一，對於陳榮燦議員的“顧客為先、顧客永遠都對”的言論，我有一些意見。我想經營生意的人始終都應將生命放在最重要的位置，這包括吸煙人士以至非吸煙人士的生命在內。主席，我想最主要的問題是究竟生意重要，還是生命重要？我想大家心目中都有一個答案。

對於經營生意的人來說，可能最重要的是設置非吸煙區會否導致生意減少。我想這未必盡然，設有非吸煙區的食肆，不等於不能吸引顧客，特別是吸煙人士。

研究數據顯示，香港的成年人人口有 14% 是吸煙者，非吸煙者佔成年人人口的絕大多數。陳榮燦議員提出了另一個觀點，那便是有些地方如戲院、巴士已經不准吸煙。我想指出，特別是在飛機上和香港一間很出名的連鎖快餐店裏，都已全部劃為非吸煙區。航空公司和這間連鎖快餐店是否那麼愚昧，為了設立非吸煙區而不理會生意呢？我認為絕對不是。商人最重要的是賺錢，但賺錢之餘，也至少有某程度的道德標準。我們相信這些航空公司和快餐店一定進行過調查，確保生意額不會因此受損。所以，這個“顧客為

先”的理論是不成立的。

第二，陳榮燦議員提出在執行方面會出現問題。他認為一向既然沒有問題，為何現在要解決呢？換句話說，食肆一向也沒有非吸煙區。這就像如果有一條狗一向在某處睡，我們便不要碰牠。但事實上，這條可憐的狗也在吸食二手煙呢。

民主黨最基本、也可以說是最低的要求，便是保障非吸煙者的權利。陳榮燦議員說一向也沒有問題，但其實不是一向沒問題，而是一向有問題，只不過這些問題沒有很多人願意提及而已。這些問題是生病、癌症和死亡的問題，這些都是我們須要面對的。即使在執行方面有問題，或食肆在維持非吸煙區方面遇到困難，我想我們仍是要以負責的態度，想辦法解決這些困難，而不單止是投票反對。

主席，最後，周梁淑怡議員有意無意地用了兩次“香煙”這字眼，不知她是否在替煙草商推銷？

主席，煙不是香的，煙是臭的。

楊孝華議員致辭：主席，今天的辯論在一定程度上涉及其他行業。剛才有些議員發言提及飲食業、零售業，我不妨向大家轉達一些我在旅遊界所聽取的意見。我這樣一點也不稀奇，因為我們來自各功能組別，各議員一定會關注其代表的行業對某些問題的看法。

主席，本港有很多人從事旅遊業，而旅遊界的特點是從事這行業的人有機會到過很多地方，其中包括東、西方的落後地區、先進地方和發達國家。全世界確有很多地方對吸煙採取較為嚴厲的管制措施，但大家應該認識到現在我們所說的香煙並不是鴉片戰爭時的鴉片，現時香煙也沒有被列為非法商品。在這情況下，我們不明白為何要採取過分苛刻、趕盡殺絕的做法。

據我所知，美國西部有些城市，尤其是洛杉磯和三藩市，對吸煙採取十分嚴厲的態度。雖然如此，三藩市機場也容許乘客在某些地方吸煙，並不是全面禁止吸煙。

剛才謝永齡議員亦提及航空公司，我在此想提出答辯。很多航空公司禁止乘客吸煙，但並非所有航空公司都這樣做，航空公司也須考慮某條航綫的承受能力。例如香港表面上有頗多航空公司禁煙，但事實並非如此。例如，

香港的日本航綫並沒有禁止吸煙。基於這條航綫的客人的吸煙習慣，航空公司認為不可能在短期內採取比較極端的措施。即使另一間並非以香港為基地而往返香港和倫敦的航空公司，在每天兩班機中，一班可以讓乘客吸煙，另一班則不可以，其中只是把座位分開。所以，我們須視乎客人的要求考慮這個問題。

我希望香港所採取的措施，不要與鄰近地區或其他國家的主要城市相差太遠。香港每年均有過千萬來自世界各地的遊客到訪，一個人出外旅行時，比較習慣他本國的法律和習慣。對於可以和不可以做的事，自有一定的準則。如果香港的規則與外國的相距太遠，或極為苛刻，很多遊客便會覺得不知就裏跌進了陷阱。當然，我不是說遊客可以吸煙，而是他們習慣了甚麼地方設有吸煙區或非吸煙區，他們會將香港與其他國家比較。所以，我傾向於採取溫和的措施。

此外，關於贊助大型體育活動的問題，很多大型活動的舉辦者也曾經向我反映。當然，他們本身都不喜歡吸煙，我也是不吸煙的，而且亦不喜歡別人吸煙。可是，在現實生活中，不論是否有道理，有些活動確實受到某種程度的贊助。不論從本港市民的娛樂角度來看，或是從香港作為旅遊點吸引旅客的角度來看，這些大型體育活動都是對香港有好處的。所以，在有選擇的修正案裏，我始終傾向於採取前瞻、但較為溫和的路綫。至於是哪些條款，我相信周梁淑怡議員會代表自由黨講述我們的觀點。

鄭耀棠議員致辭：主席，首先，我申報我是不吸煙的，但不反對別人吸煙。

剛才黃偉賢議員和謝永齡議員一再就陳榮燦議員對吸煙問題，特別是食肆內的吸煙問題提出指摘。我要強調，我們不同意羅致光議員的修正案，因為這項修正案如獲通過，在執行上會極為困難，特別是修訂條例草案若獲通過，吸煙人士和非吸煙人士，以至於食肆員工之間的矛盾，將會越演越烈。所以，我們不贊成這種硬性規定。

根據黃偉賢議員和謝永齡議員對吸煙問題的分析，吸煙必定會危害身體健康，這點我也贊同。不過，對於禁止吸煙，我認為應該採取循序漸進的方式，而不是即時採用“一刀切”的方法。

正如羅致光議員的做法，也正如黃偉賢議員和謝永齡議員的言論，都是大家經妥協後的結果。假如情況像黃議員和謝議員所說那麼嚴重，我相信他們一定會對羅致光議員的修正案投反對票。可是，我不相信他們會這樣做，

也不相信他們敢投反對票。

我重申一點，如果加入這些修正，便會造成食肆的員工和客人之間的磨擦和矛盾。

主席，本人謹此陳辭。

SECRETARY FOR HEALTH AND WELFARE: Mr President, I would like to thank members of the Bills Committee, and in particular the chairperson, the Honourable Miss Christine LOH, for the hard work they have done within such a tight schedule.

As mentioned by Miss Christine LOH, many different views were expressed by Members during the Bills Committee meetings. Amendments have been proposed to our Bill and I look forward to addressing them later on.

Let me start by explaining and elaborating once again the policy objectives of the Government's Bill. Smoking is the single most preventable cause of ill health and premature death. Because of this it has been Government's long-established policy to discourage smoking in order to protect public health. The

Smoking (Public Health) Ordinance was enacted in 1982 to provide a regulatory frame work for the control over the sale, use and promotion of tobacco products and to facilitate the setting up of no-smoking areas.

With more and more medical evidence indicating the hazards of smoking it is all the more clear that Government has been correct in taking active intervention measures. We are particularly concerned about youth and women smoking. Young people are most susceptible to the inducement to smoke and overseas experience has indicated that the smoking rate among women is linked to a territory's economic development. Tobacco advertising aims to encourage smoking among young people and women in particular in order to replace consumers who die or quit smoking because of ill health.

The earlier one starts to smoke the more difficult it is for him or her to quit and the greater likelihood of premature death. Smoking claims over 4 000 lives

in Hong Kong each year. It incurs medical costs estimated to be up to \$1 billion per year and social costs of up to four times as much.

Many countries have already recognised the harm of smoking and have imposed stringent controls over tobacco sale and promotion. Many more are following suit. The latest examples which Members have also alluded to is that of the United States. On top of the regulations already imposed by the United States Food and Drug Administration this year the United States tobacco industry has agreed to a ban on tobacco brand name sponsorship and outdoor display tobacco advertisements and to eliminate Internet advertising and commercial placement of tobacco advertisements in movies and on television. The United States proposals are quite similar to what we are proposing now. Given that the biggest exporting country of tobacco products has decided to introduce such measures we should not lag far behind.

We have already banned tobacco advertising in the electronic media. We are now proposing a complete ban on display advertisements which are pervasive and have a long-term visual effect on passers-by. In view of the various promotion methods which the industry uses we propose to ban the giving of free samples and the use of gifts to entice people to buy tobacco products. We are also introducing a new mechanism to facilitate the setting up of no-smoking areas to protect the public from passive smoking.

Our proposals tidy up the existing provisions but do not seek to change the policy intent regarding sponsorship. Tobacco corporations and non-tobacco product manufacturers will continue to be allowed to sponsor events in their own name.

When the subject was last debated in this Council on 15 January 1997 I was encouraged by the positive tone of Members' speeches to press ahead with my current proposals. I am even more encouraged by the thoughtful manner in which Members have spoken today. There can be no disagreement with the policy objective of safeguarding public health. Most Members also accept that there is a need for further legislative measures. Any disagreement concerns only the pace, not the direction of steps to be taken. As mentioned by Miss Christine LOH, our proposals also have the wide support of the medical community and smoking prevention groups. They support us because they share our concern over public health, unlike those who oppose the proposals for

their own commercial interests.

I would also like to reiterate that our proposals do not contravene the Bill of Rights Ordinance. This explicitly states that the protection of public health is more important than advertising freedom. When considering this Bill and the amendments to be moved to the Bill, I hope Members will share the same concern to protect the people of Hong Kong from illness and death and not be distracted by spurious arguments. This is a matter of public health and public health alone.

Thank you, Mr President.

Question on the Second Reading of the Bill put and agreed to.

條例草案二讀之議題經付諸表決，並獲通過。

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。

Committee stage of Bill

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。

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

《1997 年吸煙（公眾衛生）（修訂）（第 2 號）條例草案》

Clauses 5, 7, 8, 9, 12, 16, 17, 19 to 22, 24 and 25 were agreed to.

條例草案第 5、7、8、9、12、16、17、19 至 22、24 及 25 條獲得通過。

Clauses 1 and 10

條例草案第 1 及 10 條

全委會主席：羅致光議員及梁智鴻議員已分別作出預告，表示擬就第 1 條提出修正案，於該條增補第(2A)款。

本席建議進行合併辯論，一併辯論梁智鴻議員及羅致光議員分別提出之修正案。

本委員會現進行合併辯論，一併辯論梁智鴻議員及羅致光議員分別提出之修正案。本席會先請梁智鴻議員動議修正案，因他年資較深。

DR LEONG CHE-HUNG: Mr Chairman, I am also older! Mr Chairman, I move that clause 1 be amended by adding subclause (2A) as set out in the paper circulated to Members.

The result of adding subclause (2A) to clause 1 would mean that if the Bill is passed, any public display other than those that will be discussed at our later amendments would have to take effect or banned completely by the first anniversary of the passage of this Bill.

Mr Chairman, the fact that this Bill passed a second reading without any opposition only means one thing, that Members of this Council do realise the fact that display of tobacco in the form of tobacco advertisement is a dangerous issue. It should be banned completely because it will definitely lure people who do not smoke to acquire that habit.

If that be the case, then I would submit to Members that the earlier this takes effect the better. If you look around our neighbours, those who have actually banned tobacco advertising display, you realise that one year's grace period is already a very, very generous one. If you look towards the north of the border, our future sovereign, China passed an anti-advertising law on tobacco back in October 1994 and the bill took effect by the first quarter of 1995. Similarly in New Zealand, we have seen that it took about four months before the bill took effect.

Actually, even in Hong Kong when the Hong Kong Government banned

electronic media, it took thirteen months to take effect. So, Mr Chairman, I do feel that one year would be a good compromise to ensure that this harmful effect of display should be banned completely to ensure there will be a safe environment for our future population.

With those remarks, Mr Chairman, I would like to move.

Proposed amendments

擬議修正案內容

Clause 1 (See annex XI)

條例草案第 1 條（見附件 XI）

Clause 10 (See annex XI)

條例草案第 10 條（見附件 XI）

全委會主席：本席會請羅議員就梁智鴻議員動議之修正案以及其本身之擬議修正案發言，但除非梁議員之修正案遭否決，否則本席不會請羅議員動議修正案。倘梁智鴻議員之修正案獲可決，即表示羅議員之擬修正案不獲通過。

羅致光議員致辭：主席，我提出修正案最主要的原因是基於梁議員的修正案。第二方面，我們考慮到執行有關條例限制展示煙草廣告的通知和執行方面的困難。

在本條例草案進行討論時，政府表示打算於兩年內實施有關的條例，但為了避免政府日後因受到不必要或其他的壓力，以致實施日期無限期拖延，我們原則上同意梁議員提出的修正精神，將時限予以規定。

既然如此，我們也提出一項妥協的修正案，一方面符合政府的意願，另一方面訂明規限為兩年。我們希望各位同事支持這項修正案。

謝謝主席。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, while I appreciate the sentiments behind the amendments I just wish to add that it is Government's intention to bring the display ban in section 11 into effect after two years. As in the past, this will be done by way of commencement notice. This two year grace period will allow sufficient time for the affected parties to make the necessary arrangements.

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

梁智鴻議員之修正案付諸表決。

Voice vote taken.

聽取聲音表決。

Dr LEONG Che-hung claimed a division.

梁智鴻議員要求點名表決。

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，現付諸表決之議題為：梁智鴻議員就第 1 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 個按鈕中選擇其一按下，以進行表決。

在本席宣布結果之前，請各位核對所作表決。是否有任何疑問？現顯示結果。

Dr LEONG Che-hung, Miss Emily LAU, Mr Eric LI, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Paul CHENG, Mr LEE Kai-ming and Miss Margaret NG voted for the amendment.

Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-Yin, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

Dr HUANG Chen-ya and Mr Ambrose LAU abstained.

THE CHAIRMAN announced that there were eight votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

全委會主席宣布贊成修正案者 8 人，反對者 37 人。他於是宣布修正案遭否決。

梁智鴻議員致辭：主席，我不知是否要申報利益，若你說沒有需要，我便根據會議常規第 37 條第(4)款，動議若有委員在本次會議上就《1997 年吸煙(公眾衛生)(修訂)(第 2 號)條例草案》的其餘各項修正案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 分鐘後立即進行點名表決。

Question on the motion proposed, put and agreed to.

議案之議題經提出待議，隨即付諸表決，並獲通過。

全委會主席：在本全委會會議席上，就《1997 年吸煙(公眾衛生)(修訂)(第 2 號)條例草案》之其餘各項議案進行之點名表決，點名表決鐘聲由 3 分鐘減至 1 分鐘。

全委會主席：由於梁智鴻議員之修正案遭否決，本席現請羅致光議員動議修正案。

羅致光議員致辭：主席，我動議修正第 1 條，於該條增補第 (2A) 款，修正案內容已載列於發送各位委員之文件內。

Proposed amendment

擬議修正案內容

Clause 1 (See annex XI)

條例草案第 1 條（見附件 XI）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

DR LEONG CHE-HUNG: Mr Chairman, I move that clause 1 be further amended by adding subclause (2B) and that clause 10, which is related, be amended as set out in the paper circularized to Members.

The effect of these two amendments would mean to say that there will be a ban of advertising in printed media to take effect by 31 December 1999, in other words, by the year 2000, giving a grace period of some 30 months.

Mr Chairman, this is basically in line with Government's agreement and commitment to the World Health Organization (WHO), Western Pacific Region in that all tobacco advertising to be banned by the year 2000. I have no doubt that the tobacco advocates in this Council will say that the decision of the Hong Kong Government to the WHO has no legal binding, yet as an accountable member of the, or rather an associate member of, the WHO any agreement this Government has with the parent body must be respected.

Needless to say the advertising agencies will also cry foul. They will say that their revenue will be drastically decreased. Yet time and again, Mr Chairman, in this Council, not only today but in the last debate, it has been shown that the revenue, after banning any form of advertisement, has shot up. In Hong Kong for example, as I mentioned just now, in our two television stations after the banning of advertising their revenue shot up by 50%. In our neighbouring countries, it has been shown that after banning advertising in the printed media the advertising revenue also shot up. And I do not see why the

same thing will not occur in Hong Kong.

Now, in the debate, second reading debate, Mrs CHOW was saying that, "look, why should we interfere with adults who want to smoke?" But Mr Chairman, I would like to put it to you and this Committee, that we are not trying to stop adults from smoking. Basically, what we are saying is "do not induce those people, especially young people who have not smoked, to take up this habit". We are saying that, "look, there are also the non-smokers who should not be exposed to the danger and the side effects that other people's smoke would introduce.

Now, Mr Howard YOUNG also said just now that, "look, let us, do not be different from our neighbouring countries". This is exactly what we should do. Our neighbours have all banned tobacco advertising. We are standing out like a sore thumb in all this by continuing with tobacco advertising.

With those remarks, Mr Chairman, I beg to move.

Proposed amendments

擬議修正案內容

Clause 1 (See annex XI)

條例草案第 1 條（見附件 XI）

Clause 10 (See annex XI)

條例草案第 10 條（見附件 XI）

周梁淑怡議員致辭：主席，我想純粹說一句話，那便是美國對於吸煙進行了這麼廣泛的公眾教育及各方面的努力，也只是希望盡量教育人們不要吸煙，而不會禁止刊物登載香煙廣告。很不幸，謝永齡議員現時不在這裏。我相信香煙就如“臭豆腐”一樣，是沒有任何褒或貶的意義的。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, regarding Dr LEONG's amendments to ban tobacco advertisements in printed media, I would just like to add that it is our policy to adopt a step-by-step approach in respect of anti-smoking measures, having regard to experience and the sentiments of the

community.

We are not proposing a ban on tobacco advertisements in the printed media at this time but we will review the situation seriously after the display ban has been brought into effect to see whether further measures are required.

DR LEONG CHE-HUNG: The Secretary mentioned that the Government's approach is a step-by-step approach. I would like to appeal to this Council and to inform the Government that my proposed ban should take effect by 31 December 1999, 30 months from now. To me, it is already too slow a step but I do respect the agreement between our Government and the World Health Organization and therefore I extend it to that period in time. I do hope Members will support this very important move and a very important step towards banning tobacco advertising.

Thank you.

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

梁智鴻議員之修正案付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他以為者佔多。

Mrs Selina CHOW claimed a division.

周梁淑怡議員要求點名表決。

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，現付諸表決之議題為：梁智鴻議員就第 1 條及 10 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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mr Martin LEE, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, 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 CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Miss Margaret NG and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 37 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 37 人，反對者 9 人。他於是宣布修正案獲通過。

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。

Clauses 2, 3 and 4

條例草案第 2、3 及 4 條

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

These are technical amendments. We propose to change the Chinese wording of "restaurant" in order to match the wording used in the Public Health and Municipal Services Ordinance (Cap.132) to which this Ordinance makes reference.

We also propose to remove the definition of "restaurant" from the existing section 6(A)(4) to section 2. This is so that all references to restaurants in the Ordinance will be defined and not just those in section 6(A).

Proposed amendments

擬議修正案內容

Clause 2 (See annex XI)

條例草案第 2 條（見附件 XI）

Clause 3 (See annex XI)

條例草案第 3 條（見附件 XI）

Clause 4 (See annex XI)

條例草案第 4 條（見附件 XI）

Question on the amendments put and agreed to.

修正案之議題經付諸表決，並獲通過。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move my proposed amendment in paragraph (b) of my amendment to clause 3 by adding subclause (1) as set out in the paper circularized to Members.

The purpose of this amendment is to simplify the procedure of designating no-smoking areas for section 3 purposes. This simplification will shorten the time needed before such areas can become smoke-free.

Proposed amendment

擬議修正案內容

Clause 3 (See annex XI)

條例草案第 3 條（見附件 XI）

Question on the amendment put and agreed to.

修正案之議題經付諸表決，並獲通過。

全委會主席：羅致光議員已作出預告，表示擬就相關之第 2、3 及 4 條動議修正案。衛生福利司亦已作出預告，表示擬就把第 3 條之條次改為第 3(2)條動議修正案。

本席建議進行合併辯論，一併辯論羅致光議員就第 2、3 及 4 條提出之修正案，以及衛生福利司就把第 3 條之條次改為第 3(2)條提出修正案。

本委員會現進行合併辯論，一併辯論羅致光議員就第 2、3 及 4 條提出之修正案，以及衛生福利司就把第 3 條之條次改為第 3(2)條提出之修正案。按照《會議常規》第 25 條(4)款，本席會先請羅致光議員動議修正案。

羅致光議員致辭：主席，我動議修正第 2，3 及 4 條，修正案內容已載列於發送各位委員之文件內。

剛才各委員已就這些條文進行了詳細辯論。關於如何處理食肆設立非吸煙區的問題，剛才黃偉賢議員及謝永齡議員已就陳榮燦議員的意見作出回應，所以，我在這裏簡短一些談談這個問題。

有關小型食肆的問題，我們以 200 人為界限。換句話說，可容納 200 人以上的食肆便須設立非吸煙區。我們最初進行討論的時候，曾建議指定不少於一半的面積劃作非吸煙區。現在大家經過所謂妥協後，已改為不少於三分之一的面積。可是，我們還有一個細節問題須事後進行討論，那便是有關這些食肆“擺酒”時如何處理。我們非常明白宴會對於酒樓來說是非常重要的，所以，我們認為當食肆舉辦宴會的時候，應就非吸煙或吸煙的問題給予豁免。可是，在草擬修正案時，我們遇到一個難題，那就是甚麼才算是私人活動呢？一家人在外面圍在一起吃飯，也可以說是私人吃飯。如果私人活動

可以得到豁免的話，那麼差不多每一桌都可以得到豁免，所以，這是一個相當難以處理的問題。不過，經過考慮，我們最後認為這些私人宴會不管桌數有多少，只要間隔是由地面延展至天花板便可以了。所以，我們的修正案旨在豁免那些以全高度間隔隔開以作某項私人活動專用的席位，不論該等間隔是活動間隔抑或固定間隔。其餘的地方如可容納多於 200 個席位，便須將不少於三分之一的面積劃作非吸煙區。

至於陳榮燦議員提到員工在執行方面遇到的困難，我相信要執行任何一項法例，或任何一件事作出改變，有些人在某程度上是須要適應的，甚至可能須要面對少許困難。在數十年前，當政府說要禁止隨地吐痰的時候，我相信當時同樣面對類似的困難。如果當年政府沒有禁止隨地吐痰，相信今天很多顧客會在酒樓和食肆滑倒。所以，我認為在考慮這個問題的時候，禁止隨地吐痰和禁止吸煙是很相似的。當然，我相信現在禁止吸煙會遇到一些困難，但當有關法例實施了一段時間後，上述困難便會逐漸消失。

我希望各議員能夠支持本修正案。謝謝主席。

Proposed amendments

擬議修正案內容

Clause 2 (See annex XI)

條例草案第 2 條（見附件 XI）

Clause 3 (See annex XI)

條例草案第 3 條（見附件 XI）

Clause 4 (See annex XI)

條例草案第 4 條（見附件 XI）

全委會主席：本席會請衛生福利司就羅致光議員動議之修正案以及其本身之修正案發言，但除非羅致光議員之修正案遭否決，否則本席不會請衛生福利司動議修正案，倘羅致光議員就第 2、3 及 4 條動議之修正案獲可決，即表示衛生福利司就第 3 條動議之擬議修正案不獲通過。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, my proposed amendment is a technical amendment to cater for our addition of clause 3(1) only, which concerns about the deletion of the reference by order in the gazette from section 3(1A) of the Ordinance.

As regards Mr LAW's amendment, I would like to draw Members' attention to the management and possible enforcement problems posed by his proposals. The amendment as drafted means that no smoking areas might change from meal to meal and from day to day. Areas reserved for such private functions will also vary. This constant rearrangement will make it difficult for restaurant operators to delineate a smoke-free zone as required.

Apart from such practical difficulties it is also open to argument what a private event means, given that it is not defined in the Ordinance. This proposal, therefore, makes it practically impossible to set aside a permanent no-smoking area.

If the Government's proposal of giving the managers a free choice to designate any area they wish can proceed the managers will find it easier to devise a workable plan. Indeed, I hope that they will take account of the wishes of the 85% of their adult patrons who do not smoke by designating large smoke-free areas voluntarily. Overseas experience shows that after designating a no-smoking area the volume of business is not reduced.

李啟明議員致辭：主席，我現就陳榮燦議員提出的飲食業問題作出 3 點回應。

第一，有一位議員在回應陳議員的發言時說，設立非吸煙區這項措施會受人歡迎，食肆的生意也可能會更好。若是如此，我們何必要加以限制，倒不如透過自由經濟自動作出調節。正如政府所說，只要設立非吸煙區便可，而無需再在數字方面加以限制。

第二，既然吸煙人士的數目佔成年人人口的 14%，我們為何要規定為三分之一，為何不以 14%而以三分之一為限？

第三，大家也知道酒樓採用活動的屏風作為間隔，如果間隔須要從地面延展至天花板，便會變成了“梗房”。此外，我們還有一個執行方面的問題，那便是“大枱”可以隨時轉換為“小枱”，我們如何維持 200 席這個比例呢？這些都是飲食業在執行方面遇到的問題。

因此，本人反對羅致光議員的修正案，支持政府的修正案。

周梁淑怡議員致辭：主席，我代表自由黨反對羅致光議員的修正案。剛才我在二讀發言時，已經提出過一些意見。不過，剛才羅致光議員說的實際情況實在難以做到。他提及私人活動專用的地方要由地面至天花板隔開，但問題是很多酒樓採用屏風作為間格，那麼這些酒樓算不算犯規呢？由於這些屏風都不是伸展到天花板，那又是否算是犯規呢？我覺得這個說法根本缺乏靈活性，徒為酒樓帶來問題。一些酒樓業人士，特別是經營中國式酒樓的人對我說，他們的酒樓經常擺設喜宴，而這些宴會未必可以將枱桌隔開，所以，他們從實際執行的角度來看，實在難以有效地管理。

基於上述理由，我希望大家了解酒樓，特別是中國式酒樓，根本沒有可能固定地指定三分之一的面積，以達到羅致光議員的修正案的要求。所以，我希望大家反對羅致光議員的修正案，以保持政府擬議的靈活性，由管理方面決定酒樓應怎樣設置非吸煙區。

陳榮燦議員致辭：主席，剛才在二讀時黃震遐議員發言，並就飲食業規定劃設非吸煙區的修正案表示對本人作出了讓步。羅致光議員在發言時亦表示，他最初考慮在修正案中規定 50 個座位的食肆便須要設置吸煙區，但經諮詢本人的意見後，改為 200 個座位。無論如何，在這方面，我對黃議員和羅議員表示謝意。

至於民主黨的黃偉賢議員和謝永齡議員對我在二讀發言時提出的一些疑問，我不想在這裏耽誤大家的時間，希望他們有機會聆聽立法局的錄音帶，因為錄音帶裏已清晰解答了兩位議員的問題。

我想指出一點，在酒樓食肆租金昂貴的情況下，如果每天座位在一定的時間出現空置率高的情況，對飲食業來說是一種打擊。我在二讀時已代表業界指出，飲食業並不強烈反對設置禁煙區，我稍後亦會繼續對這點加以補

充。

主席，羅致光議員的修正案規定以座位的數量決定是否須要設立禁煙區，這是不可行的，因為執行上會遇到困難。法例有欠清晰，必然會引起爭議或爭論，以致造成混亂。舉例來說，羅議員的修正案規定 200 個座位便須設置非吸煙區，但酒樓通常設有 190 個座位。如果生意稍為興旺或遇上假期或節日，一家大小前來的顧客多帶了數個人，便要額外擺設數張椅子，這間平日不須設非吸煙區的酒樓，便即時觸犯了法例。這是一個例子。

一些設有超過 200 個座位的食肆，可能會刻意把十數張椅子收藏起來，或隨時“走鬼”，以逃避法例管制。當然，身為議員的我不會鼓勵這種做法，但誰膽敢說不會發生這種情況呢？這些情況是不能預見的。

顯而易見，羅致光議員的修正案存在一定的灰色地帶，令執法者困難重重。羅議員並沒有細心考慮飲食業經常發生的情況。我不肯定我說的是否全面，可能還有其他例子。羅議員也沒有細心觀察飲食業，或了解一些已經存在的問題。條例草案一旦獲得通過，酒樓食肆因這些法例而造成的爭議和糾紛必然無日無之，引致混亂非常。因此，我希望各位同事反對羅議員的修正案。

主席，我重申一點。業界絕不是反對設立禁煙區，只是希望能以稍為寬鬆和循序漸進的方法處理。

主席，請你容許我引用一句名句：“讓一部分人先富起來”這句名言是鄧小平先生所說的。主席，我希望你容許我引用這句話。中國於八十年代進行開放改革，提出讓一部分人先富起來。當時我不大相信，很多人也表示不相信，但這是事實。現在很多人比以前富裕，這是眾所周知的。我在此謝謝主席，因為我把話題扯得這麼遠，我恐怕主席不容許我這樣說。我引用這個例子，是因為我很贊成政府的議案能夠為飲食業制定一項寬鬆的法例，讓主管人員能夠設置禁煙區，以及自行決定在甚麼地方設置禁煙區，這才是循序漸進的做法。

眾所周知，現時的餐廳設有非吸煙區和吸煙區，而我剛才亦已提過。飲食業一向對政府唯命是從，中式飲食業也將會效法這樣做。今天是西餐廳，明天是中式飲食業。既然已經達到目的，便無須在這個自由社會處處施加限制。一旦說到人權、自由和民主，為何不能夠讓吸煙者隨意一點呢？同時，業界指出，如果法例規定設非吸煙區，便應以酒樓食肆的營業面積作為標

準。我剛才已經提過，200 個座位只是一個數目，但面積不會隨時變更，6 000 平方呎便是 6 000 平方呎。主席，你同意嗎？面積是不可以擴大的，除非是把它縮小。1 萬平方呎便是 1 萬平方呎，這是確實的數字，不會隨時變更。如果以剛才所說的座位數目計算，則可以隨時作出改變。對於這樣有欠清晰的法例，我希望各位議員三思，才投下良心或正確的一票，因為你所投的票是很重要的，它影響了九千多間食肆和 20 萬從業員。請議員自己作出決定吧！我不會“左右”議員的決定！

周梁淑怡議員剛才在二讀發言時說，很多飲食業人士被人“開刀”。她說這句話真的很準確。觸犯《吸煙（公眾衛生）條例》的人可被罰 25,000 元。若不符合環境保護署的規定，初犯者可被罰 30 萬元，再犯則可被罰 40 萬元。主席，從事飲食業的人的境況較小販還要慘，有些人甚至說比做賊人還要慘，他們的慘況是千真萬確的，我不想在此浪費大家的時間了。

羅致光議員的修正案的另一個灰色地帶，是酒樓食肆的管理人員是否只須劃設禁煙區，而不須要理會客人在禁煙區內吸煙呢？如果法例規定要設立禁煙區，客人卻不遵守而在禁煙區內吸煙，食肆的管理人員是否須要加以理會？若是不需要的話，設置禁煙區的目的何在？那豈不是形同虛設？修正案對此並沒有作出界定，禁煙區因此徒負虛名，以致法例難以執行。如果法例獲得通過，客人與客人之間，以及客人與食肆的員工之間，必然會發生爭議或爭執，也必然會發生很多磨擦。如果弄致要向警方舉報，則更會令執法人員疲於奔命。

本人懇請各位議員反對羅致光議員的修正案。

主席，本人謹此陳辭。謝謝主席。

楊孝華議員致辭：主席，據我所知，第一個設立吸煙區和非吸煙區的行業，不是酒樓，也不是戲院，而是航空公司。雖然這個制度歷史悠久，幾十年前已經確立，但直至今天，設立吸煙區和非吸煙區的機構，仍須在是否設置禁煙區方面享有靈活性，否則便難以經營。謝永齡議員在二讀辯論時提及航空公司，而以我所知，航空公司在飛機上劃設所謂非吸煙區，大多不是硬性規定，而可能是在電腦上以虛綫代表，這些虛綫可以隨時作出變更的。所以，經營者需要靈活性，但不等於有靈活性便會助長吸煙，或表示沒有進步。任何一個有理智的經營者，都會經常留意客人的習慣。航空界人士會知道某條航綫，某個時刻的某班機的客人是否有吸煙習慣。有些航綫的吸煙者的數目很少，甚至可以不設吸煙區，但有些航綫便不能這樣做。好像往返香港和日本的航班，晚上由日本飛抵香港的多為旅行團，乘客亦以年輕人居多，所以

吸煙區的座位比較少。可是，同一架飛機如果是在早上飛抵香港，乘客大多會是營商的人，吸煙區的座位也會多一些。如果經營者缺乏靈活性，便難以繼續經營了。

我相信其他如酒樓等行業，也會跟隨市場的改變。如果發覺公眾日漸接受減少吸煙，甚至不吸煙，這些行業自然會跟隨潮流作出明智的決定。我們也會看到非吸煙區日漸擴大。所以，我支持政府容許經營者享有較大靈活性的做法。

葉國謙議員致辭：主席，對於這個問題，我本來不準備發言。就有關設立吸煙區來說，民建聯覺得應該務求更多人不受吸煙人士所影響，所以我們認為設立吸煙區會對公眾人士有好處。民建聯的陳榮燦議員因為行業的問題，已向民建聯申請豁免，而我們也接納了他的申請。

剛才我們已聽過陳榮燦議員的慷慨陳辭，亦很細心聽過羅議員的演辭，他指出要推行這項條例，存在着頗多問題，亦未必能夠一下子予以執行。因此，民建聯將會投棄權票。

羅致光議員致辭：葉國謙議員應該明白程序，先給我時間答辯，然後才考慮改變他的主意。剛才議員提及很多困難的問題，我現在嘗試解答大家心中的疑難。

剛才楊孝華議員提出關於彈性的問題，我覺得若他持這個看法，便應該支持我的議案。正如剛才李啟明議員提到，吸煙的人只佔 14%，為甚麼只得三分之一的地方劃為非吸煙區。禁止吸煙區實際應佔 84%，三分之一是一個最低的水平。對於懂得做生意的人來說，他應該定出 84%為禁煙區。我們定為三分之一，便是希望給予充分的彈性。比例可以多一些，可以是一半，可以是四分之三，也可以是 80%。我們建議為三分之一，便是希望給社會一個信息，為那些不想吸“二手煙”的人設立禁煙區，讓他們有一個選擇。我們認為做生意的人是應該定高一點。不過，就立法來說，我們所訂的標準已十分低。

正如陳榮燦議員所說，從事飲食業的人都很聽話。我們作為政府的立法機關制定法律，我相信他們亦會十分願意遵守這些法律。有關私人地方和全高度的問題，我剛才發言時可能說得太快，解釋得不很清楚。事實上，我們本來想定為三分之一，但有些業內人士認為有困難，可能整個廳也供作擺設喜宴，又例如一個吸煙會擺設喜宴，我們沒有理由不租借給他。於是，我們

便要想想怎樣解決這些問題，不論擺設喜宴的人吸煙與否。我在最初發言時提到，我們要分辨甚麼才算是私人宴會，例如我在生日當天，筵開兩席請我的兄弟姊妹吃飯，可以稱之為私人宴會；又或只是一家幾口吃飯，亦算是私人聚會。那麼我們到底如何界定呢？實際上，修正案的重點在於私人活動以外的地方將三分之一的面積列為禁煙區，那麼甚麼才算屬於“私人”呢？如果說某一桌屬私人性質的話，便一定要把它分隔開。其他人士不受影響的話，在私人地方吸煙是可以的，只要分隔開便可以了。那麼為甚麼要說明是全高度的間隔呢？原因是有時候立法存在困難，因為如果只是說明是屏風，便可以是 3 呎的屏風或是 6 呎的屏風，我們如何界定呢？

我們最初在二讀發言的時候也提到，我們原本的目的是要全部禁止吸煙。如果有需要的話，便另闢一個地方給吸煙者，以確保其他人士的健康不會受到影響。現在可以說是一個妥協，我們要求的只是最少要有三分之一的禁止吸煙區。這個所謂“私人”的問題，事實上無須特別予以界定。只要管理人員認為是私人地方或私人宴會，便可以把他隔開。如果不能這樣做的話，他也只不過須要把三分之一的面積劃為禁煙區而已。正如剛才所說，84%的人是不吸煙的，所以，將三分之一的面積劃為禁煙區，一定不會出現實際困難。

關於彈性的問題，剛才陳榮燦議員問為甚麼我們不以面積而以座位數目來界定呢？大家要留意，申請酒樓牌照的時候需要呈交一份圖(floor plan)，內裏已繪畫了容納多少個座位。雖然經營人士日後可以把座位搬移，但是申領牌照時已經有些規定。就剛才陳榮燦議員所說一個可以容納 190 人的地方，可能忽然多容納 11 人。但我擔心的不是他有否違反本條例，我反而擔心他有否違反牌照所載的條例，或其他消防條例。一個容納 190 人的地方忽然坐了 250 人，這會否構成問題呢？不過，這個問題不關乎今天這項議案，最重要的是以申請牌照時所呈交的那個圖則為準則。如果某個食肆本來有 200 個座位，現在只剩下 150 個，那麼，根據我的修正案，便已經無須訂三分之一的面積為禁煙區了。所以，我提出的修正案是十分寬鬆的。事實上，有時候我感到是可以再收緊一些的。

此外，如果有人觸犯本條例，那些執行人員應怎樣做？他應否報警讓警方人員逮捕客人呢？我相信在最初的時候，凡事也應有分寸。食肆可以掛上指示牌，或詢問客人是否吸煙或是否選擇吸煙區，基本上已可以將客人“分流”。如果是吸煙的，便可以有三分之二的地方供他選擇。當然，有些是喜歡和別人作對，他說是非吸煙並坐在非吸煙區，可是他硬要吸煙，那麼我們應怎麼辦呢？正如剛才提到的隨地吐痰問題，當然，如果想得再極端一些，任何人犯了法，其他人都有責任向警方舉報。不過，當然這須視乎環境是否

安全。莫非見到一個大塊頭身持武器說一定吸煙，也要報警嗎？那當然要視乎是否安全才考慮報警。不過，我認為始終執行這件事，並不是真的這麼困難。正如剛才所說，難道我們任由別人隨地吐痰嗎？或任由別人犯法嗎？所以，只要我們能夠清楚劃定禁止吸煙區，同時向客人發出清晰的信息，告訴他哪裏是禁止吸煙區，哪裏可以吸煙，我相信是不會有甚麼困難的。除非全部客人也要吸煙，那麼一定會發生困難，但也一定會出現剛才陳榮燦議員所說的情況。如果所有客人也要吸煙，而他們硬要在那三分之一的地方坐下，又有甚麼問題呢？不過，如果大部分人也不吸煙，我相信那劃為禁煙區的三分之一的地方很快便會滿座，剩下來的便是其餘三分之二可以容許吸煙的地方。在這情況下，我想一個硬要吸煙的大塊頭一定不會堅持要坐在禁煙區裏。如果大家想清楚，這個關於三分之一的問題根本保障了員工在執行工作時面對困難的問題。

我希望以上能夠解答到大家對於剛才我提出修正案的一些疑惑。事實上，我們現在是循序漸進訂為三分之一，但我真的很希望日後能夠全面禁止吸煙，除了一些有特別間隔和設有空調的地方。好像一些可供燒烤的食肆，在燒烤爐上面是設有抽油煙設備的。我相信日後如果酒樓業人士看得出大部分人士也不吸煙，便須設立多些禁止吸煙區，這樣做對他的生意會更有幫助。

我希望大家給我支持。謝謝主席。

Question on Mr LAW Chi-kwong's amendment put.

羅致光議員修正案之議題付諸表決。

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：本席想提醒各位委員，現付諸表決之議題為：羅致光議員就第2、3及4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，請各位核對所作表決。是否有任何疑問？現顯示結果。

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 Andrew CHENG, Mr Paul CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Miss Margaret NG voted against the amendment.

Mr Eric LI, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr IP Kwok-him and Mr NGAN Kam-chuen abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 15 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 26 人，反對者 15 人。他於是宣布修正案獲通過。

全委會主席：衛生福利司，由於羅致光議員之修正案獲可決，你不可就把第 3 條之條次改為第 3(2)條動議擬議修正案，因這與已作出之決定不一致。

Question on clauses 2, 3 and 4, as amended, put and agreed to.

經修正的條例草案第 2、3 及 4 條之議題經付諸表決，並獲通過。

Clauses 6, 13 and 15

條例草案第 6、13 及 15 條

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

The amendment to clause 6 is purely technical so as to make the term "tar yield" consistently used throughout the Ordinance.

The amendment to clause 13 exempts Internet service providers and private correspondents from being caught under section 13(b)(i). We want to catch only those users who place tobacco advertisements on the Internet, not the service providers.

The amendment to clause 15 adds a due process for relevant parties to make representation before the magistrate can order disposal of illegal tobacco display advertisements.

Proposed amendments

擬議修正案內容

Clause 6 (See annex XI)

條例草案第 6 條（見附件 XI）

Clause 13 (See annex XI)

條例草案第 13 條（見附件 XI）

Clause 15 (See annex XI)

條例草案第 15 條（見附件 XI）

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 6, 13 and 15, as amended, put and agreed to.

經修正的條例草案第 6、13 及 15 條之議題經付諸表決，並獲通過。

Clause 11

條例草案第 11 條

梁耀忠議員致辭：主席，我動議修正第 11 條，修正案內容已載列於發送各位委員之文件內。

主席，修正案修正建議的第 12 條的第一部分純粹是技術性的修正，主要是刪去“以書面形式或其他”等字眼。

第二部分的修正是容許煙草贊助商可以在其贊助活動期間，展示其商業名稱或牌子名稱的廣告，而該廣告只是為該活動作宣傳。

我希望各位同事特別注意，我原先提出的修正案是“可為煙草產品作廣告宣傳”，但經過與其他團體接觸後，並得知煙草商也沒有強烈的表示須為煙草產品作廣告宣傳，所以最後我決定修改我的修正案。如果為各位同事帶來不便，我在此道歉。

我在此希望再澄清一次，現時的修正案只容許煙草商可以在其贊助的活動期間，展示其商業名稱或牌子名稱的廣告，而該廣告必須為該活動作宣傳。

我希望各位同事能夠支持我的修正案。主席，我希望在此一次又一次的作出澄清，目前，我這項修正案的內容的主要目的可用 4 個字來形容：維持現狀。為何維持現狀？並非我贊成《基本法》的維持現狀，而是在於過去多年，目前的運作沒有出現問題，特別是很難去證明目前的運作會令觀眾、聽眾或參與該活動的人士，因為該廣告於宣傳時展示，而導致其由不吸煙變成有吸煙的習慣。因此，在這情況下，希望大家可以支持我的修正案，使我的修正獲得通過。

主席，本人謹此陳辭。

Proposed amendment

擬議修正案內容

Clause 11 (See annex XI)

條例草案第 11 條（見附件 XI）

DR LEONG CHE-HUNG: Mr Chairman, I rise to speak against and strongly against the amendment moved by the Honourable LEUNG Yiu-chung. I think this is a big retrograde step backwards in promoting tobacco smoking.

Two points are being raised by Mr LEUNG. The first point is that he does not believe that using brand names and otherwise in events will detract people from smoking. Let me ask him if it does not bring on that effect, why does the tobacco company spend so much money to do this? Why? Why do they want to do that?

Let me ask Mr LEUNG as regards another example. If in front of a whole package of cigarettes, Marlboro or whatever it may be, there is Michael CHANG holding a tennis racket, how would that affect a young, keen tennis player of that young age?

Let me give him another example. If our Governor, Chris PATTEN, has a lot of fans — I do not know how many he has — and see him with a big t-shirt (and which he has done so once) with the word "Marlboro" on it. How would that affect those fans who follow him?

As I mentioned just now, Mr Chairman, in the Second Reading debate, there are over 300 literature research articles to prove that tobacco advertising in any form is really luring young people in particular to smoke and we have got examples from ministers of health from different countries, from Norway, Mrs CHOW just quoted that it does not happen, but I have in my hand a letter from the Norwegian Minister of Health to prove that this is the case, and another one from the British Minister of Health.

I do hope Members will vote against this because I really consider this as a great retrograde step backwards.

Thank you.

羅致光議員致辭：主席，關於這項修正，民主黨不表示支持，最主要的原因，正如剛才梁議員所說，是我們覺得這項修正亦是一個倒退的做法。就民主黨而言，基本上最好是任何的贊助活動都是應該禁止這些香煙廣告，不論是間接或直接。只不過我們考慮到一個問題，就是今時今日，政府仍然未肯投資去支持這些文娛康樂活動時，我們覺得一下子立即將其全面禁止，是會有些困難。所以，對於政府在條例草案內所提出的修正，我們覺得都是已經進一步限制有關的廣告。至於梁耀忠議員的修正，事實上是令那尺度放得太過寬，這是我們比較難接受的。長遠來說，我們是希望政府認真考慮禁止所

有直接或間接的廣告，而同時又提供有關的資源讓這些活動得以舉行，希望大家能夠反對這修正。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the existing section 14 of the Ordinance deems an advertisement for a sponsored event to be a tobacco advertisement if the advertisement bears a tobacco brand name which is not used in association with a non-tobacco product.

The amendment proposed by the Honourable LEUNG Yiu-chung will have the effect of allowing any sponsorship advertisements bearing a tobacco brand name or logo to be displayed in the venue of the event and without any health warning. This defeats the purpose of banning display advertisements and represents a regression of the existing policy and is therefore totally unacceptable.

I urge Honourable Members to vote against it.

梁耀忠議員致辭：主席，剛才多位議員都認為我的修正大倒退，我認為自己只是原地踏步，但看不到自己大倒退，因為我只是維持現時的情況，現在的做法怎能說倒退呢？只是你看不到事實的情況而已。

第二方面，我剛才提到很難證明將習慣不吸煙的人士變為吸煙人士。我曾提出此點，所以剛才梁智鴻議員提到假如沒有效用，為甚麼要做宣傳呢？我只想說的是：做宣傳可以是多方面的，有些人只嘗試使用某一牌子，但可能尚未加強信心，而不斷做宣傳可增強顧客對產品的信心，這樣也不足以為奇，但是，我也不排除有些人會這樣做，而數據方面，是難以證明的，我只想清楚地說，現在用“A”牌子的“A”字加入了活動裏，而並不是說把“A”香煙放進裏面，這樣只是維持現在的做法而已。

主席，本人謹此陳辭。

Question on Mr LEUNG Yiu-chung's amendment put.

梁耀忠議員修正案之議題付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他以為否者佔多。

Mr LEUNG Yiu-chung claimed a division.

梁耀忠議員要求點名表決。

全委會主席：本委員會現進行點名表決。

全委會主席：本席想提醒各位委員，現付諸表決之議題為：梁耀忠議員就第 11 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，請各位核對所作表決。是否有任何疑問？現顯示結果。

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Frederick FUNG, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen and Mr YUM Sin-ling voted for the amendment.

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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr

Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEE Kai-ming, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

全委會主席宣布贊成修正案者 22 人，反對者 28 人。他於是宣布修正案遭否決。

全委會主席：剛才有議員詢問本席，會議何時可完畢，但本席難以預計。若問本席會否處理下一項條例草案，以本席看來，若大家的演辭不太長，也可能再須 1 小時才能把本條例草案討論完畢，那時將暫停今天的會議。本條例草案能引起非常熱烈的討論，這是非常好，本席也很感興趣，但可惜本席不能發言。本席只是有點不明白，有飲有食又可吸煙的飛機是否被視為酒樓？
（眾笑）

李柱銘議員：你稍後便會聽到。（眾笑）

DR LEONG CHE-HUNG: Mr Chairman. I move that clause 11 be further amended by adding subclause (1A) as set out in the paper circularized to Members, and if you allow me, Mr Chairman, I will also speak on another addition of subclause (1B) because they amount to the same thing.

Now, Mr Chairman, when I speak on these two amendments that I want to introduce, I do so with a bit of embarrassment because I am sure Members will say, look, I am taking a slight retrograde step compared with what the Government Bill intends. The Government Bill intends — and I beg forgiveness from those anti-tobacco people up there who is now throwing daggers at me using their eyes — the Government Bill bans display completely but I have taken into consideration of the hardship and the livelihood issue of people who have actually presented their case to the Bills Committee at the Bills Committee meeting, people who are selling cigarettes, people who are at the side

streets, perhaps under the staircase of buildings, who feel that the fact that if we ban all these completely they will lose the few thousand dollars which is essential for their livelihood associated with the money they get for advertising for the tobacco company.

It is because of that, therefore, Mr Chairman, I move two amendments. The first amendment which is to add subclause (1A) is to exempt hawkers and allow them to advertise, to display obviously legally in relation to the fact that there has to be health warnings.

I will also be introducing subsequently subclause (1B) which takes into consideration and exempts small retailers who do not employ more than two employees. I thought this would be perhaps a balance between the need to move along in, banning tobacco advertising, at the same time, taking into consideration a progressive step and the livelihood of a lot of people who may be affected by this.

With those remarks, Mr Chairman, I beg to move.

Proposed amendment

擬議修正案內容

Clause 11 (See annex XI)

條例草案第 11 條（見附件 XI）

周梁淑怡議員：主席，關於規程的問題，梁智鴻議員剛才說到關於零售點的問題，因為我亦有一項很相似的修正，現在意思是不是一併討論，還是分開來處理呢？

全委會主席：根據講稿的安排，先動議第(1A)款，因此，梁智鴻議員應先動議該款，不過，他既然亦將會動議第(1B)款，所以他提及了後者，這是不對的。依正確處理方式，應先處理第(1A)款，然後再處理第(1B)款，即梁智鴻議員的修正案和與其有關之周梁淑怡議員增補第(4)款的修正案，兩者會作合併辯論。

DR LEONG CHE-HUNG: Mr Chairman, I did say that I only wanted to move to amend clause 11 by adding subclause (1B). But I said that if I had your permission, I would like to speak also on (1B). But I were not moving that yet.

全委會主席：本席知道你並沒有動議第(1B)款，而且若你一提及，本席便會請你停止。因此你不用擔心。本席只想向各位委員解釋，現時只是處理第(1A)款，但第(1A)及(1B)款均有修正案，若我稍為提及亦無妨，但如果採用合併辯論，那麼當討論第(1B)款時，情況便會很混亂。現在進行第(1A)款的辯論。

羅致光議員致辭：主席，我的發言主要是針對(1A)的，但是同一個道理是適用在(1B)及周梁淑怡議員所提出的修正，就是如果從我們的民主黨的看法，實在基本上我們非常之支持政府現在於修訂裏面的那個建議，而梁智鴻議員所提出的修正，又或稍後周梁淑怡議員所提出的修正，都會帶來一些我們會擔心可能會發生的事情，就是這一類型的廣告泛濫的問題。

不過，兩者取其輕，梁智鴻議員的修正較為可以接受。當然，我們亦有考慮到，如果政府的條例作出修訂之後，對於一些小販、小型商店或小士多的收入可能會製造一些非常大的困難，但當我們平衡健康及這些經濟的困難的時候，我們傾向比較側重健康的問題。但為甚麼我們終於決定支持梁智鴻議員的修正呢？這是由於我們憂慮如果我們不支持梁智鴻議員的修正，稍後倘周梁淑怡議員的修正通過的話，那個洞便會更大，故此我們寧願那個洞細一點。我們終於決定支持梁智鴻議員這一個修正及接着的修正。謝謝主席。

陳婉嫻議員致辭：主席，我們幾個工聯會的同事也支持梁智鴻議員的修正。我們支持的原因，主要是考慮到一個問題，便是我們知道那些售賣香煙的小販，即那些小攤檔，正如梁智鴻議員提到，特點是兩名僱員以下。我認為要考慮兩方面，即考慮到小商販的廣告沒有大煙草店鋪那麼顯露，而對於小店鋪來說，若不允許他們展示一定的廣告，坦白說，對這一群從事售賣香煙的小商販來說，可能會影響他們的生計。我自己也是零售百貨工會的主席，他們向我投訴，認為假若沒有那些小型的廣告的話，基本上，相信會對他們謀生造成困難，正因為這一點，我個人雖然全力支持推動禁煙，但是在這過程當中，也得考慮到特別在經濟狀況不理想時，假若因為這一條例影響到不少這些售賣香煙的小販的生計的話，我們便不想有這情形發生。

因此，我們支持梁智鴻議員的修正。

李柱銘議員致辭：主席，這個時代在本局就最喜歡“轉軌”，但是我們民主黨今次其實是作出一個令我很痛心的決定，即支持梁智鴻議員的修正的決定。其實，我們就健康這方面來看，我不理會是大機構賣香煙或是小的商店，甚至一個人經營的販賣香煙，吸煙不單止對自己有害，同時對其他人也有害，所以我們從健康的立場來看，根本就沒有理由不支持政府的，但是為何我們民主黨現在要支持梁智鴻議員呢？其實只有一個理由，就是梁議員告訴我，他計算過，如果我們不支持梁醫生，政府的條例就根本不能夠通過，只是基於這個原因，否則，我們是永遠不會放棄這個那麼重要的原則。所以，我們是痛心地支持梁議員的修正，我們不想“轉軌”，但是害怕輸，因為梁議員告訴我不支持他就一定輸，沒有辦法了，現在惟有作出這個決定。

周梁淑怡議員致辭：主席，我們當然是支持可以容許有牌的小販展示煙草廣告，但我們與梁智鴻議員的看法的分歧見於下一個修正。這項修正我們是支持的。

楊森議員致辭：主席，我們民主黨討論條例草案這部分時，已作出很詳細討論及經過一番掙扎，李柱銘議員已提及到我們堅持原則那一點，可是也有些同事提到很多公公、婆婆不過是經營一間很細少的商店，而在門口樹立廣告牌可能已是他們的部分主要收入，假如我們不准他們這樣做的話，可能他們便要申請綜合援助，而這些公公、婆婆也非常希望能靠自己維生，不希望倚靠政府的綜援，這是十分符合我們香港人多勞多得的精神，所以我們的決定是基於這兩個原則及體會到這些老人和一些經營條件較差的小販，當然也考慮到李柱銘議員所提的情況，可是我也希望指出，我們也是十分顧及那些條件較差的小販，因為這點是我們在討論中許多同事也提到的，所以並非是純粹看票源的。謝謝主席。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, while I appreciate the many good intentions raised by Members towards hawkers and other small retailers, I must emphasize that we envisage enormous enforcement

difficulties if this exemption proposed by Dr the Honourable LEONG Che-hung were granted.

There are some 770 hawkers in the Urban Council area who have their licence endorsed to sell tobacco products. In the Regional Council area, I understand that no hawkers have their licence so endorsed. This would mean unequal treatment to hawkers in different parts of the territory.

Even in the urban area, we cannot tell by sight which hawker is licensed or unlicensed or whether his license is endorsed or not. It is therefore impossible to ascertain whether a hawker commits an offence until we can look up the records. Apart from being cumbersome, this has resource implications and we therefore object to this exemption.

On his other amendment which tries to exempt tobacco retailers employing not more than two persons from the display ban, this will again impose very great enforcement difficulties because we have to ascertain how many staff a retailer actually employs in order to determine whether they are exempted or not.

On these two amendments, we must object to this exemption.

梁智鴻議員致辭：主席，我很感謝幾位同事發言支持這修正。正如我剛才開首所說，我引入這兩項修正其實是經過很大的掙扎。在這件事上我亦覺得有少許慚愧，因為作為一個醫護人員、作為一個一直推動全面禁止香煙的人，要提出這樣的一項修正，其實是很艱難及很痛心的做法。

但憑良心講，我們是聽過很多上來我們這個條例草案委員會的人士向我們講述他們的日常生活艱苦，是很需要在這方面這樣做，所以我才在最後提出這項修正，我亦希望同事可以支持這兩項修正，因為我這兩項修正最少不會將那扇門開得太大，如果將那扇門開得太大，就很可能引來其他有關香煙廣告的問題。

我在此亦要向政府致歉，因為很明顯，我亦同意這項修正很可能引起運作上及執行上的困難。不過，其實政府所引入的條例草案也有很多執行上的困難，例如禁止 18 歲以下的人士買煙，這又怎樣執行呢？是否派一個警察在每個煙檔旁邊駐守呢？所以他們亦要考慮這點。不過，最後回到牌照的問題上，例如小販販賣煙草的牌照，兩個市政局稍後可能亦要研究這件事。

謝謝主席。

Question on Dr LEONG Che-hung's amendment put and agreed to.

梁智鴻議員之修正案之議題經付諸表決，並獲通過。

全委會主席：本委員會仍繼續處理第 11 條。梁智鴻議員已作出預告，表示擬於第 11 條增補第(1B)款。周梁淑怡議員亦已作出預告，表示擬於第 11 條增補第(4)款，而這與梁議員之建議是有關連的。

本席建議進行合併辯論，一併辯論梁智鴻議員及周梁淑怡議員就第 11 條提出之修正案。

本委員會現進行合併辯論，一併辯論梁智鴻議員及周梁淑怡議員就第 11 條提出之修正案。按照《會議常規》第 25 條第(4)款，本席會先請梁智鴻議員動議修正案。

梁智鴻議員致辭：主席，我動議進一步修正第 11 條於該條增補(1B)款，修正案內容已載列於發送各位委員文件內，我剛才已詳述了，不想浪費各位的時間了。謝謝。

Proposed amendment

擬議修正案內容

Clause 11 (See annex XI)

條例草案第 11 條（見附件 XI）

全委會主席：本席會請周梁淑怡議員就梁智鴻議員動議之修正案以及其本身之擬議修正案發言，但除非梁智鴻議員之修正案遭否決，否則本席不會請周梁淑怡議員動議修正案。倘梁智鴻議員之修正案獲可決，即表示周梁淑怡議員之修正案不獲通過。

周梁淑怡議員致辭：主席，我的修正案其實與梁智鴻議員的修正案分別不太

大，不過，我希望同事注意的就是，因為梁智鴻議員的修正說明零售商聘用不多於兩名僱員，即是那個硬性規定得很緊，一般來說，一個小本經營的生意如士多，可能都不過是由 5 人以下經營，而我們一般對小僱主定義，都是以由 5 人以下經營的作為小僱主，其實那些都是一些非常小規模的一些經營。

但是，如果梁智鴻議員這麼硬性規定，我相信可能出現一個執法的問題。基本上，我亦都了解到，一般的零售點都是小本經營的，是非常小的僱主，所以我希望大家能夠支持我的修正之餘，就是變成反對梁智鴻議員的修正。其實，基本上，支持我亦是支持一些很小的商販，使他們得以能夠仍然運作。如果這麼硬性的規定的時候，可能對於一些如只有 3、4 個僱員工作的士多造成影響。故此希望大家反對梁智鴻議員的修正，稍後支持我的修正。

梁智鴻議員致辭：主席，周梁淑怡議員認為我的修正案相當缺乏彈性，我也同意這說法，但是大部分的小商店可能有 5、6 個人工作，而他們大多數是親屬，並聘請 2、3 個人協助。我擔心的是，就周梁淑怡議員提出的修正而言，我知道她的出發點是好的，如增加彈性，最後卻可能會引致別人取巧。換言之，現時大的超級市場、公司，只要他們在店內售賣香煙，便可於大的櫥窗展示香煙廣告，我認為這種情況比現在更糟。我們已反對那些公開的廣告，若香煙廣告商把這些金錢花費在大公司櫥窗的廣告上，我認為這樣的效果會比現時的情況更差。

謝謝主席。

周梁淑怡議員致辭：主席，我相信在我們的條例草案委員會中，已曾就這點作出討論。其實大家都清楚知道，現時的超級市場或百貨公司售賣香煙根本是絕無僅有的。所有的零售點都是小規模的。原因是一般想購買一包香煙的人士，不會到超級市場買一包香煙，故現時的零售點幾乎是固定了，數目不會變，而且絕大部分都是很小規模的。

我希望政府能給予靈活性，不致令一些小商販或小本經營的僱主受到影響。謝謝主席。

李柱銘議員致辭：主席，本來我不想發言，但聽過周梁淑怡議員剛才的發言

後，我知道更一定要支持梁智鴻議員的言論。

既然煙民不會光顧大規模的販賣點，像我們民主黨現在支持“亞公”、“亞婆”等長者，周梁淑怡議員卻說支持小商戶。若一般人不去光顧大商戶，而容許小商戶作廣告宣傳，只會把門越開越大。因此，民主黨一定支持梁智鴻議員，希望不須討論周梁淑怡議員的修正案。

主席：周梁淑怡議員，是否規程問題？

周梁淑怡議員致辭：主席，李柱銘議員似乎有少許誤會我的意思。他總是強調“不需要”，我相信他可能聽漏了我部分的發言。

梁智鴻議員的修正指明“兩名僱員”，在法例上作這規定，實在是非常“硬性”。若很多小本經營者如僱用 3 名夥計，便不合乎規定。很多細小的士多其實已做這種生意，他們的規模相當小，而且極依賴廣告補貼他們的收入。因此，我們希望能有這個靈活性，我絕非要求將它增廣。事實上，目前一般零售點都是小規模經營的。

李柱銘議員：我聽得很清楚，我還是喜歡梁議員所說的“少些人”、“較少的規模”、“賣少些香煙”，對照之下，比“較大的規模”、“賣多些香煙”減少一些殺傷力。

主席：梁智鴻議員，是否要求澄清？

梁智鴻議員：其實我可否再發言，主席。

主席：只要不是重複論點便可以了。

梁智鴻議員：剛才周太說得很對的，以現在的超級市場而言，香煙不是他們最重要的貨品，當然他們不會賣廣告。今次這條條例草案禁止公開登廣告，但當香煙商要賣廣告，而他們沒有地方賣廣告時，他們會如何呢？他們會否就向超級市場打主意，在這方面賣廣告呢？我相信同事要記着這點。誠然，我自己同意，現時煙草不是超市的主要貨品，不敢說香煙是不是，當煙草商

不能在其他地方賣煙草廣告時，就會向他們入手。我希望同事會看到這點，反對周梁淑怡議員的修正。

田北俊議員致辭：主席，剛才幾位議員的發言來來去去都說如果是兩名僱員以下的那些就一定是“亞婆亞伯”，說到很可憐似的。民主黨就說支持梁議員，說這些可憐的“亞婆亞伯”，就讓給他們賣吧！我不喜歡吸煙，你反對吸煙就反對吧！為何找個理由，兩名僱員以下就一定是“亞婆亞伯”，但可能兩名僱員以下的不是“亞婆亞伯”，但就一樣可以賣煙，反過來說，有 5 名僱員以下的商戶如一些士多，卻未必一定很富裕，可能是一個 5 人家庭做這生意，比兩名僱員以下的商號還要貧窮。這個理論實在是差不多。倘若是支持的話，5 名僱員和兩名僱員根本無甚分別，同樣是售賣香煙。如何投票沒有問題，但若謂支持兩名僱員以下而不可以支持 5 個僱員以下，我覺得道理是不成立的。

陳偉業議員致辭：主席，我想田北俊議員不太理解梁智鴻議員的修正的內容。基本上，家庭成員是不計算在僱員內，即如那個家庭成員有幾人，另外再加兩個僱員就包括在內，所以在過去幾個月，我自己亦會見過不少地區的販商，小販或士多方面的負責人。基本上，透過梁智鴻議員的這項修正，應該保障到一些經營家庭式士多的小商人，或一些持小販牌或報販牌售賣香煙的人，我相信對他們有一定的保障。當然，正如李柱銘議員先前所說，原則上都應該不准的。但是如果對一部分人構成太大的打擊，這一項修正也是一個妥協的修正。

希望各位議員支持這項修正。

黃震遐議員致辭：主席，剛才已提過民主黨根本希望全面禁止這方面的廣告，不過因為可能影響到依賴這些小生意的人的生計，所以容許有這修正，因此，我支持梁智鴻議員；不過，我也希望這些小販和那些經營小生意的人應記得這一條路再也行不通，我們只是提供一個過渡時間，一個機會使他們得以適應及在未找到新的生計前，獲得這樣的安排。政府最終也會封閉了這一“漏洞”，否則，不久煙草商便會利用這一漏洞，再引誘他人吸煙，我們不希望發生這種情況。

李柱銘議員致辭：主席，我同意剛才梁智鴻議員的說話。若我是煙草公司的

公關，我便會微笑：“就這樣吧！以後就將公公婆婆都穿得很美麗，衣服鮮艷到了不得，吸引別人注意力，賣煙給年輕人。”其實我是很擔心的，不過對我而言，其實田北俊議員說得對的，邏輯上是同意你的，是要完全禁止的。希望政府會留意，希望下一屆的立法局，即第一屆的立法會，會真真正正能在這方面下一番工夫。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I have already spoken about Dr LEONG's proposed amendments. I would like to address the Honourable Selina CHOW's amendments.

Mrs CHOW's amendment to exempt such establishments poses again enormous difficulties for the Administration. We therefore object to these exemptions.

It is not difficult to envisage big supermarkets, convenience stores, restaurants, grocery stores, other stores being flooded with all kinds of tobacco advertisements and the sizes of these tobacco advertisements are not specified in the amendments. This is totally unacceptable and defeats the purpose of imposing a display ban. Therefore we must object to this exemption.

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

梁智鴻議員修正案之議題付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他以為可者佔多。

Mrs Selina CHOW claimed a division.

周梁淑怡議員要求點名表決。

全委會主席：本委員會現進行點名表決。

全委會主席：本席想提醒各位委員，現付諸表決之議題為：梁智鴻議員動議之修正案，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，請各位核對所作表決。是否有任何疑問？現顯示結果。

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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, 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 CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr LEUNG Yiu-chung voted against the amendment.

THE CHAIRMAN announced that there were 38 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 38 人，反對者 9 人。他於是宣布修正案獲通過。

全委會主席：周梁淑怡議員，由於梁智鴻議員之修正案獲可決，你不可就第 11 條動議修正案，因這與已作出之決定不一致。

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

經修正的條例草案第 11 條之議題經付諸表決，並獲通過。

Clause 14

條例草案第 14 條

全委會主席：衛生福利司。梁耀忠議員及梁智鴻議員已分別作出預告，表示擬於第 14 條內擬議之第 14(2)條動議修正案。

本席建議行合併辯論，一併辯論由衛生福利司、梁耀忠議員及梁智鴻議員就第 14 條內擬議之第 14(2)條動議之修正案。

本委員會現進行合併辯論，一併辯論由衛生福利司、梁耀忠議員及梁智鴻議員就第 14 條內擬議之第 14(2)條動議之修正案。按照《會議常規》第 25 條(4)款，本席會先請衛生福利司動議修正案。

請讓本席解釋一點，《會議常規》第 25 條第(4)款制定先後次序，有時本席指出某位議員年資較深或由某位官員動議，是由於大家動議的範圍相同，因此按其他原則決定先後次序。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that section 14(2) in clause 14 be amended as set out in the paper circularized to Members.

This is a tidying-up exercise. The policy intention remains the same as the existing provision, that is to say, we deem any advertisement which induces smoking, depicts a tobacco product, contains a tobacco brand name or logo as a tobacco advertisement.

The amendment aims to catch objects such as lighters or stickers which are

not advertisements in the traditional sense but have the effect of promoting smoking or tobacco products. We also aim to clarify what is exempted.

As regards sponsorship advertisements, we will continue to exempt sponsorship in the name of a tobacco corporation or sponsorship using a name identified with a tobacco product but in association with non-tobacco product.

There is some concern that the television broadcasters will be caught by showing any smoking scene or tobacco product or brand name in their programmes or documentaries. I can assure Members that the exemption granted under subsection (3) will give sufficient protection to those concerned. We will not initiate prosecution action just because a news report or television programme shows such a scene accidentally or incidentally.

For example, if a sports programme showing an overseas event where a banner in the venue shows a tobacco brand name or logo, or if the interviewee in a news or documentary is smoking while interviewed, such appearances are regarded as accidental or incidental to the programme. As long as no valuable consideration has been given for such accidental or incidental appearance, they will not be treated as tobacco advertisements.

Proposed amendment

擬議修正案內容

Clause 14 (See annex XI)

條例草案第 14 條（見附件 XI）

全委會主席：本席會請梁耀忠議員就衛生福利司動議之修正案，以及其本身之修正案及梁智鴻議員之修正案發言。待梁耀忠議員發言後，本席會請梁智鴻議員就各項擬議修正案發言。不過，在此階段不得就梁耀忠議員或梁智鴻議員之修正案動議任何議案。

梁耀忠議員致辭：主席，關於這一條條例，我將會提出修正案，最主要的內容是在第 14(2)條作出規限。根據現行條例，例如展示 A 牌子的香煙廣告是不可以的，但是如果以 A 牌子的牛仔褲贊助活動就可以，但事實上是不會這樣的，因為 A 牌子的香煙不會資助 A 牌子牛仔褲公司去贊助一項活動，這樣

做是完全沒有意義的，而我的修正就是說，如果是 A 香煙公司贊助一項活動的話，例如球賽，就可以容許它稱為 A 盃球賽。我的修正案的內容就是這麼簡單，希望大家明白這個道理，即是說 A 不是 A 香煙，而是 A 盃的球賽，與現時的情況差不多，希望各位支持。

DR LEONG CHE-HUNG: Mr Chairman, the whole amendment here is on sponsorship. I think there is a lot of misnomer and I would like to make this clear, and that is nobody, not in the Bill, is against sponsorship, or banning sponsorship. What we are banning is advertising in the disguise of sponsorship. Let me perhaps spend a little bit of time to explain what the situation is like now with the current law, what the Bill introduced by the Government will bring about, what Mr LEUNG Yiu-chung's amendment will bring about, and what my amendment would bring about.

The current situation, and I do hope the Secretary for Health and Welfare would correct me if I am wrong, is that if you use the words, let us take an example, Marlboro, if you say "Marlboro Tennis Match" it is actually against the law at this point in time, but the fact is that it is not refined enough that you can actually implement to take effect.

What the Government intends to do is to tighten loose ends, as it were, so that it could actually implement the law properly. But, at the same time with the Government's Bill, if you say "Marlboro Classic Tennis" or you say "Kent Holiday Rally" then you are alright. The fact remains in that situation you still see the word "Kent", the word "Marlboro", the word "Camel" or whatever it is which in the blatant eyes of the young people would be attracted by all these attractive advertisements.

Mr LEUNG's amendment is even worse. Mr LEUNG says, "look, it does not really matter. You can actually even say "Marlboro Football Match". You do not even need to add the word "Marlboro Classic Football"". It is a direct approach to indicate that this is actually a secret and nothing else.

Now, what I intend to introduce is an amendment to allow only corporate sponsorship. In other words, I will not allow brand names. I will only allow "British American Tobacco Company" or "RJ Reynolds", who is the originator of Camel. That is actually basically what it is.

Now, I do agree and I think I do agree that because of all this sponsorship business and because of all these issues about banning sponsorship, the cultural people, the sports people and shamefully even the rehabilitation organizing people are being drawn in to support the so-called advertisement in the disguise of sponsorship. Well, I can understand why. Very simply, they need the money to keep them in function and we need to see the good culture aspect in Hong Kong, the good sports and to support the rehabilitation organizations.

But be that as it may, let us look at it from two angles. The first angle is that our friends who appeared in the Bills Committee actually told us that the whole year of cultural, sports, perhaps even rehabilitation, support from the tobacco company amounts to around \$5 million. This is about 1% of the interest of Hong Kong's fiscal reserve. I would appeal to the Government that if my amendment goes through, the Government should take the initiative of taking a positive step to setting up funds, for example, or introducing a tobacco levy tax, for example, to support this. Other countries have done it. Victoria has done it with very good effect. I do not see why with all our enormous reserve in Hong Kong we cannot move in this direction — to want to promote sports and culture activities and at the same time ban the harmful effects of tobacco.

So with that, Mr Chairman, I do hope Members would vote for my amendment and reject the two amendments moved by the Government and Mr LEUNG Yiu-chung. Thank you.

全委會主席：各位委員現可就衛生福利司就第 14 條內擬議之第 14(2)條動議之修正案，以及就梁耀忠議員及梁智鴻議員各自提出之修正案進行合併辯論。

周梁淑怡議員致辭：主席，我相信我們現在是討論梁智鴻議員基本上用趕盡殺絕的方式禁煙，但又沒有足夠的說服力。他所提及的是廣告，但假如那個廣告純粹是顯示一個所謂“牌子”(logo)，又如何可以吸引人去吸煙呢？我覺得要限制別人擺放“logo”的自由，無可否認是一個很大的限制，但他卻說不出其觀點的理據。

以一項活動而言，假如是由某一隻牌子的商品贊助，而只是顯示是由該商品贊助的話，那樣又如何會引導別人去吸煙呢？當然，正如梁智鴻議員亦承認了，是要趕盡殺絕，那麼便無話可說，最好就是甚麼都看不見。最好就是將所有香煙銷毀掉下海裏，像銷毀鴉片一樣，他對“煙仔”的立場是絕對的。但問題是以一個合法商品而言，如何可以證明顯示其“logo”便會引導別人吸煙呢？如果不能言之成理，為何要作出這樣的限制呢？為何因此而令那些活動沒有可能或無法舉行呢？當然，若政府可以以公帑資助便最好，但若政府不提供資助時，即活動根本無法舉行。這樣是否會損害了某一些活動，而是否應該真的要付出這代價呢？我希望各位同事反對梁智鴻議員的修正案，支持梁耀忠議員的修正案。

羅致光議員致辭：主席，民主黨支持政府的修正，至於梁耀忠議員的修正，我們覺得是沒有必要的。關於梁智鴻議員的修正，可以說是我作為民主黨衛生發言人其中一項最困難的工作。

以整個吸煙問題而言，大家都知道是非常具爭議性，而在我們黨內是由最極端——即最好甚麼都不禁——以至甚麼都要禁的觀點都有，而梁智鴻議員這項修正亦是我們黨內最具爭議性的，我亦不妨說出來給大家知道，不過我們黨最後的決定認為梁智鴻議員這項修正並不符合我們黨的看法，所以我們不能夠支持，我相信這亦是一個平衡的問題。

事實上，在先前的發言內，我們亦已表示實際上我們很希望更進一步，梁智鴻議員的修正的精神我們民主黨是支持的，但正如先前已提及，困難在於如果政府未能夠投放足夠資源於贊助活動，在現階段我們民主黨是難以支持這件事。不過，我們相信只要政府肯拿出足夠的誠意去資助這些活動的話，民主黨日後會非常樂意、非常高興支持有關的修正。謝謝主席。

鄭家富議員致辭：主席，就民主黨在文康廣播的政策方面及諮詢政策方面，我希望針對政府和梁耀忠議員的修正以及剛才周梁淑怡議員對於廣告的看法，表達一些意見。

我在條例草案委員會也曾就該問題表達意見，那些廣告商或煙草商經常說他們所展示的廣告並非希望吸引人們吸煙，即使是這樣的話，也沒有證據證明擺放一個“logo”就會吸引人吸煙，充其量只會吸引那些已有吸煙習慣的人轉換牌子。我十分清楚記得黃霑先生——一位非常出名的廣告製作人——所說的話，在他第一個推銷“菓子鹽”的廣告，他提及怎樣才能使人們喜歡飲用這個“菓子鹽”，他想了很久，結果想到“唉！舒服囉！”這句說話吸引香港人開始用“菓子鹽”，他的理論是廣告根本由始至終就是要吸引

人購買那商品。

主席，我真的不能接受那些煙草商指刊登廣告或以其牌子贊助節目其實只是贊助，並不是希望人購買該商品的論點，若然的話，我真不明白他們為何花費那麼大筆金錢去做廣告。至於梁耀忠議員的修正，基於剛才我所說的原因，我認為必定會使到不少香港人，特別是青年人受影響。主席，因為現時許多贊助活動，特別是體育活動，實在對許多青年在這方面存有相應效果。假如你問我有何直接關係，我相信不少研究已證實是有關的。不過問題是煙草商並不會與我們談論這些問題，而只是與我們談論另一些完全沒關係的事情。

關於文康廣播方面成立一個基金，或體育基金，或抽取煙草稅後再撥一些金錢以推展文娛康體的發展，我們已討論了許多年，以每年有 18 億元的煙草稅來計算，我們如果仿效澳洲 1% 的做法，每年已有 1,800 萬元，該數目實在是非常龐大。如果我們能夠踏出這第一步，根本政府這項建議，甚至是梁智鴻議員的建議，我們民主黨也敢支持，不過問題是假如作出支持之後，現時既沒有再徵收煙草稅以設立一個基金，我們便將要再承受來自文娛康樂團體的很大壓力，於是我們如剛才李柱銘議員所說，又一次要再退一步，接受政府這項修正，希望這項修正能真的慢慢地幫助煙草商，因為現在已寫明廣告不得提及煙草產品牌子。我們認為並希望此舉能進一步打擊煙草商的廣告，最低限度是新一代不會吸煙。

主席，本人謹此陳辭。

李柱銘議員致辭：主席，煙草公司的公關是全世界收取最高報酬的人，他們的噱頭是最好的，但有時說話就真是侮辱了我們的智慧。他們說廣告並非是希望吸引原來不吸煙的人吸煙，只是要令吸煙的人轉換牌子而已，這真是天下間的大荒謬，難道有人買香煙時他們會問一下：“先生，你以往吸過香煙嗎？未吸過！快點回家罷，不要買了。我們只賣給那些想轉牌子的人。”那會有人相信呢？我們民主黨經常做宣傳，有時候在街上賣廣告，放一個白鴿標誌出來，那麼我們就是白鴿黨，是嗎？吸引甚麼呢？必定是希望現在支持自由黨、民建聯那些人全部支持民主黨，但是有一些新選民，難道不爭取他們，叫他們回家不要投票嗎？所以煙草商說的話，真的是可能騙到 3 歲小孩，但是 4 歲的便不行。所以我們千萬不要聽他們的說話，聽聽也還可以，但心中知道他們是說謊才好。

周梁淑怡議員說展示那些牌子的“logo”怎會引人吸煙，如果她有參觀過那些網球賽，便知道他們根本是邀請你吸煙，不是只是送件T恤給你穿、或送一頂帽子給你戴那樣簡單，他們完全是將免費香煙放在你面前。若果有人未吸過煙的，叫他試一口，難道他們會叫他不要嗎？所以，說這一番說話的人，我真不知她究竟所為何由，可惜她現在不在此聆聽。

其實我心目中是完全支持梁智鴻議員，但投票時就不可以；不過，我希望政府就真的能找多些喜歡宣傳香港的基金來支持體育運動，好使年青人得益，不要受煙商吸引，例如香港明天會更好基金，今天也邀請了我演講，有機會給我會見一下外國記者。其實他們是花了很多錢在這一方面，但也應該花錢在另外一方面，就是贊助一些運動項目，惠及香港的青年人，那就真的會令香港明天更好了。所以，主席，投票時我會不大高興，但希望梁議員他日更好運，希望政府更向前進步。

黃震遐議員致辭：主席，有關梁耀忠議員的修正，由於我的同事已經提及了，現在我不想再批評各方面反對他的看法。有關梁智鴻議員的修正，我也想談談羅致光議員剛才已經解釋了，民主黨對這題目是爭論過不只一次，甚至很多次也爭論得臉紅耳赤，其實，關於這個問題，我們不認為煙草商的廣告沒有影響力，我們在這一方面也有一致的看法，而關鍵性問題在於甚麼稱為廣告與如何避免誤殺良民？

梁智鴻議員提到禁止宣傳香煙的牌子，但這牽涉到一個問題，例如“Kent”、“Salem”等其實是地方的名稱，如果這樣禁止，便使很多與香煙無關的事情也被禁制，我們認為“廣告”應怎樣理解？如果是牽涉到香煙牌子的設計有雷同的地方，而且顏色、字體也雷同，假如名稱與字母也相同，這樣便算真正幫助香煙推銷廣告；否則，便不一定屬於廣告，這一類比較複雜的看法，我們根本在今次審議這條例草案時，沒有辦法繼續談論，也沒有機會與梁智鴻議員商量，以比較恰當的字眼去界定間接性的廣告的定義，所以，我們民主黨內部也不能達成一個共同的想法。我希望將來梁智鴻議員、所有反吸煙的人士與政府一同繼續研究這一方面，因為我們認為那種真正推廣市民吸煙的廣告應加以禁止，但是，技術上我們暫時未能做到而已。

梁耀忠議員致辭：主席，我總是覺得如果我們要真正推行反吸煙，最直截了當的做法就是將香煙視作一種毒品，不可以再流傳，這是最好不過的了，不

用再討論那麼多。因為只要你肯定了那是毒品的話，那就完全不同。但是，一方面我們在現實中又不是這樣做，我們容許其存在又不將其界定為毒品，但另一方面又限制某一些商品的宣傳，我覺得實在會對《人權法》造成障礙。因為《香港人權法案條例》第十六條規定，人人有發表自由的權利，這些權利包括以語言、文字或出版物、藝術或自由選擇的其他方式，不分國界尋求接受及傳播各種消息及思想的自由。

可能有人說我濫用人權，但是事實上人權真的存在，不過，當然《人權法》內亦有說公眾健康可以構成一個合理的目的，對行為加以限制亦可以不違反《人權法》。但問題在於我們雖然有很多醫生以很多事實去表明吸煙真的會危害健康，但是我們又不將香煙當作毒品那樣處理，認為未惡劣至如斯地步，那麼我們應該如何處理呢？我並非鼓勵吸煙，我一直也不鼓勵人吸煙。我常常對我的學生說不要吸煙，但是問題在於要做這工作時，不僅只是禁止，教育更為重要。此外，派發香煙這種情況，其實不單止在球賽的場內有派發香煙，在地鐵站也有人派發免費香煙。

還有一點，我知道一般青少年人之所以吸第一口煙，或許不是因為他看到駱駝，亦不是見到那些山山水水，不是見到那些廣告，而是隔鄰的朋友說試一口罷，他們也不知是何種牌子就試了一口，所以第一口煙不是因為看了廣告而引致吸第一口煙的，即是不一定是廣告令他染上煙癮，而是最主要的群體影響。青少年人做甚麼事也是群體的，這才是核心問題。所以青少年的吸煙問題，我們應針對朋輩的影響，不單止吸煙、吸毒，甚至其他壞的行為都是朋輩的問題，所以我覺得若說要限制廣告，從人權角度來看，我自己比較難於接受。

當然大家說今天我們要顧及公眾健康，正如我剛才也說過，除非我們採取極端手段，否則我很難接受。

謝謝主席。

MR JAMES TIEN: Mr Chairman, I think declaring my interests that I am a non-smoker does not mean much. A lot of people here probably do not smoke, but I would also like to declare my interests as Vice-President of the Tennis Patrons Association, which every year organizes the Marlboro Open Tennis Tournament in Hong Kong. So, I would just like to say a few words about Dr LEONG's proposal.

I think he is suggesting that "Marlboro Open Tennis" is not acceptable, but

rather, something like "Philip Morris Open Tennis" would be. But I think from the sponsorship's viewpoint, if Philip Morris is supposed to come up with like over 10 million every year to sponsor the Marlboro Open Tennis using the name only of Philip Morris and not as Marlboro, I do not think it will be a starter. So, you have got to be really realistic. Unless one day the Government or the Urban Council is willing to pick up the sponsorship fee, where will we get tennis players like Michael CHANG or Pete SAMPRAS to Hong Kong? Then this event will be over.

As to the Honourable Martin LEE, usually whenever he says something, I believe him because he is always correct. This is one of the rare occasions which I think he might have got his facts wrong. The Marlboro Open Tennis does not give away cigarettes. In fact, in the open stadium where we sit, with several thousand people watching Michael CHANG playing Pete SAMPRAS, smoking is actually banned from the stadium. So, from that point, I do not think, at least in the stadium, when you have a Marlboro Open Tennis, it would in that sense encourage people to smoke.

Certainly, I do agree with the rationale that staging the Marlboro Open Tennis certainly has some advertising value. I think that is a true statement. If not, who would want to do it? But on the other hand, unless we find a better solution now for the tennis tournament, for the soccer tournament, or for all the arts festivals, if we do it immediately all of a sudden, we are going to lose this event now.

Thank you, Mr Chairman.

李柱銘議員致辭：主席，田北俊議員是一個誠實人。我很欣賞他剛才所說的一句話，他指“賣廣告”當然是有其價值，否則為何要這樣做！他說得非常對。但煙草公司的商人仍未肯承認，他們說是要吸引煙民轉牌子，彼此“賣廣告”都是為了轉牌子。那麼真好！不如全部都禁止，彼此“打和”，這樣沒有甚麼不妥！

因此，我認為田北俊議員的說法實在是最清楚真實的狀況。我希望以後不再聽到那些似是而非的論據。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the two Members' amendments go to two extremes. The Honourable LEUNG Yiu-chung's amendment will totally remove any control in relation to tobacco brand name sponsorship. We find this regression of the existing policy objectionable.

On the other hand, Dr the Honourable LEONG Che-hung's amendment will effectively ban advertising of non-tobacco related business which shares the same name of a tobacco product. We do not want our Ordinance to affect those we have no intention to control. The Government therefore objects to both these amendments. Mr LEUNG Yiu-chung's other amendments to the proposed section 14(2) will create confusion to what is a tobacco advertisement by saying only what is not a tobacco advertisement.

全委會主席：在本席把衛生福利司之修正案付諸表決前，本席現提醒各位委員，倘衛生福利司之修正案獲可決，即表示梁耀忠議員及梁智鴻議員各自提出之修正案不獲通過。

Question on the Secretary for Health and Welfare's amendment put.

衛生福利司之修正案之議題付諸表決。

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，現付諸表決之議題為：衛生福利司就第 14 條內擬議之第 14(2)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，請各位核對所作表決。尚欠多人。是否有任何疑問？現顯示結果。

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 CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEUNG Yiu-chung, Mr NGAN Kam-chuen and Mr YUM Sin-ling voted against the amendment.

Mr Eric LI and Mr Paul CHENG abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 18 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 26 人，反對者 18 人。他於是宣布修正案獲通過。

全委會主席：由於衛生福利司就第 14 條內擬議之第 14(2)條動議之修正案獲可決，梁耀忠議員或梁智鴻議員不可動議他們各自提出之修正案，因這與已作出之決定不一致。

全委會主席：現由梁耀忠議員動議第 14 條內擬議之第 14(3)條。

梁耀忠議員致辭：主席，我動議修正第 14 條內擬議之第 14(3)條，修正案內容已載列於發送各位委員之文件內。

Proposed amendment

擬議修正案內容

Clause 14 (See annex XI)

條例草案第 14 條（見附件 XI）

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I do not see the point or any merit for the Honourable LEUNG Yiu-chung's amendment, and hence object to this amendment. The expression "notwithstanding a certain section" is a very common legal phrase. It serves to clarify which specific provision has the overriding effect.

Question on Mr LEUNG Yiu-chung's amendment put.

梁耀忠議員之修正案之議題付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他認為否者佔多。

Mr LEUNG Yiu-chung claimed a division.

梁耀忠議員要求點名表決。

全委會主席：本委員會現進行點名表決。

全委會主席：本席想提醒各位委員，現付諸表決之議題為：梁耀忠議員就第

14 條內擬議之第 14(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，請各位核對所作表決。尚欠 2 人。是否有任何疑問？現顯示結果。

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr LEUNG Yiu-chung voted for the amendment.

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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, 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 David CHU, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

THE CHAIRMAN announced that there were 10 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

全委會主席宣布贊成修正案者 10 人，反對者 37 人。他於是宣布修正案遭否決。

周梁淑怡議員致辭：主席，鑑於先前梁智鴻議員的第 11 條的修正獲得通過，而我不可以動議修正第 12(4)條，所以現在我撤回先前已通知各委員有關第 14(4)條的修正。

Question on clause 14, as amended, put and agreed to.

經修正的條例草案第 14 條之議題經付諸表決，並獲通過。

Clause 18

條例草案第 18 條

周梁淑怡議員致辭：主席，第 18 條的修正是關於在香煙零售點容許零售商連煙附送一份價值不超過所購買牌子 20 支裝香煙的價值的贈品，為何會有這個情況呢？因為當我與商販傾談時，他們很鄭重的提到現時私煙的情況實在是非常嚴重，而現時大家也知道估計在銷售市場中私煙所佔的比例達三成之多，事實上因為私煙的價錢較付足稅的香煙便宜許多，所以許多煙民也會選購走私煙，然而這些小商販往往為着適應，會在合法完稅香煙附贈一些小禮品，如打火機等。他們告訴我，假如他們不能這樣做，便會引致那些合法完稅香煙與走私煙沒有分別，因而會導致合法做生意的人反而失去競爭力，希望大家能了解到，這是會影響許多小商販唯一可以對付走私煙販的競爭力，謝謝主席。

Proposed amendment

擬議修正案內容

Clause 18 (See annex XI)

條例草案第 18 條（見附件 XI）

羅致光議員致辭：主席，民主黨不能支持這項修正。民主黨也曾考慮到周梁淑怡議員所提有關私煙的問題，也明白到這個問題是值得我們關注的，不過，我們認為不適宜在這一條例草案內處理有關附送禮物與私煙之間的關係，尤其是當我們考慮到如果賣一包香煙，便贈送一個公仔，而公仔上寫上了某某香煙的牌子，那麼，這是很麻煩的事情，而且，我們認為這樣做，便會留下一個大的漏洞，給予他人機會利用法律的縫隙。所以，在這種情況下，民主黨不能支持這項修正。謝謝主席。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I must register my strong objection to this proposed amendment. It is full of problems. It is totally contrary to our policy objective. We aim to discourage young people from taking up the habit and encourage those who smoke to quit.

The attachment of gifts to tobacco products sold aims at encouraging people to smoke and to perpetuate the habit. Enforcement is also a problem

because it is not possible to estimate the market value of the gift which is normally specifically designed for that event.

周梁淑怡議員致辭：首先在修正內說明，那禮物的價值不能超過所購牌子一包 20 支裝香煙的價值。

第二，所附送的禮品要有健康忠告。

第三，我想大家注意一點是，當那些禮品送出時，是在零售點當煙民買香煙時才送的，所以基本上不會有青少年可以拿到這些東西的。事實上，青少年在那些地方購買香煙，根本已經觸犯了法例，因為不能售賣香煙予 18 歲以下的青少年。

全委會主席：李柱銘議員，如果插言是有關規程問題則可以，因為這是一個由周梁淑怡議員動議的修正案。

李柱銘議員：她提出了一些新的論點，也不可要求她答辯嗎？

全委會主席：除非你只要求她澄清某一點。請你精簡些。

李柱銘議員：也許我就要求她澄清。

全委會主席：因她剛才已發言答辯。That was the final reply. I am sorry.

李柱銘議員：譬如那包香煙是售予成年人，但那件禮品會否是一些非常吸引年輕人或小孩看到後而使他們非常渴望長大後吸煙的東西呢？

周梁淑怡議員：主席，那些禮品並不是在街上隨便送出的，而是那些煙民購買香煙時附送的，所以並不是任何青少年對那些禮品感到興趣時便可以隨時自己去拿取的，我們也考慮到的是，事實上有許多人曾提到現時有些禮品是隨處派發的，所以可能派發到青少年的手上，現時所說的並非那些，這些純粹是在零售點購買香煙時附在所銷售香煙一起獲贈的，以令合法完稅香煙能

與走私煙有所分別。

全委會主席：如果一直要求澄清，便會演變成辯論。

李柱銘議員：周梁淑怡議員並不十分明白我的問題，我並不是說那些青少年自己去拿取，而是他的父親購買了，那件附送的禮品會否令青少年感到十分吸引，而使他們長大後非常渴望吸煙。

Question on the amendment put and negatived.

修正案之議題付諸表決，並遭否決。

全委會主席：由於修正案遭否決，本席現向各位提出之待決議題為：第 18 條納入本條例草案。

Question on the original clause 18 put and agreed to.

原擬第 18 條之議題經付諸表決，並獲通過。

Clause 23

條例草案第 23 條

羅致光議員致辭：主席，我動議修正第 23 條，修正案內容已載列於發送各位委員的文件之內。

民主黨希望將原來載列於附表 4 的百貨公司、商場、銀行等有大量市民，特別是非吸煙者，經常出入和逗留的地方，改為載列於附表 2，即是由管理人決定哪些是非吸煙區而更改為全部禁止吸煙。由於這項修正案先於稍後時間在附表 2 增補條文的修正，所以各位同事若支持這項修正的話，希望各位稍後也要支持第 22A 條的修正，而不是現在於附表 4 剔除購物商場、百貨公司、銀行等之後，而不在附表 2 增補，那麼便會兩大皆空了。所以請各位留意，若贊成現時這項修正，就要贊成第 22A 條的修正，若不贊成第 22A 條的修正，即是你根本不想這些地方成為必然禁煙區，那麼希望各位不要贊成現時這項修正案，否則便會將管理人的權力也剝削，使他不能指定某些地方為禁煙區。

謝謝主席。

*Proposed amendment**擬議修正案內容***Clause 23 (See annex XI)**

條例草案第 23 條（見附件 XI）

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, although we appreciate the spirit behind the amendment to make all indoor places open to the public, in supermarkets, department stores, shopping centres and banks smoke-free, leaving only restaurants in section 4. We, however, believe that it is more desirable for managers to determine the location of no-smoking areas to suit their operational requirements. Since the designation is made out of their own initiative, the managers of the Schedule 4 premises would be more prepared to enforce the law.

羅致光議員致辭：主席，剛才衛生福利司的最後那一句說話比較令人費解，我不很明白為何有法律但不依循，即是不去執行，反而任由當局做的時候卻會執行，這道理不太清楚，不過，我相信有法律，人們便會執行，香港人是奉公守法的。

謝謝主席。

李柱銘議員：請羅致光議員澄清一點，他的建議是否包括本立法局大樓？

羅致光議員：主席，這項修正是涉及立法局大樓的。

主席：本席希望屬同一黨的議員不要唱雙簧。（眾笑）

司徒華議員：你剛才那句說話可否列入會議紀錄？（眾笑）

主席：本席只是開玩笑，若大家認為須列入會議紀錄，這是可以的。

Question on the amendment put.

修正案之議題付諸表決。

Voice vote taken.

聽取聲音表決。

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

全委會主席表示他認為可者佔多。

Mrs Selina CHOW claimed a division.

周梁淑怡議員要求點名表決。

全委會主席：本委員會現進行點名表決。

全委會主席：本席想提醒各位委員，現付諸表決之議題為：羅致光議員動議之修正案，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，請各位核對所作表決。是否有任何疑問？似乎尚欠多人。現顯示結果。

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 Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing and Mr YUM

Sin-ling voted for the amendment.

Mrs Selina CHOW, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr David CHU, Mr Ambrose LAU and Mr LO Suk-ching voted against the amendment.

THE CHAIRMAN announced that there were 32 votes in favour of the amendment and 11 votes against it. He therefore declared that the amendment was carried.

全委會主席宣布贊成修正案者 32 人，反對者 11 人。他於是宣布修正案獲通過。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 23 be further amended as set out in the paper circularized to Members.

The amendment adds a number of educational institutes under Schedule 4.

Proposed amendment

擬議修正案內容

Clause 23 (See annex XI)

條例草案第 23 條（見附件 XI）

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 clause 23, as amended, put and agreed to.

經修正的條例草案第 23 條之議題經付諸表決，並獲通過。

New clause 3A

新訂的條例草案第 3A 條

Display of signs outside restaurants

在食肆外面展示標誌

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。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 3A as set out in the paper circularized to Members be read the Second time.

The reason for this amendment has already been explained earlier. This is a technical amendment to remove the definition of "restaurant" to section 2.

Question on the Second Reading of the clause proposed, put and agreed to.
條例草案條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Clause read the Second time.
條例草案條文經過二讀。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 3A be added to the Bill.

Proposed addition
擬議的增補

New clause 3A (See annex XI)
新訂的第 3A 條（見附表 XI）

李柱銘議員：主席，可否請衛生福利司解釋一下議案的內容，她似乎太精簡了。

全委會主席：在二讀新訂的第 3A 條時已闡釋清楚，現在是最後階段 — the last step: that new clause 3A be added to the Bill。

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 22A
新訂的條例草案第 22A 條

Designated no smoking areas
指定禁止吸煙區

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。

羅致光議員致辭：主席，我動議二讀新訂的第 22A 條，內容已載列於發送各位委員之文件內。剛才本局已經支持了將附表 4 的超級市場、銀行、百貨公司購物商場剔除，我希望大家能夠進一步支持這一項修正，將這些地方訂明為禁止吸煙的地方。

謝謝主席。

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

條例草案條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Clause read the Second time.

條例草案條文經過二讀。

羅致光議員致辭：主席，我動議本條例草案應增補新訂的第 22A 條。

謝謝主席。

Proposed addition

擬議的增補

New clause 22A (See annex XI)

新訂的第 22A 條（見附表 XI）

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 22B

新訂的條例草案第 22B 條

Schedule amended

修訂附表

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。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 22B as set out in the paper circularized to Members be read the Second time.

The amendment seeks to add the new airport at Chek Lap Kok to Schedule 3.

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

條例草案條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Clause read the Second time.

條例草案條文經過二讀。

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that new clause 22B be added to the Bill.

Proposed addition

擬議的增補

New clause 22B (See annex XI)

新訂的第22B條（見附表XI）

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

THE SECRETARY FOR HEALTH AND WELFARE reported that the 衛生福司報告謂：

SMOKING (PUBLIC HEALTH) (AMENDMENT) (NO. 2) BILL 1997

《1997 年吸煙（公眾衛生）（修訂）（第 2 號）條例草案》

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

經修正後已通過全體委員會審議階段。她動議三讀上述條例草案。

Question on the Third Reading of the Bill proposed.

條例草案三讀之議題經提出待議。

梁智鴻議員致辭：主席，謝謝你給我機會發言。我想說 3 點。第一，我當然藉此機會感謝所有同事的支持。這可以說是在進一步反吸煙的旅程上，邁開第一步，亦是向反香煙廣告運動進發的重要旅程。我亦很感謝多位出席人士給予我們的支持，我相信沒有他們的支持，我們亦不能達致此階段。

第二，我亦可以對大家說，既然此條例草案經過如此多修正而通過，我自己的條例草案不會繼續二讀。如果主席容許的話，我是不會恢復二讀的。這其實十分簡單，正如剛才陸恭蕙議員說，我提出的條例草案沒有其他東西，只不過是引蛇出洞，可惜只是引了一條蟲出來。不過經過今天修正後，這條蟲還未成龍，不過已差不多了。所以，我自己覺得非常滿意，我亦相信所有反吸煙的同事亦很滿意。

第三，主席，我覺得在座的同事和香港市民和主席雖然是吸煙人士，都覺得不應吸煙。我在此希望所有吸煙人士盡快不要吸煙，保持自己身體健康、他人身體健康和環境健康。

謝謝主席。

多說一句，請主席戒煙。謝謝。

李柱銘議員：主席，戒煙尚未成功，主席仍須努力。

主席：本席雖不可以發言，但仍感謝各位議員對本席愛護有加。（眾笑）

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

條例草案三讀之議題經付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

SUSPENSION OF SITTING

會議暫停

主席：按照《會議常規》，本席現宣布暫停會議，明晨 9 時正恢復會議。

Suspended accordingly at twenty-two minutes past Ten o'clock.

會議遂於晚上 10 時 22 分暫停。