

OFFICIAL RECORD OF PROCEEDINGS

Friday, 27 June 1997

The Council met at Nine o'clock

MEMBERS PRESENT

THE PRESIDENT

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

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

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

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

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

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK, J.P.

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

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

THE HONOURABLE LAWRENCE YUM SIN-LING

PUBLIC OFFICERS ATTENDING

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

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

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

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

CLERKS IN ATTENDANCE

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

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

Resumption of Second Reading Debate on Bill**SECURITY AND GUARDING SERVICES (AMENDMENT) (NO. 2) BILL
1997**

PRESIDENT (in Cantonese): Council shall resume. We will continue the Second Reading debate of the Security and Guarding Services (Amendment) (No. 2) Bill 1997.

MR CHAN KAM-LAM (in Cantonese): Mr President, ever since the enactment of the Security and Guarding Services Ordinance (the Ordinance), Council Members have gone through bitter struggles whenever they discussed the issue. Does the improvement on service standards of caretakers of buildings necessarily mean bringing unemployment to the elderly watchmen, forcing them out of work and driving them to the queue for relief?

Mr President, as there was virtually no retirement protection available in Hong Kong in the past decades, when we asked the elderly residents with whom we frequent contacted, especially those living in older estates or districts, about their life after retirement, they would usually say, "Well, I will try to get a job as watchman". It seems to me that these jobs have become the safe haven of the grassroot retirees. Of course, they can also choose to become recipients of the meagre Comprehensive Social Security Assistance payment. According to the figures provided by the Police Licensing Office, as at September 1996, among the 110 000 existing watchmen who were holders of former watchman's permits, 25 825 were between 61 to 70 years old and 10 624 were aged above 70, the total of which is about one-third of the permit holders. The number of people in the trade who have not applied for "white cards" may even be larger.

Mr President, although the Security and Guarding Services Ordinance passed by this Council in 1995 enables continuous employment of people over the age of 65 in security work of Category A, that is serving as watchman in single private residential buildings, as far as I know, among the people who were employed as watchmen in buildings in Hong Kong when the Ordinance came into effect last June, nearly 100 000 of them have not obtained white cards. If they want to continue to work as watchmen, they will have to apply for the security personnel permits, which have more stringent requirements. Before the

Ordinance came into operation, I had requested the Government to defer the effective date of the provisions for a period of six months, the purpose of which was to give sufficient time for those people in the trade who were not white cards holders to lodge their applications. However, it was turned down by the Government. It only agreed to enhance publicity before the Ordinance came into effect.

The Ordinance has been in place for one year, during which we have received numerous complaints on this matter. There were watchmen aged over 65 being dismissed by their employers on the alleged grounds of compliance with the new legislation. Some employees were yet to obtain their permits after they were offered employment, although they had made the application long ago. Besides, some applications for permits were rejected because the employees concerned had committed minor criminal offences decades ago and were then convicted. These cases demonstrate that with the new legislation in place, the outstanding problems to be solved still remain unsolved.

Mr President, the Bill introduced by the Honourable CHAN Wing-chan only applies to security personnel who were lawfully employed under the former Watchmen Ordinance before 1 June 1996. They need not apply for the new security personnel permit under the new legislation before they can continue with the janitor work in various types of buildings. In the letter from the Secretary for Security to persuade Members to oppose to the Bill, it emphasizes that if the Bill is passed, the efforts made by the Government to combat crimes and to enhance the service standards of the security industry will all be thrown away. Yet we think this is exaggeration. It has not only brought the matter to an unduly high level, but also deliberately twisted the spirit of the Bill.

Regarding the current phased exercise adopted by the Government to replace new permits by year of birth, the Democratic Alliance for the Betterment of Hong Kong thinks that this will only defer rendering the guards and security personnel jobless for a short period. According to the present schedule laid out by the Government, one third of the people in the trade will be forced out of the trade by the year 2001, and even if they could pass the medical examination, the number of available vacancies of watchmen in single private residential buildings in the territory would fail to absorb all of them.

Mr President, Members who are opposed to the Bill think that once the legislation is passed, nothing can be done to improve the quality of watchmen.

Yet we find this worry excessive. Just imagine, in view of the currently meagre monthly salary of caretakers, which is around \$3,000 to \$4,000, younger people are unwilling to join the trade. Therefore, the Government's claim that the quality of service can be improved with the Security and Guarding Services Ordinance in place is only her wishful thinking and "empty talks". Moreover, we do not agree that the quality of service and age have direct relations. Why do Council Members ask for equal opportunities and oppose age discrimination on the one hand, but made an assumption that the elderly caretakers cannot provide good service on the other? We think that the most practical way to truly improve the service standards of the trade is the provision of on-the-job training for the existing security personnel as early as possible.

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

MR CHENG YIU-TONG (in Cantonese): Mr President, when I meet with employees or members of trade unions, I usually ask them about their life and physical health. The answer I often get is, "I am getting old and useless. I am not even fit to serve as a watchman." When I hear these words, I feel very sad. Let us take a look at the group of people who are not protected under the Employment Ordinance. When they "retired", which is put between quotation marks when I mention the term, they thought they could work as watchmen. But eventually they could not because under the existing legislation, people over 65 years old are not allowed to work as watchmen in buildings other than single private residential buildings. When dealing with the matter, I completely appreciate the legislative intent of the Ordinance, which is to improve the quality of the service provided by the trade. I accept that completely. However, when we enact a piece of legislation, we have to consider whether it will take away the livelihood of a certain sector of the community or bring unemployment to some people. This is something we must consider. We set out to do good, which was to improve the quality of the service, but as things turned out, it backfired and rendered some people jobless. I do not want to focus on how many complaints the trade union has received or how many people have been "dismissed" as the result of the legislation. They are not my focus. Instead, I think we should concentrate on whether the legislation is enacted in a justifiable and sensible manner. When we handle these issues, we have to consider various aspects, such as whether they are humane, reasonable and legitimate, and to strike a balance among them. If we were handling a certain piece of legislation due to which some people could not find a job, I would feel that these

people had been wronged by us and we had been heartless towards them. This is something not acceptable to me.

Furthermore, I cannot find any age limit provided under the Employment Ordinance which stipulates that a certain kind of people cannot do a certain kind of work. Why is it that only under the Security and Guarding Services Ordinance that there should be such an age limit? Does it imply that the younger the people, the better the service they provide? As the Honourable Miss CHAN Yuen-han also mentioned yesterday, age is not equivalent to the quality of service. For people who are relatively senior in age, if they can get a job which they think they are physically fit of doing, why should we disallow them to do so? If they think they are physically fit and competent to take up the job, and employers are willing to offer employment to them, why must we prohibit them from employment through legislation?

The Honourable Mrs Miriam LAU claimed yesterday that if this Bill was passed, it would grant privileges to some people. I want to point out very clearly that these are not privileges, and no one wants them in the first place. As the passage of the Ordinance would render them jobless, thus making them feel a grim future, they hope for an exemption. We are putting these amendments before the Council because we want these people to be looked after. Earlier on we were talking about medical graduates from non-Commonwealth institutes. The same rationale applies here. I really do hope that Members would consider these issues from different perspectives, taking into consideration that the retirees need a job to sustain them through their senior years.

Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, I do not want to go over the points made by the Honourable Mrs Miriam LAU. Our debates should be supported by reasons and facts. Firstly, I have to respond that the government should give us more advice. However, I have the responsibility to consider the issue of the people's "livelihood" too. Obviously, the Honourable CHENG Yiu-tong is more familiar with the Ordinance than the Honourable Miss CHAN Yuen-han. At least he has repeatedly mentioned in his speech that people aged over 65 can still work as watchman in single private residential buildings. There are several problems we have to handle or assess. Firstly, there are many complaints from employees who have been dismissed after the Ordinance came

into effect recently. I consider these cases illegal and unjustifiable dismissal. Why? It is because the age limit as set out in the Ordinance is 65, but the committee under the leadership of Mrs Miriam LAU has never issued any notice informing its members who would have to apply for a replacement of permit. In other words, if an employer says, "You are no longer eligible," it is wrong and is only an excuse to fool the employees. You can say it is an excuse. If anyone makes use of the legislation as an excuse for dismissal, we should enforce the law and bring that person before the court for committing unjustifiable dismissal. Despite the passage of the Ordinance, watchmen will not be put out of jobs until the year 2001. Moreover, assessments have to be made to see if they are watchman of single private residential buildings. There are two possibilities. If he is a watchman in a single private residential building, he can retain his job beyond the year 2001; if not, he may have to look for another job as a watchman in such buildings by the year 2001. We will have to estimate the number of single private residential buildings in Hong Kong which provide employment opportunities, as well as the number of other types of buildings.

Regarding the definition of the term "single private residential building", I must point out that it is rather broad. Some people even think that it is too broad. For instance, housing estates such as the City Plaza, although under modern management style, are single private residential buildings as every block of flats in it can be regarded as a single private residential building. However, if you take into account the shopping arcades, they are no longer single private residential buildings; they are commercial buildings. Secondly, regarding the manpower market, some watchmen work in single private residential buildings and others work in other types of buildings respectively. If the Ordinance is fully implemented, the bargaining power of elderly employees will be weakened after the year 2001. Why? This is because they can only work as watchmen in single private residential buildings. But mind you, as some Members, such as Miss CHAN Yuen-han, pointed out yesterday, some employers are willing to employ elderly people of age over 60 or 70, who are in fact physically fit to work. If it is of "mutual consent", and the salary has been mutually agreed, why should we stop it? In fact, many elderly watchmen are working in single private residential buildings. For example, in Mongkok, the majority of such watchmen have very strong sense of responsibility. They realize that they may not be able to find other jobs or have other employment opportunities at their age. They have a strong sense of responsibility and long-established harmonious relationship with the residents there. In fact, they are fully competent and enjoy their work very much, so they can keep on working. However, some companies find this

impossible and thus forcing them to go. Yet, this is only an excuse and is not the purpose of the Ordinance. We should discuss the Ordinance in accordance with its spirit and existing provisions. We cannot say that those displaced workers must be at the age of 65, nor alleged that people of such age are incompetent. We should not use such a simple logic in our debate in this Council. This would give others an impression that we could find no way out.

Members of this Council should have gone over every provision of the Ordinance. In fact, the only assumption in this case is the number of jobs offered by single private residential buildings is inadequate to absorb all watchmen aged over 65. Yet we must caution that the inadequacy just mentioned is a result of a complicated calculation. Why? People aged below 65 with a permit can work as watchmen in either commercial, industrial or other types of buildings. But one must bear in mind that younger in age does not often mean superior ability. If they do not work hard, they would be dismissed. If they are not conscientious and even committed embezzlement, their permits will be revoked. Yet young people have stronger bargaining power. If they work conscientiously, they can choose to work for either single private residential buildings or other types of buildings. In fact, if the latter cannot recruit people over age 65, it is simply because the salaries they offered are too low. If better payment is offered, young people may be attracted to work as watchmen in those buildings. Thus, those vacancies can be filled by people of senior age. If we assume that there are 100 000 such vacancies in single private residential buildings and other types of buildings in Hong Kong, and that people in the trade are in a state of saturation, then unless the unemployment problem further deteriorates and the number of unemployed increases drastically, people under age 65 who are not watchmen originally will not be attracted to join the trade, thus creating a totally different picture. Yet, this is not impossible.

We must bear in mind that, just as Mr CHENG Yiu-tong has said, the Ordinance should not take away the livelihood of people at once. The aforesaid scenario will come into play by the year 2001. Moreover, even if a person is over 70, he can still work as a watchman if he can pass the medical examination. I do not see how the people's livelihood would be destroyed in this way. If such thing really happens, it must be something unlawful, and is only an excuse to dismiss those workers.

On the other hand, what we must deal with is the duration of the exemption if we are to give such exemption. The fire accidents which occurred

recently might be due to the negligence of watchmen, who did not pay any attention to the fire doors while on patrol. In fact, for watchmen of single private residential buildings, the area to patrol is very limited. If the area to be patrolled is very large, then should we consider the issue from the security angle? Should we allow a very long transitional period? Should we wait for those exempted people to pass away first? To be frank, I have no idea when I will die. It is not always the case that the older ones die first. This is hard to say. Therefore, I think we cannot defer the implementation of the legislation indefinitely. The existing transitional period is already long enough. I think that by the year 2001, there should be enough employment opportunities for people aged over 65 to work as watchmen in single private residential buildings. Moreover, as many development plans for residential flats are underway, even if they are all housing estates, they will be regarded as single private residential buildings. The government's participation in this respect becomes more active. If there are really such plans where public housing will be ready for sale several years later, they are also single residential buildings under our definition. Under this circumstance, I wonder how the allegation of "taking away people's livelihood" can be substantiated. We are very concerned about this problem, as the Democratic Party has been supporting a large number of legislation relating to the protection of labour. We should take a very careful look at the situation. If there is a doubt, I prefer that the benefit of the doubt should go to the elderly people, and not to the enhancement of the quality of security service. In fact, after careful consideration, we cannot find any ground to support the allegation or make any justifiable estimation.

Thank you, Mr President.

MR MOK YING-FAN (in Cantonese) : Good morning, Mr President. You enjoy very good health and have admirable stamina. You turn up early this morning, even earlier than me, and have today's sitting started on time. This goes to prove that elderly people are not necessarily inferior to the young. Mr President, you are not a bit old and I'm sorry for exaggerating about your age. I mean

MR MARTIN LEE (in Cantonese): Mr President, I really cannot imagine why you have become a watchman overnight. *(Laughter)*

MR MOK YING-FAN (in Cantonese): Mr President, please let me continue. I hope we can have our debate under a more relaxed atmosphere today. I fully support the Amendment Bill introduced by the Honourable CHAN Wing-chan. The Honourable CHENG Yiu-tong and the Honourable James TO have already given a full account of the principle of law and legal justifications behind the Bill. As they are more familiar with these aspects, I do not think I have anything to repeat. I just want to say something more on the human touch of the Bill.

If I were asked the question, I would say the Ordinance is harsh and unjust. The social welfare in Hong Kong is inadequate. Does the Government want to see all elderly people applying for the Comprehensive Social Security Assistance? With the provision of adequate social security and the allocation of more funds for the purpose, I think no one would like to take up the work of a watchman. No one would be willing to take up the job in return for a meagre income of \$3,000 to \$4,000 per month, as it is after all not a dignified job. Nobody would like to sit there all day and become the focus of public discussion. Instead of leading such a life in their remaining years, every elderly person would like to go to the park early in the morning with their pet bird settling in a bird cage, have a nice chat with their friends there or play mah-jong when they have time. If they can afford it, I think all elderly people would like to retire at the age of 65, enjoying a comfortable life and spending their time with their grandchildren.

With the provisions of the Ordinance which was enacted a year ago, elderly people working as watchmen are all rendered jobless and forced to "go home". Some of them have to "go home" and start living in straitened circumstances, and others may have to return to their native place in Mainland China. At yesterday's Sitting, Miss CHAN Yuen-han of the Hong Kong Federation of Trade Unions mentioned that they had received lots of complaints in this respect. In fact, I have also received many such complaints in my constituency. The Owners' Corporation of the building in which my clinic is situated is humanistic and allows all the existing elderly watchmen to continue their services in the building, so that they can earn their own living and lead a dignified life.

Mr President, I find the Amendment Bill introduced by Mr CHAN Wing-chan an attempt that comes too late to improve the situation. With the enactment of the Ordinance, a lot of elderly people have already been deprived of their means of livelihood. Moreover, the most important point to note about the Ordinance is the fact that its provisions are in violation of the principle against

age discrimination. I hope fellow Members will fully support the Bill on age discrimination to be read today, so that amendments will soon be introduced to the Ordinance as there are actually discrimination against elderly watchmen on the ground of age under the Ordinance.

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

MR LEE CHEUK-YAN (in Cantonese): Mr President, on behalf of the Hong Kong Confederation of Trade Unions, especially with the Hong Kong Buildings Services Workers and Attendants Union as one of its sub-groups, I would like to express our support to the Bill introduced by the Honourable CHAN Wing-chan. This is in fact the third time we have a debate on the subject. When I was first elected to this Council, we already had a debate on the Bill. Another debate was conducted again last year on the issue. Thus, I am not going to say too much this time. However, there is one thing I can say for certain: this piece of legislation has actually deprived the elderly watchmen of their means of livelihood. This may not be the original intention of the Administration and I believe this is not what they want to achieve. The Administration has also thought of a way to solve the problem, so that all "white card" holders may remain in their job with the implementation of a five-year replacement programme. However, large companies have actually started dismissing watchmen over the age of 65 pursuant to the provisions of the Ordinance. In fact, the dismissal is not necessary because as mentioned, there will be a transitional period of five years. Nevertheless, the watchmen are being displaced, probably due to the companies' thinking that they have to be dismissed sooner or later, and their preference to take action earlier and to relieve themselves of any worry. The security services of the building where Mr CHENG King-hon lives is managed by the First Pacific Davies. Even such a large company has decided to dismiss all watchmen over the age of 65. There is indeed no place for elderly watchmen, even in a large company. We all know that it has been a common practice for large companies in Hong Kong to dismiss elderly watchmen. These displaced watchmen may take up janitor work in single private residential buildings as they are still allowed to work there. However, the problem still exists and some people will be rendered jobless if the supply of labour continues to grow and the turnover of workers remains high.

Although certain arrangements have been built into the Ordinance to provide security workers with some form of short-term protection, this is not the

whole truth. Therefore, I hope fellow Members will support the Amendment Bill introduced by the Honourable CHAN Wing-chan, which conveys an explicit message to elderly watchmen in Hong Kong that they still have secure jobs. Some Members mentioned last night and just now that we are going to scrutinize the Bill on age discrimination today. However, I would like to remind fellow Members that there is a provision in the Bill on age discrimination to allow a two-year period for undertaking any review of the existing legislation. Therefore, elderly watchmen may not be benefited from the legislation. Nevertheless, I still hope that all problems concerning age discrimination can be solved some day. Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, I did not intend to speak on this Bill originally, but the more I heard, the more I get worried.

I doubt whether some of my colleagues understand what the Ordinance is about, and I am particularly alarmed by the Honourable MOK Ying-fan's speech. It seems that we are studying different bills. (He is leaving the Chamber now and does not want to listen to my speech!) The Ordinance which Mr MOK referred to does not prohibit people aged over 65 to remain in the trade. However, since age 65 is being regarded as the retirement age, those elderly people are only allowed to do a certain category of jobs in that trade.

As you all know, this is a way to balancing public interests. The major premise is the requirements set out for security personnel. This is very important, or else there is no point in studying this Bill. The ultimate goal of the Bill is to safeguard public interests, ensuring that all security personnel are up to a certain standard. The Honourable LEE Cheuk-yan was right. There had been concerns that elderly caretakers were very old, so how should they be cared for? In this connection, some people have suggested the issuance of Category A permits. Such permits are not promoting age discrimination. They just enable people who have reached the retirement age to continue with their work. The allegation that the Bill creates age discrimination is just lame argument. If Members are familiar with the Bill, they should know this is a gross deception and is hiding the truth. On the other hand, if they are not familiar with the Bill, what they said was totally wrong and was misleading the public.

In regard to Category A permits, they allow people aged over 65 to remain in the trade. However, as age 65 is the retirement age, they are limited to working under a particular environment, such as within a single residential building. This is something we all know.

The speech made by Mr LEE Cheuk-yan was relatively fair. He pointed out that as elderly security workers were dismissed by some security companies, they would have to look for jobs elsewhere and thus causing inconvenience to them. As such, it does not do them any good.

The purpose of the Bill is merely to offer protection to the workers. Workers who were originally engaged in a certain kind of job would be forced to change jobs with the new legislation in place or because they are required to meet certain standards. This is something that could happen. However, it is not being unfair to them, as they can still get a job. At the same time, this practice helps realize the legislative intent of the Ordinance. In the light of other information in hand, it is found that many existing security personnel are far from age 65, or has not even reached two thirds of it. Therefore, the Bill will not constitute any problem to them. For those who are senior of age, they can choose to work in single private residential buildings, so at least they have a way out. I think it is completely wrong to relate this matter to age discrimination. It would be misleading to the public who are not very familiar with the Ordinance, and they may think age discrimination really exists. Yet, this is not the case. Instead, it is our common recognition that age 65 is the retirement age. No one says that it is unlawful to ask someone to retire at the age of 65. This is commonly accepted by the community. This is not only something the community accepts, but also something allowed by the trade. It has provided assistance to people who have reached the retirement age. The Category A permits which we just mentioned allow them to continue their work until they change jobs, retire or pass away. Why should the fact be distorted?

If Members of the Association for Democracy and People's Livelihood decide to support the Amendment Bill because of the influence of Mr MOK Ying-fan or his perception of the Bill, I hope that they will reconsider the matter, or else they will become the laughingstock.

MR LEE KAI-MING (in Cantonese): Mr President, I think many of the arguments have been repeated for a number of times. I just want to respond to the queries raised by the Honourable Mrs Miriam LAU yesterday on the Bill introduced by the Honourable CHAN Wing-chan, and there are two points I am going to talk about in particular.

First of all, she said that the number of reported cases of dismissal was insignificant. In fact, after the enactment of the Ordinance, there have been a lot of cases and labour disputes concerning dismissal of aged security personnel. Yet, under the provisions of the Ordinance, most of these complaints cannot be substantiated. Such being the case, the relevant trade unions have advised the complainants not to lodge their complaints because with the explicit requirements laid down in the Ordinance, there is no point in doing so. Therefore, the actual fact is that such cases have never been included in the records kept by the Labour Department.

Secondly, she queried which trade union should be responsible for giving evidence to prove the employment records of security workers. I think trade unions are now in a position to produce evidence on a number of issues. At the initial stage, in applying for a container trucker licence, one must have his qualifications verified by the relevant trade unions. At present, qualifications of electricians are also verified by trade unions when they apply for a permit. Trade unions will be very careful in examining the actual length of service of a particular person in the relevant trade.

Moreover, the Amendment Bill introduced by Mr CHAN Wing-chan is in no way an action that goes against the original intention to improve the quality of security services. Exemption will only be granted to existing security workers but not to those newcomers. The objectives of the Ordinance will be achieved after the retirement of all the existing security workers. In fact, keeping this group of workers in service is advantageous to both the workers and the management of those buildings which have scarce resources, single private residential buildings in particular. Only \$3,000 to \$4,000 is required in hiring this group of security workers but it will be impossible to employ security personnel who are in their prime or are under the age of 60 or 65 with such a meagre pay. Should this happen, there will be nobody to guard the buildings. Watchmen are in fact responsible for undertaking minor duties, such as calling up a technician when the lift is out of order or collecting management fees.

There is no need for them to undertake guarding and security services. Therefore, the Bill should have no impact on the quality of security services.

With the above arguments, I support the Amendment Bill introduced by Mr CHAN Wing-chan.

SECRETARY FOR SECURITY: Mr President, let me first state clearly the Administration's position on this Bill. The Administration strongly opposes the Bill as it would nullify all the efforts that have been made so far under the Security and Guarding Services Ordinance to improve the standard of the security industry. We wish to improve the standard of the security industry, not just for its own self but for the better good. It would help us to fight against crime in the community.

The enactment of such a Bill would create serious confusion and enforcement problems by creating a dual standard for security personnel — double standards — while the so-called "existing security workers", which refer broadly to watchmen's permit holders employed before 1 June 1996 under the Bill, are put completely beyond the current regulatory framework. Those employed after that date are subject to control of the existing law. Why are we proposing such discriminations?

Worse still, the Bill does not solve the alleged problem of unfair dismissal of aged security workers. Clearly, it is not in the public interest to enact this Bill. In broad terms, the Bills seeks to exempt "existing security workers" from the requirement to apply for security personnel permits under the Security and Guarding Services Ordinance, which came into effect on 1 June 1996 and which replaced the Watchman Ordinance, the only legislation governing the security industry then.

Under the Ordinance, an independent Security and Guarding Services Industry Authority was established to issue licences to security companies and determine the criteria for issuing permits to security personnel. Applicants must be fit and proper persons. In addition, adequate training has to be provided by companies for security personnel to ensure that they would perform their duties competently.

We understand that one of the reasons for the Honourable CHAN Wing-chan to introduce the Bill is that there have been cases where security personnel over the age of 65 were dismissed by their employers on the alleged ground of compliance with the age requirement of the Ordinance. I must emphasize that there are already provisions built into the Ordinance to facilitate the continuous employment of security personnel over the age of 65 in line with the criteria approved by this Council in July 1995 for issuing security personnel permits. Those over the age of 65 can apply for a Category A permit and work in single, private residential buildings, that is to say, buildings with one main access point and used substantially for residential purposes. This covers a large number of residential buildings in Hong Kong. There is no upper age limit for security personnel working in this type of building.

Some Members of this Council have expressed concern that employment opportunities for the elderly watchmen would still be very limited. It appears that they may have some misunderstanding about the definition of "single, private residential buildings". I would therefore like to draw Honourable Members' attention to the definition which we have spelt out in a public notice. A single, private residential building is defined as an independent structure that is covered by a roof and enclosed by walls extending from the foundations to the roof which is used substantially for private residential purpose and has only one main access point.

There is no limit on the number of households that these buildings may house, but the requirement of one main access point would ensure that these buildings can be adequately guarded by elderly watchmen. This definition applies even to individual blocks of large housing complexes.

Some Members of this Council also expressed concern about the upper age limit of 65 for a Category B licence, that is to say, guarding work for all, I repeat, all, types of premises and properties. These cover not just residential premises. I trust Honourable Members would bear in mind that the purpose of the Ordinance is to improve the standard of security services which the public are entitled to expect. Security work under Category B is very diverse. It covers all types of guarding work such as that in large commercial premises, complexes, hotels, banks, shopping arcades, industrial buildings, goldsmith's shops, and so on. Security personnel engaging in this type of work generally require greater

alertness, vigilance and physical fitness than security personnel working in single, private residential buildings. An upper age limit for Category B work is therefore necessary in order to ensure that these security guards are capable of carrying out their duties.

Section 33 of the Ordinance further provides a transitional arrangement to buffer any immediate impact on the employment opportunities of aged security personnel. Irrespective of age, holders of Watchmen's Permits issued under the defunct Watchmen Ordinance can continue their service in all, I repeat, all types of buildings until they receive notice from the Authority to change their Watchmen's Permit into Security Personnel Permits. The intention is to empower the Authority to bring the Watchmen's Permit holders into the regulatory framework of the Ordinance by phases with a view to improving the standard of service in the security industry. The Watchmen's Permits replacement exercise, which starts from young to old, commenced last month and will take about five years to complete.

The Administration has publicized the Ordinance, in particular the transitional arrangements, through television and radio broadcasting. The Authority has also emphasized this arrangement in the media and at its meetings with trade associations as well as trade unions, for which I understood there had been many. In conducting its public hearing on applications for licences, the Authority again reminds the companies of the above. The Commissioner for Labour had also issued letters drawing the attention of employers to this arrangement.

It would, therefore, appear that if allegations of dismissal on grounds of age requirement does exist it is because a small number of employers have either mistakenly or deliberately misinterpreted the Ordinance. Exempting existing security workers from the licensing requirement as proposed in the Bill will not solve the problem since those employers would use other excuses. We believe the appropriate way to tackle problems of abuse is to contact the Labour Department to provide conciliation and employment services to those security workers dismissed.

Mr President, I would finally like to respond to a point made by the Honourable Miss CHAN Yuen-han in her speech last night. I am not an impassioned speaker, as Miss CHAN Yuen-han is, so I will have to respond in a more measured manner.

Miss CHAN Yuen-han and one or two other Honourable Members have accused us or the Bill, of the setting of an age limit of age discrimination. I confess I am not an expert human rights lawyer, so I can only comment from the layman's point of view. It appears to me that they might have confused between differentiation by age and discrimination by age. Differential treatment does not — does not — equal discrimination. Much depends on whether the differential treatment is reasonable, proportional and demonstrably in the public interest. Our scheme, our Bill, does not deprive elderly watchmen of a means of livelihood, as I have explained in my speech, and as the Honourable Mrs Miriam LAU explained in her speech in greater detail very clearly.

The age of 65 is an age which, broadly speaking, is generally accepted by the community as an age where the physical, mental alertness and other reasons does give us the conclusion that perhaps it is a kind of general retirement age. Of course, you can argue that the fairest means is to test any worker individually to see whether he can actually do the work, and that would be and should be the sole criteria. But if we want to argue that point to its logical conclusion it means, for example, that there should be no general age of retirement. In fact, incidentally, the retirement age, compulsory retirement age for the Civil Service is 60. The compulsory retirement age for the disciplined services rank and file, which although I am not drawing any equivalent, does at least bear a degree of similarity to the demands of some of the more difficult security guard jobs. The compulsory retirement age for disciplined services officers is 57. Are we saying that those compulsory retirement ages are discriminatory on age grounds? Look at the broader perspective. There are statutory and sometimes not statutory provisions governing a variety of conditions of treatment, some of those depending on age. The age of majority is an obvious one. You can argue that why do we set the age of marriage without parental consent at 21? Why cannot the person who is 20 be allowed to be tested for his suitability to get married, instead of setting a common age of marriage without parental consent?

So, setting an age at which different treatment is given or is mandated is not, in my view, although as I said I am layman, discrimination by age. I repeat, is it judged to be reasonable and proportional? Secondly, is it demonstrably in the public good? I should remind Honourable Members that the purpose of upgrading the standard of service of the security industry is to achieve, amongst other things, better protection of the life and property of the community by upgrading the standard of service of the security industry.

Honourable Members will recall, although thank heavens, it does not occur so very often now, several years ago the amount of public concern on crimes committed inside residential buildings or inside commercial buildings, the rapes, the robberies, with guns, without guns, with knives, with everything. If we do not have a decent and up-to-the-standard security service industry in Hong Kong, how are we going to improve the public's protection against heinous crimes of the sort I mentioned? So, demonstrably, this Ordinance is in the public interest.

Nonetheless, I do not believe that either the Government or the Security and Guarding Services Industry Authority have their mind completely closed. I believe the Security and Guarding Services Industry Authority will soon embark on planning for a review of all the criteria associated with the issue of licences and permits. We will certainly take account of the general community's views, views of the industry, views even of trade unions and those who are engaged in security work themselves in that review. But such a review will take time to take account of all the relevant factors.

The Honourable CHAN Wing-chan's Bill is hasty, does not take account of all the concerns and certainly not the concerns of the community as a whole. It has not been deliberated, examined and studied in detail by this Council. I urge Honourable Members to vote against such a hasty Bill which is demonstrably not in the public interest.

Thank you, Mr President.

PRESIDENT: That was a rather impassioned speech too.

MR CHAN WING-CHAN (in Cantonese): Mr President, I did not expect my Member's Bill, which should have been a simple matter, has caused such widespread repercussion. I am also grateful that nine Members have spoken on this Bill. Many of them have talked about some of the focal points, which are also major issues of the Ordinance. I would like to brief you on the Ordinance.

Just as I have mentioned, my intention of proposing this bill is very simple and clear. It is to grant an exemption to those existing caretakers and watchmen of buildings after the Security and Guarding Services Ordinance came into

operation, such that their livelihood would not be taken away. Some Members have mentioned that it is the Ordinance that prohibits those caretakers and watchmen from working in buildings other than single private residential buildings. We have already touched on the grounds accounting for such scenario, and Members have also responded to the question of how the livelihood of those elderly people being taken away. I am not going to repeat on that.

I just want to reiterate one point: the definition of the term "existing security workers". Firstly, it refers to people who were lawfully employed under the former Watchman Ordinance on 31 May 1996. In other words, it means holders of watchman permits, the so-called "white cards". Secondly, they had been lawfully employed for six months under the Watchman Ordinance within 24 months by 1 June 1996, and have obtained certificate of service from their employers and trade unions proving that they are holders of white cards. People who meet these two requirements can be exempted. There is no need for them to apply for replacement permits, and they would not be put out of work because of the Ordinance.

As a matter of fact, after the Security and Guarding Services Ordinance came into operation, measures have been taken to the effect that people over age 65 cannot undertake security work, including jobs as caretakers or watchmen of buildings other than single private residential buildings. In other words, people over the age of 65 are not permitted to work in buildings other than single private residential buildings. Since structural unemployment is serious at present, such a blanket measure will be unfair to those who are physically fit and are in need of a job. We have just said that this is age discrimination, but the Secretary for Security does not think so. Anyway, this measure is not in line with the principle of equal opportunities. Whether there is age discrimination or not, the measure has violated the principle of equal opportunities. Even if the elderly people are fit to work, the Administration does not give them a chance to do so. The purpose of introducing the Security and Guarding Services (Amendment) (No. 2) Bill is to help people aged 65 or above who are still in service to continue to work at Category B buildings, that is buildings other than single private residential buildings. I hope that Members will give their support to this Bill.

The Secretary for Security has just refuted the claim that the Ordinance is age discriminating, and cited many examples in this regard. For instance, he has said that if people under age 21 want to get married, they should obtain the consent of their parents. In fact, he has mixed up those statutory and

comprehensible concepts with age discrimination, and distorted the fact. For countries with legislation against age discrimination, personnel managers there dare not ask the candidates in a job interview, "How old are you, Mr CHAN or Miss LEE?" I want to ask the Security for Security whether any management staff dare to ask such question. The answer would be in the negative. Nevertheless, there is no legislation against age discrimination in Hong Kong. If the Honourable LAU Chin-shek's Bill concerning age discrimination and sexuality discrimination were to be voted separately, I think it would stand a good chance to get passed. Mr LEE Cheuk-yan has said that there will be a two-year grace period if the Bill is passed. Within this period, the provision that people reaching the age of 65 cannot work at buildings other than single private residential buildings should be amended immediately, or else it will be against the law. Is that right?

The Secretary for Security has just said that private buildings with only one main access point are regarded as single private residential buildings. Earlier on, Mr James TO has said that the majority of old buildings in Mong Kok have only one main access point, yet their number is very small. Meanwhile, you may say that there are few single private residential buildings and plenty of other types of buildings, so people aged over 65 will have little chance of employment. At the meeting of the Security Panel held on 24 April, an official from the Security Branch said that buildings with more than one access point were not single private residential buildings. As the Legislative Council session is about to end, the Hong Kong Federation of Trade Unions (FTU) recently hired a float and went on a tour in Kowloon. The Honourable CHENG Yiu-tong, the Honourable Miss CHAN Yuen-han and I were on the float. We took the opportunity to thank the residents for supporting the FTU over the years. We had a tour in Kowloon, where many housing estates are situated. I paid much attention to the housing estates. Many of those newly completed housing estates have two main access points, one entrance and one exit, and so they are not regarded as single private residential buildings. The buildings completed afterwards are also of this type. More and more single private residential buildings are demolished and there are not many left behind. How can people aged 65 or above find a job? There is little chance for them to get employed.

Yesterday, the Honourable Mrs Miriam LAU pointed out seven things which Uncle Chan should not do. Why not? I just want to fight for the benefit of those caretakers. I must do so because they will actually be put out of work at that time. Despite that there is a transitional period for the replacement of

permit, but it will expire by the year 2001 and they will have no chance of employment by then.

She claimed that the Bill would grant privilege to some people. Yet granting exemptions to them is in fact an act to allow them to work. There are many precedents. The Honourable LEE Kai-ming mentioned the case of the issuance of permits for electricians. There was a time when electricians had to sit for an examination before they could get licensed. The trade union concerned then asked for an exemption. The result was that serving workers who had worked for a certain number of years would be granted exemptions, and they could obtain a licence without having to sit for an examination. Nothing wrong has ever happened. Have you ever seen any unqualified electrician hanging around? I guess not.

As time is tight, I just want to say a few more words. When I introduced this Bill, a friend of mine said, "Uncle Chan, this Bill was rejected by the Council in the 1994-95 session. What do you think the chance of the Bill being passed this time will be?" I know that there will be much pressure, but my intention is to help those elderly people or caretakers to retain their means of livelihood, and I have to do it one way or the other. It is my belief that good ordinances should be maintained and they need not be amended. However, if an ordinance does not work well and brings adverse effects to some people, then amendments should be made. Changes are common in many things. For instance, the Honourable Mrs Selina CHOW recently amended a piece of legislation successfully, which was the Medical Registration (Amendment) Ordinance. Mrs CHOW told us a story. She said a group of children left the town, and the gate of the town then closed and they could not come back. What should they do? In fact, the gate was left open all the time in the past, it was shut after they went out. What could be done? They could only find someone to open it, yet this was no easy task. In that case, a Member has to introduce a bill, and with the help of other Members, those medical graduates and medical students from overseas would be granted exemption and need not sit for an examination when they came back. Mr Martin LEE is shaking his head, and probably showing his disagreement. Yet, the case is more or less like this. Speaking of Mr Martin LEE, I remember that during the deliberation on the Smoking (Public Health) Ordinance, he put forward the theory of the about-turn. I like it very much. He said he had painfully changed some of his principles and supported the amendments proposed by Dr LEONG Che-hung regarding advertisements. This was what I heard. I hope that Mr Martin LEE will say something I would like

to hear once again, that is to make an about-turn and support my Bill. At dinner last night, I tried to solicit the support of the Honourable LAW Chi-kwong. Mr LAW replied very generously and said, "Uncle Chan, my vote is yours." I said, "Thank you." "The votes of the Democratic Party will be yours too." "Thank you." It seems to me that the lobbying works. I would like to give my sincere thanks to the Democratic Party for their support. Whether discrimination really exists, I think we all know the answer. I do not want to argue about this any more. We should give more emphasis to welfare and rights instead. We all say that we want to fight for the welfare of the elderly people, that is to ask for an additional \$300 of the Comprehensive Social Security Assistance payment. We have made so much noise on that and we are all on the same side. No one has any objection. However, we now ask these caretakers of 65 years of age to retire. If there is pension, who will bother to work? They work for 12 hours just to receive a meagre payment of three thousand to four thousand dollars. This is very inhuman. To choose between welfare and rights, I hope that Members will safeguard better welfare for the elderly people.

Thank you, Mr President.

Question on the Second Reading of the Bill put.

Voice vote taken.

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

Mr CHAN Wing-chan claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Security and Guarding Services (Amendment) (No. 2) Bill 1997 be read the Second time.

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

PRESIDENT (in Cantonese): Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Frederick FUNG, 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, Mr CHEUNG Hon-chung, Mr David CHU, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, 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 Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-Yin, Miss Christine LOH, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE PRESIDENT announced that there were 20 votes in favour of the motion and 30 against it. He therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Since the motion that the Security and Guarding Services (Amendment) (No. 2) Bill 1997 be read the Second time was negatived, this Council will not proceed to a further order on this Bill.

Resumption of Second Reading Debate on Bill

PROTECTION OF THE HARBOUR BILL

Resumption of debate on Second Reading which was moved on 4 December 1996

MR ALBERT CHAN (in Cantonese): Mr President, as Chairman of the Bills Committee on Protection of the Harbour Bill, I would like to report to fellow Members the deliberations of the Bills Committee and take this opportunity to thank organizations which have made submissions on the Bill.

The Protection of the Harbour Bill is a Member's Bill presented by the Honourable Miss Christine LOH to ensure that Victoria Harbour will be protected against excessive reclamation. It establishes a presumption against reclamation in the harbour and requires such reclamation to be approved by the Legislative Council.

The substance of the Bill lies in clauses 3 and 4. Clause 3 of the Bill provides that as a general principle, Victoria Harbour is a special public asset and a natural heritage of Hong Kong people, and imposes a presumption against reclamation in the harbour. Public officers and other authorities are bound to have regard to this principle. Clause 4 of the Bill prohibits the carrying out of any reclamation in the harbour unless it has been approved by the Council. Either one of these two clauses can be enacted independently of each other. If enacted without clause 4, clause 3 will still be effective in imposing a duty on public officers and all statutory bodies to consider alternatives other than reclamation before making a decision. Members of the public may seek judicial review under certain circumstances if public authorities ignore the presumption. Clause 4 of the Bill has a constitutional implication in that this is the first time the Council is mandated to act as an approving authority for specific cases other than its established role as monitor of public finances. The clause also has resource implications in that the Council should have the necessary procedures within its own system to implement the provision so that necessary experience and expertise can be applied to reclamation issues which it is being given power to decide. If both clauses 3 and 4 are enacted, the Council will also be subject to judicial review over its actions in this area.

The Administration is opposed to the Bill. It considers the Bill unnecessary on the ground that the existing town planning process is open and transparent and involves a thorough process of public consultation. It holds the view that the Bill transfers from the Executive to the Legislature the responsibility of planning and land use development involving harbour reclamation, thereby upsetting the present division of responsibilities between the two. In the Administration's view, the Bill also limits options available to resolve planning and land use development problems and constrains the

Government's ability to supply land and infrastructure at the right place and time. Besides, the presumption against reclamation in the harbour may give rise to legal proceedings and uncertainties as the procedure and criteria for approving reclamation in the harbour are unknown.

The Bills Committee has examined a number of scenarios with different combinations of clauses and proposed amendments to the Bill, including an alternative arrangement proposed by the Honourable Edward HO to include Victoria Harbour as a target of land use under the Outline Zoning Plan. Under this arrangement, future reclamation of the harbour would be regarded as a change of land use and the Town Planning Board (the Board) would be the legitimate body to oversee harbour reclamation work. The Board could make provision for the protection of the harbour, similar to that for protection of country parks and green belts, by including specifications in the Notes of the plans. The proposal will probably not bear constitutional implications as the statutory relationship between the Board and the Government remains unchanged. Since the Board is already charged with the responsibility of approving the Outline Zoning Plan, the proposal may not necessarily have any charging effect. However, under this proposal, the decision of the Board is still subject to rejection by the Governor in Council.

The Administration is prepared to accept Mr Edward HO's proposal as a substitute for the Bill and undertakes to implement the proposal in accordance with the existing provisions of the Town Planning Ordinance. In examining the relevant sections of the Town Planning Ordinance which form the basis for the implementation of Mr HO's proposal, the Bills Committee notes the provision in section 3(1), which specifies that the Board shall undertake the systematic preparation of draft lay-out or development plans of such areas of Hong Kong as the Governor may direct. Members consider it important for the Governor to give an explicit direction to the Board in this respect and request an undertaking that the Governor would give the direction. If the direction is forthcoming, Members may consider the Bill unnecessary and vote accordingly. Up to this point in time, no such undertaking has been given to the Bills Committee.

The Bills Committee also notes that Miss Christine LOH may move a Committee stage amendment to add a new clause to expressly authorize the Board to exercise zoning control over reclamation in the harbour. However, I understand that the amendment cannot be moved as it involves a charging effect. The clause, if successfully moved, will enable the Board to control reclamation.

Reclamation works may proceed as long as the Administration adheres to its undertaking to submit all reclamation proposals for approval by the Board before authorizing them.

Members of different political parties on the Bills Committee have expressed reservations about or taken different stances towards clause 3 or clause 4 or both, and the Bills Committee has not reached any consensus on the Bill and will not move any Committee stage amendments.

Mr President, in my capacity as the Chairman of the Bills Committee, I give the aforesaid report on its deliberations. I have moved an amendment to the Bill on behalf of the Democratic Party and the main objective is to reduce the boundaries of the harbour as proposed by Miss Christine LOH. According to Miss LOH's suggestion, the waters in Lei Yue Mun, the whole of Central District, Green Island, Tsing Yi and Tsuen Wan fall within the boundaries of the harbour. The Democratic Party, however, thinks that the proposed scope of boundaries will have significant implications on Government's public works programmes, in particular housing development projects. We understand that there is a serious shortage of housing and land in the territory. If the scope of waters mentioned above is included in the definition of "harbour", the Green Island Reclamation and the major development project in Central Kowloon, which involve hundred thousands of housing units, will be affected. In view of the significant implications, the Democratic Party seeks to reduce the scope of boundaries of the harbour proposed by Miss LOH so that it will only cover the waters of central harbour in Central, Wan Chai, Causeway Bay and Tsim Sha Tsui. The Government is planning to carry out massive reclamation in the area and with the implementation of these plans, a straight line will be formed from Central Reclamation, where the Mass Transit Railway terminus in Central is located, to the Hong Kong Convention and Exhibition Centre. The whole of the central part of Victoria Harbour will then no longer exist. I think this will be a heavy blow to the feelings of Hong Kong people and cause severe damage to the practical use of the harbour. Therefore, the Democratic Party thinks that large scale reclamation should no longer be carried out in this area.

Nevertheless, we do realize that some road development projects, such as the project on Central-Wan Chai Bypass, require the carrying out of reclamation. We have consulted the Legal Adviser in this respect. As stated clearly in my brief account of it, the Bill only imposes a presumption against reclamation in the harbour. If the relevant project is proved necessary, and if consideration has

been given to other alternatives but the project is found irreplaceable, the reclamation should, in principle, be approved. The restrictions provided for in the Bill do not seek to prohibit the carrying out of reclamation in the harbour completely but only try to establish a presumption against reclamation. The project can still be carried out if it is proved necessary.

In our opinion, what we propose in our amendment is a more balanced option. The particular importance of Victoria Harbour and the Hong Kong people's affection for the harbour have been taken into account on the one hand, and the practical needs in the development of public facilities and in land development have been considered on the other. I hope fellow Members will support the resumption of Second Reading debate of the Bill and vote for the relevant amendments.

Thank you, Mr President.

MR EDWARD HO (in Cantonese): Mr President, the spirit behind the Protection of the Harbour Bill presented by the Honourable Miss Christine LOH is to ensure that Victoria Harbour will be protected against excessive reclamation. The notion certainly attracts general support from the public. Victoria Harbour is a distinctive feature of Hong Kong. Not only has it become the landmark of the territory, it is also the centre of all sorts of commercial development over the years.

The topography of Hong Kong Island makes it only possible for a small number of people to take up residence at housing built against the mountain. That is why the island has once been described as a barren rock. As most of the flat lands, especially those in urban areas, on Hong Kong Island are reclaimed lands, the Government has all along considered filling in Victoria Harbour by reclamation the best way to develop the territory.

West Kowloon Reclamation and infrastructure projects for the construction of the new airport at Chek Lap Kok are recent examples of major reclamation in the territory. The reclamation projects also provide land for housing developments and construction of other facilities. The lands needed for development far exceed those needed for carrying out the projects under the Airport Core Programme. Under such circumstances, it is natural for Hong Kong people to ask if endless reclamation will be carried out until the whole of

Victoria Harbour is levelled up some day, until we lose in future such a natural heritage with so many distinctive qualities.

Since the Government has the sole authority to decide the scope of reclamation without even the need to make reference to the advice of the Town Planning Board (the Board), public concern about the situation is intensified.

At the debate of a motion on reclamation moved by Miss LOH in March 1996, I have pointed out that the Government should, before carrying out further reclamation, reassess other alternatives for developing the territory to find out if better options are available, and that careful consideration should be given to views expressed by the relevant professional bodies.

I basically support the spirit of protecting the harbour behind Miss LOH's proposal but I must add that I have great reservations about the Bill.

The substance of the Bill is divided into two parts. It establishes a presumption against reclamation in the harbour on the one hand, and empowers the Legislative Council to make final decision on future reclamation proposals on the other.

As far as the presumption against reclamation in the harbour is concerned, I am afraid that it will cause unacceptable and inestimable hindrance to future development along the harbour. For example, we all realize that there will be a need to build a trunk route linking up the east and the west in the reclamation area in Wanchai and Central. The presumption will definitely hinder infrastructure projects of this nature. These cases may even be brought before the court, thus causing further delay.

Mr Albert CHAN has made reference to the presumption established under clause 3 in his speech and said that reclamation can still be carried out if it is proved necessary. However, I have studied every single word in clause 3 but can find no provision to confirm if the Government is vested with the power to do so. Subclause (1) of clause 3 provides that "the harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people, and for that purpose there shall be a presumption against reclamation in the harbour". Subclause (2) of the clause, on the other hand, states that "all public officers and public bodies shall have regard to the principle stated in subsection (1) for guidance in the exercise of any powers vested in them". The

guidance given in subclause (1) is to preserve and protect but not to carry out development projects in the harbour. If the presumption is endorsed by the Council, a problem may arise when all construction and reclamation projects in the harbour are strictly forbidden.

Mr President, it is so far hard to confirm if reclamation projects can be terminated completely, and that no projects should be allowed to be carried out in the harbour. I think the most important point is to place some restrictions on future reclamation proposals, so that approval will only be given to those which have been proved necessary. In other words, there will not be unlimited or arbitrary reclamation.

I would like to add that there are underestimations in all demographic projections conducted recently by the Government. A press conference on housing land supply was convened yesterday and it was revealed that according to the findings of a recent research study conducted by the Research and Library Services Division of Legislative Council Secretariat, there have been grave underestimations in demographic projections made by the Government since 1992. Projections made by the Census and Statistics Department lately suggest that Hong Kong will have a population of 8.2 million in 2016. I am very much doubtful about the figure and suspect that it may be an underestimation again.

To be frank, I do not believe that the Government has, in its planning for the future, taken into account the rapid increase in local population and given the situation its full consideration. I firmly believe, and have said so in some other occasions, that developing other town centres in districts farther away from the harbour such as the northern part of the New Territories is the only solution to the problem of long term development in the territory. Therefore, I think the Government should examine other alternatives before carrying out reclamation in the harbour.

With regard to the second part of the substance of the Bill, clause 4 provides that all reclamation proposals in the harbour should be approved by the Legislative Council. I find the provision inappropriate because the Council is not a planning body and it is not suitable for the Council to take up the function of territorial planning. If the procedure is endorsed by the Council, there will be overlap and confusion of roles and functions between the Council and the Board. I understand that it is Miss LOH's original intention to have all reclamation proposals vetted and approved by the Board but the President ruled that her

proposal has a charging effect and as a result it has to be withdrawn. During our deliberations on the Bill, a number of members of the Bills Committee also find the proposal inappropriate and I firmly believe that Miss LOH does not regard it as the best solution either. For the above reasons, I hope fellow Members will not support the provisions in clause 4, even though Miss LOH may have other opinions on various provisions such as clause 3 of the Bill.

Mr President, despite my opposition, the arrangement I propose may achieve the same objectives of the Bill. I propose to designate the harbour a protected zone and include it as a target of land use under the Outline Zoning Plan to be drawn up by the Board. This may ensure that all reclamation proposals will have to be vetted and approved by the Board, and the general public will have the right to express their views and raise their objections to the projects. As in the cases of other land uses such as green belts, protected zones and so on, the harbour will be protected by specifications included in the Notes of the Outline Zoning Plan, so that development in the harbour will be limited to those projects which have been proved necessary.

Mr President, I hope an explicit undertaking will be given by the Secretary for Planning, Environment and Lands in his speech later to promise that if my proposal is accepted, the Governor will direct the Board to alter the use of the harbour into a land use, or empower the Secretary for Planning, Environment and Lands to give the direction. As my proposal will not cause any interference to the existing planning system and may achieve the objective of protecting the harbour, fellow Members are urged to vote against the resumption of Second Reading debate of the Bill. With regard to the amendment proposed by the Honourable Albert CHAN, I cannot support it either because I do not think his proposal can address the problems and shortcomings which I raise on the Bill presented by Miss LOH. His proposal cannot offer complete protection to our harbour either. Maybe we can have another debate on this point during the Committee stage.

Thank you.

MR IP KWOK-HIM (in Cantonese): Mr President, Victoria Harbour has always been an important landmark of Hong Kong. This is the reason why there has been much discussion about reclamation in the harbour in all sectors of the community, including the Legislative Council.

We cannot accept excessive and unrestrained reclamation, and nobody would like to see Victoria Harbour turned into Victoria River as a result of endless reclamation. However, from the perspective of overall planning, not only is it a cost-effective way to produce land through reclamation, such projects also serve as the most effective solutions to relieve traffic congestion and address the rehousing problem arising from the redevelopment of old districts. After weighing the pros and cons, we consider that the most desirable mechanism for carrying out large scale reclamation is subject the proposals to careful vetting and approval of an independent authority, and channel should be open to the public for expressing their views. It is indeed necessary to establish such a channel, through which the public may participate in the monitoring of the relevant reclamation projects and the transparency of the system may be enhanced. The measures adopted and the channels through which reclamation is carried out at present fail to achieve the objectives mentioned above. In this respect, the Honourable Miss Christine LOH sets out her specific requirements in the Protection of the Harbour Bill. The Bill establishes a statutory presumption against reclamation in the harbour in clause 3, taking judicial review as the mechanism for public scrutiny on reclamation projects. This is in principle a desirable arrangement in view of the present situation in carrying out reclamation projects in the territory, especially those in the harbour. The arrangement will enable the public to participate in the monitoring of reclamation proposals.

Mr President, during the deliberation of the Bills Committee, Mr Edward HO has proposed considering the issue from the executive point of view and extend the functions of the Town Planning Board (the Board) so as to enhance the transparency of the present system. It is also proposed that through executive arrangements and amendments to the Town Planning Ordinance, a statutory plan covering the whole of Victoria Harbour may be drawn up, so that the Board will be empowered to vet and approve future reclamation proposals in the harbour, and the public may express their views through the statutory procedures provided for in the Town Planning Ordinance. In this connection, I think if the Government honours its commitments, the public will have the chance to participate in the vetting and approval of reclamation proposals, and the objectives of clause 3 of the Bill presented by Miss LOH will also be achieved.

The Democratic Alliance for the Betterment of Hong Kong (DAB) has considered the views expressed by various parties and it is our opinion that the arrangement proposed by Mr HO is desirable. We once hoped that the Bill

could be withdrawn so that the problem would be solved in a much better way. Unfortunately, our hope failed. The Honourable Albert CHAN proposes a Committee stage amendment to the Bill to narrow the scope of boundaries of Victoria Harbour, which Miss LOH seeks to preserve as a natural heritage through legislative means. Mr CHAN has already expressed his views but I personally think that the amendment is in essence a result of a lack of confidence in the effect of extending the power vested with the Board. It may also be a result of the Government's failure to give more convincing undertaking in this respect. Moreover, I think the amendment is an unnecessary move because it may give rise to the problem of how to determine the correct and the most suitable geographical position of the central point of the harbour. As thorough study in this respect has never been conducted, the DAB thinks that the amendment is not worth supporting.

The DAB is willing to give its support to other alternatives, if any, which address public concerns on arbitrary and unrestrained reclamation in Victoria Harbour. If there is really no solution to the problem or no other way to hold the situation in check, we will then support the amendments proposed by Miss LOH.

Clause 4 of the Bill provides that all reclamation proposals must be subject to the vetting and approval of the Legislative Council. The DAB thinks that this will confuse the relationship between the Legislature and the Executive, and is therefore opposed to the amendment.

Mr President, I so submit.

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, Victoria Harbour is the place of origin of Hong Kong. It is a deepwater port on which Hong Kong people rely for a living and depend for development. It is also a tourist attraction that the people of Hong Kong take pride in; and a scenic spot of great value.

Open and thorough consultative machinery has never been available to the general public and professionals in related fields during the planning process of reclamation projects. The Town Planning Board (the Board) has no role to play in this regard either. The Government's guiding principles for administration

and philosophies of management are both unimaginable and unacceptable for a modern city as Hong Kong.

The Member's Bill presented by the Honourable Miss Christine LOH seeks to prevent the Government from carrying out reclamation in Victoria Harbour in future, and subject all other reclamation proposals to the approval of the Legislative Council. The Bill compels the Government to conduct a comprehensive review on the decision making procedures in planning reclamation projects. It is preliminarily agreed that the Board will have the power of preparing reclamation plans and relevant bills, and the proposals would be subject to statutory consultative procedures. In this connection, the Bill presented by Miss LOH has already acquired achievements that are hard to come by and its contribution should not be neglected. I myself and the Hong Kong Association for Democracy and People's Livelihood (ADPL) is in support of clause 3 of the Bill, including the amendment proposed by the Honourable Albert CHAN to the interpretation clause. The clauses contain provisions against reclamation in Victoria Harbour and subject reclamation projects to the scrutiny of judicial review. Even though the Board is really allowed to vet and approve future reclamation proposals as promised by the Government, clause 3 of the Bill is still necessary as it may provide additional protection to the monitoring system.

As far as clause 4 of the Bill is concerned, some colleagues opine that if reclamation proposals are subjected to the approval of the Legislative Council, the roles of the Executive and the functions of the Legislature will be seriously confused. The ADPL cannot accept this argument. We agree, and it is also very obvious, that the Bill will have significant implications on future planning programmes, especially on the new coastal roads on Hong Kong Island and in Kowloon, as well as reclamation projects in Tsing Yi and Kowloon Bay. However, it is my understanding that clause 3, though enacted, will not prohibit reclamation in the harbour completely.

I hope the Government will have an appropriate mechanism in place as soon as possible through the adoption of administrative measures, so that when reclamation in Victoria Harbour is required to implement essential development programmes, a balance will be struck between the need of development in the territory on the one hand, and Hong Kong people's sincere wish to protect the harbour on the other.

Thank you, Mr President.

MRS MIRIAM LAU (in Cantonese): Mr President, it is recorded in history that reclamation in Hong Kong was first started a century ago in Kennedy Town and the project was completed in 1886. Reclamation in Central started in 1890 and the whole project was brought to completion in 1904. Since then, more and more reclamation projects took place in different locations of Hong Kong, and the areas covered were also on the increase.

In early days, there was only a population of 15 000 in Hong Kong. The number grew significantly to 300 000 in 1901 and increased drastically over the years to 6.3 million at present. In 10 to 20 years' time, Hong Kong will have a population of 8 million or more.

Hong Kong has been suffering from an inherent shortage of land and perplexed by the problem of land supply. Increase in population has made it even more difficult for the Government to obtain adequate land to meet our demand.

In those days, foreign merchants were opposed to reclamation, mainly due to their wish to retain those private wharves that they owned. The Honourable Miss Christine LOH is against reclamation because she thinks that Victoria Harbour should be protected and preserved as a special public asset and a natural heritage of Hong Kong people.

Nobody will object to the lofty idea of environmental protection that Miss LOH advocates; neither will I. However, it is very much questionable to adopt through legislative means an ideal which is little short of illusory and render it the guiding principle as well as the basis on which a presumption against reclamation in the harbour is established.

Our practical needs and ideals are often in conflict and sometimes we have to put our ideals aside. Housing is one of our practical needs while transportation is another. In the White paper on Transport Policy in Hong Kong published by the Government in 1990, it was already confirmed that a number of road works would have to be carried out, including the section connecting Kennedy Town and Aberdeen of Route 7, road links to the Eastern Corridor and Central-Wanchai Bypass. All these are major channels which link up different

parts of the territory and will be of considerable assistance in relieving the problem of traffic congestion.

In order to have the road works on Route 7, Central-Wan Chai Bypass and road links to the Eastern Corridor carried out, Green Island Reclamation and Central-Wan Chai Reclamation have to be implemented. Disruptions in these reclamation projects will inevitably lead to delay in the progress of such road works. With the presumption established by Miss LOH, final decisions on these road works will only be made after a battle between idealism and realism. Those who like fishing on the shore of West Point will consider the harbour in Western District a public asset and a natural heritage, thus objecting to the reclamation project in Green Island. People living in the southern part of Hong Kong Island, on the other hand, are confronted with the problem of traffic congestion in Aberdeen Tunnel every day, which impels them to consider the issue from a practical point of view and urge for the early construction of an extension of Route 7 on Green Island Reclamation.

Subjecting all reclamation projects to the approval of the Legislative Council will undoubtedly turn the Council into a battlefield for the war between idealism and realism. Members may believe that they will, apart from adopting an idealistic approach, vet and approve all reclamation projects realistically but it is a proven fact that ideal is always the first and foremost consideration of many of our colleagues. Even if the matter is really handled in a realistic and not idealistic manner, does the Council have the necessary resources to assess the projects? Do Members have the professional knowledge required to make our judgement? We might as well take the questions into consideration.

Reclamation is part of the overall planning on land use. If a presumption is introduced into the system and the projects are subjected to the vetting and approval of the Council, the Government's flexibility in handling the problem of land use will be undermined and it will not be able to ensure sufficient supply of land to meet the urgent demand.

I believe the amendment proposed by the Honourable Albert CHAN of the Democratic Party is different in approach but contributes to the same end. It also provides for, in principle, the establishment of an assumption or presumption but the scope it covers is reduced. I believe Mr CHAN, in moving the amendment, also understands that there is the need to carry out reclamation in Hong Kong. He is in support of or at least not opposed to reclamation.

However, Mr CHAN or the Democratic Party thinks that an assumption must be established to restrict reclamation in certain areas. The scope of Mr CHAN's proposed amendment is limited to the areas where he or the Democratic Party thinks are the places that will have the practical need to carry out reclamation. In his opinion, there is the practical need to carry out reclamation only outside the scope of boundaries of the central harbour. This may be in line with the perspective of the Democratic Party, which has included in its platform the issues of reclamation in Tsuen Wan and Route 7. According to the amendment proposed by Mr CHAN, the presumption against reclamation in the harbour applies only to the central harbour and the areas mentioned above will be excluded. This will satisfy rival claims as reclamation may be carried out in both Tsuen Wan and Green Island with the exclusion of the areas from the scope of boundaries of the central harbour.

I think the amendment proposed by Mr CHAN cannot genuinely satisfy the practical needs of Hong Kong because it does not cater for the need to carry out road works on road links to the Eastern Corridor and Central-Wan Chai Bypass. Mr CHAN emphasizes in his speech that this is only a presumption, which may be reversed if there is the practical need to carry out reclamation. It seems to be very simple in saying so but an established presumption can only be reversed after intensive debate and a number of legal procedures and appeal procedures. With such complicated and time-consuming procedures, public works which require urgent action cannot be carried out.

I take a clear and consistent position on reclamation. I am in support of indispensable projects and object to unnecessary and excessive reclamation. With the series of arrangements and the consultative procedures currently in place, the Government is in a position to determine if there is the practical need to carry out reclamation. Yet, the monitoring mechanism will definitely be strengthened if the suggestion made by Mr Edward HO is put into practice. There is absolutely no need to have a battle between idealism and realism in the Council before a final decision on reclamation projects is made.

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

MR HOWARD YOUNG: Mr President, firstly I would like to applaud the motives behind the Honourable Miss Christine LOH's Bill. The sentiment behind it is to, not just to protect or environment, but also cry out aloud on behalf

of many Hong Kong people, saying "enough if enough. Let us stop filling in the harbour." This sentiment, Mr President, applies not only to people who are concerned with the environment but also many members of the tourism industry as well.

The harbour of Hong Kong is one of our greatest assets. It is an asset that, once gone, cannot be rebuilt. It is an asset that, like in the computer industry where we have hardware and software, from a tourism point of view, the harbour is also a hardware and software rolled into one. Hardware in the fact that our ships, our ferries and even our harbour tour cruises all use the harbour to attract tourists to Hong Kong. Which postcard of Hong Kong have you seen publicising on Hong Kong that does not show the harbour and its magnificent background?

When I say software, it means that even when people come to Hong Kong and go to one of the major tourist attractions, that is the Peak, what do they look at? They look at the harbour and they expect to see, day and night, a clean, well-presented and photogenic harbour before our eyes, and that is one of the characteristics of Hong Kong.

However, Mr President, it is not true to say that simply by leaving things as they are or stopping still that will improve the situation or even will be best. No. For instance most of Hong Kong's tourists today still arrive at Kai Tak Airport and next to Kai Tak Airport is the Kai Tak Nullah. Now, in my view, that should have been reclaimed and filled in years ago so that we would greet Hong Kong tourists when they come off the plane with a view of either a park or maybe nice buildings or exhibition centres rather than a pungent whiff that comes out of the nullah. Therefore, even from the tourism point of view, even though you wish to preserve the harbour, there were past needs and even needs which should have been met long time ago or to have some bits of it reclaimed.

Looking further ahead, Mr President, the tourism industry is very keen to develop a shipping terminal in Hong Kong so that cruise ships can come to Hong Kong. Now, if they come now, apart from Ocean Terminal, where else can they berth? And should use be made in future of, say, the potential Kai Tak site, and I do not see how this could possibly be done without some form of reclamation.

Therefore, on the one hand, we want to preserve the features of the harbour and let it remain as an asset of Hong Kong, on the other hand we must recognise

there are certain things that need to be done, and although it might be reclaiming it a bit more, the end result might be better for everyone.

So, Mr President, I feel that the motives behind Miss Christine LOH's Bill are very supportable. Indeed, I feel that the route to take is not that satisfactory, as many of the Members have already said or talked about as to whether it should be the Legislature that decides on such matters, I will not go into that again and to repeat the arguments. But I do hope that when the Secretary for the Planning, Environment and Lands replies to this Bill he will be able to tell Members to what extent we will be able to let the public or professionals to have more of a say in determining the future of our harbour. How will the Town Planning Board, despite the previous attempt by Miss LOH to bring that into being, or whatever body there may be, be able to have an enhanced role in this matter?

I certainly feel that there is a case for not looking at the harbour and the land site in isolation. They are indeed related. You look at all natural harbours and good harbours in the world, you look for instance in San Francisco, in Sydney, anywhere, people do not come to look at the harbour or the water as a tourist attraction. They want to see what is on their waterfront, the architectural features behind it and so on, and the zoning. So, I think the Government hopefully when it addresses this Council on the Bill will be able to tell us how it envisages this problem to be tackled, not just from the purely parochial harbour point of view, but also how the land adjoining the harbour will be dealt with as well.

Thank you, Mr President.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I would like to point out first that today, many Members have made their speeches which seem to say that the Administration has never mentioned any reclamation programme, and they now have some views on this subject.

In fact, the Administration clearly outlined the scope, contents and purposes of the proposed reclamation when announcing the Metroplan and the Port and Airport Development Strategy (PADS) some six or seven years ago. At that time, the Administration also conducted extensive public consultation. I just want to point out that when we announced the PADS and the town planning layout of the West Kowloon Reclamation, with the exception of one or two

opinions which held that reclamation would affect the piers, the majority of the views we received were in favour of going ahead with the Airport Development project without delay as Hong Kong had to accommodate a large population with its limited land resources. The reclamation project should also be implemented as soon as possible. Some people even held the view that the amount of land which the Administration intended to gain by means of reclamation was inadequate. Why have Members changed their views after just a few years when the Administration proceeds with the reclamation in accordance with the results of the public consultation? Members did not raise any objection during the public consultation exercise conducted by the Administration.

As for this Bill, Mr President, we note that members of the Bills Committee have not reached a consensus. Therefore, the Administration is opposed to this Member's Bill. As some Members have mentioned that this Bill carries two purposes. Firstly, clause 3 of the Bill will impose a presumption against reclamation in the harbour, and all public officers and public bodies are bound to consider this principle when discharging their duties or in the exercise of their powers; secondly, clause 4 of the Bill will effectively give the Legislative Council the approving authority for carrying out reclamation in the harbour.

Mr President, I want to make it clear that it is also a government policy to protect and preserve the harbour. However, the Administration considers the Bill unnecessary for the implementation of this policy on the grounds that the existing legislation and procedures for town planning have provided a statutory process for site formation and making amendments to town plans. This process is open and transparent and involves a thorough process of public consultation. Moreover, the Bill will also confuse the role of the Legislative Council to legislate with the responsibility of the Executive Council to make executive decisions. I will elaborate on the position of the Administration regarding these two points in the debate of the relevant provisions of the Bill.

Mr President, we have clearly expressed that the Administration is opposed to this Bill during the deliberation of the Bills Committee. I have also pointed out just now that this Bill is unnecessary. What is more, this Bill fails to spell out the details concerning its implementation. However, I would like to stress again that the Administration is aware of the serious concern in the community about reclamation in the harbour. We also agree that there is still room for improvement in the vetting and approval process for reclamation

proposals. Therefore, the Administration has come up with two proposed improvements and suggested one of them be adopted to replace the Bill:

- (1) All future reclamation proposals, except minor projects, will be submitted to the Town Planning Board (TPB) for consideration, in order to let the TPB decide whether there is a need to make a new statutory town plan or amend the existing statutory town plan for a particular reclamation proposal. After taking into account the relevant planning factors and results of the study, the TPB will evaluate the need for reclamation and the land use proposals. The TPB will also consider the scale of the reclamation prudently. If the reclamation proposal is rejected by the TPB, it will not be processed any further. On the contrary, a review may be necessary. However, if the reclamation proposal and the land use proposals have been approved by the TPB, the Administration will consult the relevant district boards and organizations on the proposals and then convey their views to the TPB for consideration. After considering the results of the public consultation, the TPB will decide on whether to act according to the Town Planning Ordinance and publicize the amended draft statutory town plan incorporating the reclamation proposal. The TPB will put the statutory town plan on exhibition in accordance with the Town Planning Ordinance. Any persons affected by the draft statutory town plan may lodge objections to the TPB during the exhibition period under clause 6 of the Town Planning Ordinance. After considering the objections, the TPB may propose amendments to the draft statutory town plan before submitting it to the Governor in Council for approval; or
- (2) A statutory town plan covering the entire Victoria Harbour can be formulated to stipulate that all reclamation proposals in the future are subject to the relevant statutory process under the Town Planning Ordinance.

Mr President, the abovementioned proposals of the Administration are still valid and the Governor has written to members of the Bills Committee, pointing out that the Administration will implement the above proposals if the Bill is withdrawn. I do not understand why some Members do not consider that the Administration has actually made such a commitment. However, if the Bill is

passed, the proposals of the Administration will be nullified due to the implications of the Bill.

Mr President, I hereby appeal to every Member to consider carefully the issues concerned before making a decision on the Bill. The Bill, if passed, will not only seriously disrupt the current mechanism for town planning, causing confusion to the division of responsibility between the Executive and the Legislature, but also affect to a great extent our various proposals to meet the future development needs of Hong Kong. The Administration is opposed to the Bill and considers it unnecessary. I also hope that all Members will vote against this Bill.

Thank you, Mr President.

11.00 am

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

MISS CHRISTINE LOH: Mr Deputy, the Administration plans to reclaim a total of about five square miles of the harbour. Half of this reclamation has already received the final stamp of approval from the Governor. The other half is awaiting such approval, and has been delayed principally by the same public controversy that gave rise to this Bill.

The Administration's plans call for more reclamation than all that was previously done over 150 years, and reduce the harbour's width to 860 m as its narrowest point. The implementation of the plans will mean a drastic and irreversible shrinkage of one of the most precious features of our geographical environment. In a few short years, they will turn Victoria Harbour into Victoria River.

It is therefore not surprising that the community has expressed the deepest dissatisfaction with these plans. The Secretary has just now reminded us that these plans had been revealed to the public already some years ago and questioned why people did not raise their voices then. It may be that the Government never released on one sheet of paper the extent of all these plans. However, this plan was released, I believe, some time towards the end of 1994

and that plan obviously shocked a lot of people, which is why the controversy has arisen. This Council heard representations opposing the plans from an extraordinarily wide spectrum of relevant professional bodies and individuals, including the Hong Kong Institutes of Surveyors, Architects, and Landscape Architects, the major environmental protection groups, various unions of marine professionals, individual academics and Town Planning Board members.

Meanwhile, the Society for the Protection of the Harbour, of which I am Deputy Chairman, collected more than 148 000 signatures in two months from members of the public supporting a petition to stop harbour reclamation. Many Members who have themselves engaged in petition drives will realize what an extra ordinary number this is within that period of time.

The Administration, however, is impervious to such pleas. The machinery of Government was first set in motion towards harbour reclamation as early as 1988, and it is now so deeply committed to the resulting plans that I believe the Administration no longer knows how to back away from them. Nor, in any case, is it interested in doing so. The belated outbreak of public controversy has stalled the juggernaut, but there is no indication it will change course. That is why we need the Bill.

Clause 4 of the Bill requires the Legislative Council's approval for harbour reclamation. The technical problems raised by the Administration are unconvincing and I will not waste time on them. We know that this Council's internal procedures are perfectly capable of recognizing which reclamation proposals are routine and uncontroversial, and of approving them swiftly and without fuss.

Where major reclamation works are concerned, I understand that many Members are reluctant to confront the executive head-on. In such cases, however, I suggest that approval by this Council is not only an appropriate course of action, but the best course. We have an obligation to speak for the community, and no other body is presently able to do so. I have previously argued for the establishment of a new body to take up the unassigned portfolio of advising the Administration on strategic development planning. Until that is done, this Council ought to shoulder the burden. Not the burden of advising on strategic planning, which I freely admit we are not qualified to do. I am speaking of the burden of being the community's last line of defence against

reclamation plans that have veered wildly off course. That we can and should do, Mr Deputy.

Clause 3 of the Bill establishes the principle that the harbour is to be protected and preserved as a special public asset and a natural heritage of Hong Kong people. For that purpose, the clause also establishes a presumption against reclamation in the harbour. Such a presumption will ensure throughout the planning process that due account is taken of the harbour's special characteristic. It means that reclamation in the harbour may only be undertaken if no feasible alternative is available. As a bottom line, I suggest that this is eminently reasonable.

I myself am not against total reclamation. For example, Kowloon Bay, which the honourable representative of the tourist functional constituency, Mr Howard YOUNG, just talked about. In the work of the Society for the Protection of the Harbour we have also published alternative plans to those of the Government and in there, for example, we have suggested that Kowloon Bay may be turned into a harbour and may in fact suit the needs of the tourist industry.

The Secretary professes horror at the lack of details about how to fulfil its obligations under the presumption. He would be equally horrified, and more genuinely so, if the provision were more detailed. As written, the provision makes the minimum intrusion on the Administration's internal planning processes.

Moreover, clause 3 by no means rules out any future harbour reclamation. It merely demands that when the Administration considers harbour reclamation, it takes account of the pre-eminent place that the harbour has in the hearts of Hong Kong people. In other words, it requires the Administration to reorder its own priorities to better reflect those of the community it governs. I see no argument against such a requirement, which is no more than what good government demands.

The Honourable Albert CHAN will move a Committee stage amendment to limit the Bill's protection to the Central Harbour. I regret that this must be so, and I leave him to explain the reasons for doing so in greater detail later. I do not believe the Bill can pass without this amendment, however, so I urge Members to support it. Let us protect as much of the harbour as we can.

As a last-ditch alternative to the Bill, the Administration offers to allow the Town Planning Board to vet reclamation plans. What should we make of this proposal? I would like Members to consider four basic points.

First, Members should approach the proposal with much scepticism. It contains more the usual component of evasion and misdirection. Let me give an example.

The Administration raised charging effect arguments twice to block provisions intended to bring the Town Planning Board into the scheme of the Bill. When making those arguments, the Planning, Environment and Lands Branch advised the President as follows, and I would like to quote from that letter:

The Board is responsible for the preparation of draft plans for the layout of "such areas as the Governor may direct". But the question of whether those areas should be reclaimed in the first place is a separate and prior issue which falls outside the present functions of the Board.

Under present law, the Board is not concerned with deciding whether there should be a reclamation or not, but with preparing a draft layout plan for a reclamation if so directed by the Governor.

Despite having advised the President that the Town Planning Board could not legally question the extent of reclamation plans, that is precisely what the Administration now proposes the Board should do.

I do not mention this contradiction to suggest that the Administration is legally unable to implement the proposal. I think it can do so, and that it was in fact less than candid in the earlier advice. My point is that there is no reason to believe the Administration is being more candid with Members now. The advice and arguments offered by the Administration in this matter have consistently been motivated by strategic considerations first and foremost.

Second, most of the Administration's so-called proposal is not a proposal at all, but merely a reaffirmation of existing arrangements. The undertaking to allow the Board to examine reclamation plans has been in place since 1995. The refinement of that undertaking, to submit an advance list of reclamation projects to the Board, dates back to 1996. These arrangements already exist. They are how we reached the unsatisfactory position we are in today.

The sole, new element in the Administration's proposal is the suggestion that a single town plan be prepared for the entire harbour. This was raised for the first time on 30 May 1997, and I wrote immediately to the Governor on that day asking him to take the necessary legal steps to set the suggestion in motion. The Honourable Edward HO also highlighted this and he was most helpful in thinking through how this could be done. The Governor's reply reaffirmed the 1995 and 1996 undertakings, but failed entirely to mention the creation of a single plan for the whole harbour. I had offered, Mr Deputy, to withdraw this Bill if this could be done but again no answer.

That evasion was typical, and brings me to my third point. The Administration categorically rejects any legal obligation to abide by, or even to consider planning input from outside the Administration itself. The current legal position is that the Governor may freely authorize any reclamation unilaterally and finally. He may do so despite views to the contrary expressed by anyone, including the Town Planning Board. This is the legal position the Administration is asking you to endorse.

Fourth and finally, the Administration continues to stand by its existing reclamation plans. There may be some flexibility about the details, and in particular about long-term direction of development. But harbour reclamation is a medium-term strategy, and as recently as last month, the Administration tabled papers to the Bills Committee reaffirming its basic justification for reclaiming the harbour in the medium term. Mr Deputy, we do not have a long time to save the harbour. As this is medium term, decision will be taken very quickly and very swiftly. I am trying to seek a measure of balance on this process, which is why I urge you to support clause 3, the idea of the presumption.

In this light, the meaning of the Administration's proposal should be clear to you. The Administration is willing to put reclamation plans to the Town Planning Board because frankly, it is confident that the Board will not challenge them. The Administration has solid *ex officio* representation on the Board, and has not reappointed the Board's most vocal and knowledgeable opponents of reclamation. Nevertheless, just in case the Board does become obstreperous, the Administration also wants to retain the legal right to ignore it. That is why the Administration proposes only administrative instead of legally binding arrangements for the Board. So, Members, I ask you not to be fooled by these

and that is also why the Secretary is seeking to block every provision I have suggested to bring the Board into this Bill.

The fact is that the Administration intends to proceed with its reclamation plans. The only reason it has not done so yet is that it is still searching for a politically acceptable package in which to do so. Right now, Members have a choice. They can give the Administration the political package it needs by rejecting the Bill or they can try to save the harbour.

Mr Deputy, I urge Members to support clause 3 even if they cannot stomach clause 4.

11.15 am

THE PRESIDENT resumed the chair.

Question on the Second Reading of the Bill put.

Voice vote taken.

Miss Christine LOH claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on Miss Christine LOH's Members' Bill. The question is: That the PROTECTION OF THE HARBOUR BILL be read the Second time.

Will Members please register their presence by pressing the top button in the voting units and then cast their votes by pressing one of the three buttons below?

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, 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, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, 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 Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 30 votes in favour of the motion and 20 against it. He therefore declared that the motion was carried.

Committee stage of Bill

Council went into Committee.

PROTECTION OF THE HARBOUR BILL

Clauses 1 and 5 were agreed to.

MR ALBERT CHAN (in Cantonese): Mr Chairman, the Standing Orders stipulate that any proposed new schedule shall be considered after the clauses of

the bill have been disposed of. In accordance with Standing Order 68, with your consent, I move that Standing Order 46(5) be suspended so as to allow my proposed new Schedule 1 to be considered ahead of the remaining clauses of the Bill.

CHAIRMAN: Mr Albert CHAN, as only the President may give consent for a motion to be moved, without notice, to suspend Standing Orders, your request cannot be dealt with in Committee. I therefore order that Council shall now resume.

Council then resumed.

PRESIDENT: Mr Albert CHAN, you have my consent.

MR ALBERT CHAN (in Cantonese): Mr President, I move that Standing Order 46(5) be suspended so as to enable the Committee of the whole Council to consider the new schedule 1 I proposed ahead of the remaining clauses of the Bill.

PRESIDENT: I now propose the question to you and that is: That Standing Order No. 46(5) be suspended to enable the Committee of the whole Council to consider Mr Albert CHAN's proposed new schedule 1 ahead of the remaining clauses of the Bill.

Question on the motion put and agreed to.

Council went into Committee.

New schedule 1

Boundaries of the Central Harbour

Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that the new Schedule 1, as set out in the paper circularized to Members, be read the Second

time. This new Schedule 1 aims to narrow the boundaries of the Victoria Harbour as set out in the Honourable Miss Christine LOH's Bill to the central harbour, which is defined as, on the east — a straight line drawn from the extreme south-east point of Hung Hom adjacent to Kowloon Bay to the extreme north point of Hong Kong Island at North Point, and on the West — a line following the course of the conduit of the West Harbour Crossing.

We propose this amendment mainly because we feel if the entire Victoria Harbour is within the ambit of the Bill, the effect will be too great and far-reaching. We have considered the fact that major development will take place in a number of areas. Central Kowloon, to name one — if the Kai Tak site is developed, the area so reclaimed will provide housing for 400 000 people, whereas the Green Island reclamation will provide housing for 200 000 people. If the presumption against reclamation is established in respect of these areas, it will create some hindrance to their future development.

In his speech earlier on, the Honourable IP Kwok-him criticized us for not having carried out an in-depth study before putting forward our amendment. In fact, he probably did not take part in our discussions or he failed to get a good hold of the rationale behind the amendment. In fact, when we look again at the revised boundaries of the central harbour, we notice that in the Government's Metroplan, that is, the main reclamation projects, almost all reclaimed land were to be used for developing commercial buildings. The part of the central harbour we have proposed mainly involve Central, Wan Chai, Causeway Bay and Tsim Sha Tsui. Apart from the portion used for the purpose of road works, none of the remaining is for meeting the supply of residential flats.

We are also aware that some people have recently submitted their proposals to the Government and the Chief Executive's Office, suggesting, among others, building a jumbo-sized square on the newly reclaimed land in Central. We consider it extremely undesirable if the central harbour tradition and hence the harbour which Hong Kong people feel extraordinary passion for is to be destroyed as a result of such planning.

I would also like to respond to Mrs Miriam LAU's criticism. She thinks that we are partial in making the choice. Although she did not use the exact wording, she was saying that as we did not oppose reclamation in Tsuen Wan, why we were against the same works in Central? As regards reclamation in Tsuen Wan, the Tsuen Wan office of the Democratic Party was totally opposed to

the idea. We do not include that part this time because we understand that the Tsuen Wan reclamation is a project on the district level. But Hong Kong people all feel extraordinary passion for our central harbour. From a geographical point of view, disastrous consequences would result if reclamation were to take place. Furthermore, we do not want opinions in the district to affect the clauses of the Bill as a whole. Considering the special status of the central harbour, we think that it should be incorporated into the Bill.

Earlier on, the Secretary for Planning, Lands and Environment inquired why no one, including Members, opposed the Metroplan when it was proposed. In fact, during the consultation of the Metroplan, the then United Democrats of Hong Kong did express their reservation over the Government's reclamation projects in Central and Wan Chai, especially with reference to the Government's intention to reclaim the Causeway Bay typhoon shelter, which would entirely spoil numerous traditional scenery. As to why so many people have reacted so strongly recently, I think it is because during the 1993-94 consultation exercise, a lot of the consultation papers were only written in nature or beautiful descriptions. After all those reclamation projects in recent years, especially after the Central reclamation and West Kowloon reclamation were finished, the real picture has made Hong Kong people realize that reclamation has resulted in severe damage. The pictures that the Government provided during the consultation were all pictures showing what would turn out after the reclamation has been finished, which were very appealing. But when we see the actual damage that reclamation has caused, what we feel is totally different from the pictures the Government depicted.

I hope members will support the amendment to Schedule 1, which will narrow the area covered by the Bill. If the entire Victoria Harbour is covered by the Bill, Members may worry that the effect will be too great. I think that if Central and the central harbour are not incorporated into the Bill, and that if the relevant controls are not supported, the Victoria Harbour, renowned as "Pearl of the Orient", may cease to be a shining pearl. Instead, it will become a fat and filthy pig. I hope that Members will support the amendment.

MR EDWARD HO (in Cantonese): Mr Chairman, I do not intend to speak too much on it. I think the purpose of the Honourable Albert CHAN's amendment is to materialize that presumption. I would like to speak on the issue of the presumption when we discuss clause 3 later on, and I will also respond to the

Honourable Miss Christine LOH regarding the views of other professional bodies toward reclamation shortly. That I am doing so is because if we carry on like this, we will repeat the problems we already discussed during Second Reading of the Bill. Thank you.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr Chairman, before expressing my views on the proposed amendments, I would like to first clarify some of the views expressed by the Honourable Miss LOH just now on the Town Planning Board (TPB). I am of the opinion that all three points raised by Miss LOH are groundless. Firstly, she said that *ex officio* members had a majority or account for a high percentage in the TPB. Secondly, she said that the Government wanted the TPB to handle this proposal because the Government was sure that the TPB would approve its proposals. Thirdly, she mentioned that Members who were the most vocal opponents of reclamation had not been reappointed to the TPB by the Government.

In response to these three points, I would like to point out first that civil servants are purely appointed to the TPB on an individual capacity and they are in a minority. Moreover, with the exception of civil servants, most TPB members are prominent figures in their own professions and seven of them are university professors. On several occasions, some TPB members explained to the Bills Committee why they were opposed to the Bill. Among the opponents of this Bill were professors in Town Planning and even professors in Town Planning laws. All of them have explained to the Bills Committee from their professional point of view why they do not consider Miss LOH's proposals feasible. If Miss LOH thinks that such a group of prominent persons, academics and professionals are rubber-stamps for the Government, I think that she is in one way or the other insulting their intelligence. As for the third point that it seems some members had not been reappointed to the TPB because they were opponents of reclamation in the harbour, this is not true either. Even though I know which member Miss LOH refers to, I do not want to reveal his name. In fact, this member had been on the TPB for more than 12 years. It is the right time for a change in line with the Government's normal practice. When this member was not reappointed, some other TPB members were not reappointed at the same time after serving in the TPB for more than eight or 10 years. Moreover, this member confided to me on several occasions that he felt tired after serving on the TPB for 10 years and it was time to retire. We accepted his views at that time. Therefore, I am very surprised at Miss LOH's

allegation that this member had not been reappointed because he was opposed to reclamation in the harbour. I feel that I am obliged to make a clarification.

As for the amendments proposed by Mr Albert CHAN, I would like to point out that the Bills Committee had not discussed these amendments. Therefore, the Government had not been given the opportunity to explain their implications. I would like to elaborate the implications of Mr CHAN's amendments.

According to the amendments, clauses 3 and 4 (that is, a presumption against reclamation and all reclamation proposals are subject to approval of the Legislative Council) will continue to apply. The purpose of the amendments is to confine the scope of the Bill to the central harbour, which covers the waters bordering Tsim Sha Tsui, Hung Hom of Kowloon Peninsular and Central, Wan Chai and Causeway Bay of Hong Kong Island. In fact, I wish Mr CHAN could tell me the logic and grounds for his amendments, which will have serious implications for the future development of Central, Wan Chai, Tsim Sha Tsui, Hung Hom and Kowloon City. As the Bill defines reclamation as "any work over and upon any foreshore and sea-bed", and involves many "relevant Ordinances", the amendments will affect any work over and upon any foreshore and sea-bed, including works to be carried out under the Cross-Harbour Tunnel Ordinance, the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance, the Roads (Works, Use and Compensation) Ordinance and the Western Harbour Crossing Ordinance. In addition, many other small scale works, such as those involving the construction of piers and public facilities along the coast line and their maintenance works, may also be affected.

The amended Bill will also throw development plans in the relevant districts into uncertainty. It may give rise to many legal disputes in the future, thereby seriously affecting the planning and progress of relevant projects, such as the Central-Wan Chai Bypass, the new road connecting Tsim Sha Tsui with the West Kowloon Reclamation area and the rail-link between KCRC and the Western Corridor Railway. These projects are vital to the improvement of the transport system in Hong Kong. We have included these projects in the planning scope when formulating the overall development strategy. Under this Bill, these projects must be given special and different treatment, which will not

only cause confusion, but also affect the related projects which are outside the scope of the Bill.

Moreover, as I said in the Second Reading debate, the current town planning procedures and the powers vested in the Legislative Council have ensured that reclamation proposals and the related infrastructure are subject to supervision, examination, public consultation and approval or disapproval of funding. These provisions apply to all reclamation proposals. It is not necessary for us to give special consideration to some projects in accordance with the provision of "a presumption against reclamation" in the Bill.

The Government is still opposed to the relevant amendments on the above-mentioned grounds. I urge every Member to vote against the Bill.

Thank you, Mr Chairman.

MISS CHRISTINE LOH: Mr Chairman, I would just like to respond to those questions and points raised by the Secretary. First of all, he seems to have misheard me. What I said, Mr President, was the Administration has solid *ex-officio* representation on the Board. *Ex-officio* members includes the Chairman and the Deputy, so I think the Secretary was a little bit overly-sensitive about what I was saying.

Secondly, he seems to take issue with my assessment that I believe the Administration is confident that the Town Planning Board will not challenge the reclamation plans. That is my assessment and I am not showing any disrespect to the Town Planning Board members, but of course, if the Administration wishes to disagree with my assessment, that is its right to do so.

Thirdly, I was also referring to the appointment system. As far as I know, the appointment system of the Government do take into account known views when it is making appointments, and I was not referring certainly to any one person, about people who are known to oppose further harbour reclamation; so again, it is perhaps due to the sensitivity of the Secretary that he decided to restrict it to any particular person.

I myself regret that the amendment has to be made by the Democratic Party, but as I said earlier on, this amendment will not pass without my support of this

amendment. And I do ask Members to support it because it is a medium-term strategy and reclamation is a medium-term strategy. If we do not do something about it now, in three years time, Hong Kong will regret losing its harbour.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would like to simply respond to the several questions put by the Secretary for Planning, Lands and Environment. As regards why we define the boundaries of the central harbour, as I have mentioned in my speech, the central portion of the Victoria harbour is a very valuable, meaningful and special place for many Hong Kong residents. Victoria Harbour is also very important to the tourism industry. When we look down from the Peak, we mainly see the Victoria harbour. If the harbour is narrowed, the entire view will be destroyed. Besides, we have other reasons to back ourselves up, especially with reference to the needs of the shipping industry. According to the Metroplan, if the sea around Central, Wanchai, Causeway Bay, Tsim Sha Tsui and Kowloon Bay are reclaimed, the entire harbour will vanish into thin air, leaving only a stream instead of a harbour.

Victoria Harbour used to be a berth for ships. In the '60s, when I was small, I saw aircraft carriers of the United States berth in the centre of the Victoria Harbour. At present, even a small boat cannot berth in the Victoria Harbour, let alone an aircraft carrier.

Of course, I understand that the harbour has to change to serve different purposes. But if the harbour is devastated, even monetary interests cannot make up for the losses. Besides, people making a living on boats, people working with lighters and ferries all complain of the big waves in the harbour. This has to do with the narrowing of the harbour. With more and more boats, but the harbour continues to be narrowed, it is rather unreasonable. Just as the number of vehicles on the road increases, the road should be widened. But the reverse is true of Hong Kong: in the past few years, the number of boats has multiplied, but the harbour has become even narrower. Having considered all these, we have therefore proposed the amendment. We look forward to Members' support. Thank You.

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

Schedule read the Second time.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that the new schedule 1 be added in the Bill.

Proposed addition

New schedule 1 (see Annex XXIV)

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

Clause 2

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out in the paper circularized to Members.

This amendment mainly aims to change the definition of "harbour" to "central harbour", the reasons for which were made known to Members earlier on.

Thank You.

Proposed amendment

Clause 2 (see Annex XXIV)

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr Chairman, before I deliver my speech, I would like to point out to the Honourable Albert CHAN that whether an aircraft carrier can berth in Hong Kong has nothing to do with reclamation. Firstly, as aircraft carriers of modern design are huge anyway and very few harbours are big enough to accommodate them and this has nothing to do with whether reclamation is carried out in Hong Kong. Secondly, whether an aircraft carrier of the United States (US) Navy berths in the inner harbour of Hong Kong depends on the operational needs of the US Navy, and this also has nothing to do with the reclamation in Hong Kong. All aircraft carriers which had entered the harbour of Hong Kong in the past were smaller ones. Now, even the cruise liner Queen

Elizabeth II can enter our harbour, and this has nothing to do with the width of our harbour. The length of this liner is not much different from that of an aircraft carrier of the past.

Mr Chairman, regarding clause 3 of this Bill, I would like to reiterate that it is also government policy to protect and preserve the harbour. Since this is an administrative policy, it should be decided by the administrative authority. Therefore, the Administration sees no need to legislate and to impose a presumption against reclamation in the harbour. I have also said that current town planning procedures have ensured that before a reclamation proposal is implemented, there will be a detailed study on the effects on the planning and environment, hydrology, sea traffic and other aspects, followed by public consultation.

The Town Planning Ordinance has also established a statutory process through which members of the public can participate in the planning process and raise objection to reclamation proposals. The Administration will also have to consider public views before making a final decision. However, while we are doing what we can to protect the harbour, we must understand the importance of reclamation to the economic and social development of Hong Kong. Only through this channel can we provide land and infrastructure at the right place and time for our metropolitan development programme. For example, we can hardly imagine how we could have provided sufficient land for the construction of the Central and Kowloon stations of the Airport Railway without reclamation in the harbour.

Moreover, housing is in great demand in Hong Kong and the major solution is to increase the supply of land. Apart from making more land available and expediting urban renewal, reclamation in the harbour must be carried out if we want to provide more land in urban areas. A ban through legislation on reclamation will not help solve land shortage problems. This provision questions the reclamation proposals while offering no practical and feasible solution. We cannot produce flats only in the New Territories, nor can we build the Central-Wan Chai Bypass in Yuen Long. Members do not consider the presumption in its current form a ban. They claim its legal effect is to set up a

CHAIRMAN: We are on clause 2, Secretary.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): I am sorry, Mr Chairman. My speech stops here.

MISS CHRISTINE LOH (in Cantonese): Just now Members showed their support for the amendment of schedule 1. From a logical point of view, I should also support it. I do not think I have anything to add.

Question on the amendment put and agreed to.

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

Clause 3

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clause 3 be amended as set out in the paper circularized to Members. This amendment aims mainly to change the scope of clause 3 — presumption against reclamation in the harbour — from "harbour" to "central harbour". I already explained the reasons earlier on. I hope Members will support this amendment.

Proposed amendment

Clause 3 (see Annex XXIV)

MR EDWARD HO (in Cantonese): Mr Chairman, I have indicated earlier on that I am opposed to establishing the presumption by legislative means. Therefore, I do not want to repeat myself.

I would like to respond to the speeches of the Honourable Albert CHAN and the Honourable Miss Christine LOH. Firstly, Mr CHAN has mentioned that in the past an aircraft carrier could get into the harbour. He is far younger than I am, but I remember that when I was small, New Jersey actually berthed at the now western harbour because it was too big to get into the harbour we now refer to. And we had to take a Yau Ma Tei ferry to see it.

I would like to reinstate that my passion for Victoria Harbour is no less than Miss Christine LOH, Mr Albert CHAN or any other colleagues, or members of the public sitting at the public gallery. When I was small, I swam at the place where Victoria Park is located now, before the reclamation, of course. The water was clean, and suitable for swimming. And my father permitted me to do so!

The Hong Kong Institute of Architects hopes very much to protect the Victoria Harbour. We have submitted proposals to the government, suggesting that the size of the reclamation be reduced, retaining only part of the land for infrastructure and other development purposes. But the Hong Kong Institute of Architects is not totally opposed to reclamation. And the Institute of Surveyors is also in support of the presumption of protecting the harbour. The reason that I am opposed to it is that I do not think it is an appropriate move. And the Government has clearly honoured their undertaking to let the Town Planning Board approve reclamation in the harbour, and let members of the public express opposing views.

As regards the criticism that members of the Town Planning Board chime in with the Government only, I do not think it is fair to say so. I believe colleagues will still remember that we once planned to build the extension to the Legislative Council underneath the neighbouring park, with comprehensive greening on top. The Urban Council agreed to it, and so did the Government. But the proposal was eventually turned down by the Town Planning Board because some of their members were against the idea. Now we have to spend hundreds of millions of taxpayers' money to purchase several stories of commercial buildings in Central for our offices. That is why I say it is rather unfair to say that the Town Planning Board obeys the Government.

We are discussing the issue of presumption. I think I am done on this part.

MR IP KWOK-HIM (in Cantonese): Mr Chairman, we are fully aware of the actual impact of reclamation in the Victoria Harbour on scenic views, and we totally understand the feelings of Hong Kong people on it, especially those returning to Hong Kong from Macau or mainland China by sea.

I believe Members know that the route stretching from the waters mentioned earlier on to the open sea is far less rough than that of the Victoria

Harbour in terms of seas and waves. This is directly related to the fact that reclamation works have caused Victoria Harbour to become almost "Victoria River".

Therefore, I would like to reiterate that we are opposed to reclamation works lacking properly planning, excessive or unnecessary. Therefore we are in support of the Honourable Miss Christine LOH's Bill in spirit. But we are also wondering if we can have a choice, which would allow members of the public to have their part to play and to express their opinion in order to strike a balance; if so, then we think we can well accept that choice.

Thank you, Mr Chairman.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): The Agenda I have read is the old one. It puts clauses 2, 3 and 4 together. Now I will continue with my speech.

I would like to take this opportunity to say a few words on the imposition of a presumption. Just now, I heard some Members say that the so-called presumption was not a ban. They said that this Bill would impose a presumption against reclamation in the harbour, which provided that all public officers and public bodies had to ensure in good faith that only when there was no other alternative, would reclamation in the harbour be considered as a last resort. Members also claimed that the Government should have nothing to worry about if it could prove the validity of its grounds for reclamation.

However, it seems to me that Members have oversimplified this matter when putting forward their arguments. I have been given the impression that Members will perform the role of the court. I would like to remind Members that once a bill is passed into law, it is up to the court to interpret. As for the actual meaning of the presumption against reclamation in the harbour, it will be left for the court to decide. We have to wait for the court to give the verdict before we can fully understand it.

Secondly, we must bear in mind that once such a presumption has become law, all public officers and public bodies may be subject to judicial reviews when

they carry out any action related to works in the harbour. If members of the public think that the Government has ignored this provision, they can seek help from the court, in order to ensure that this provision will be given full consideration. We must point out that if the Legislative Council is given the power to approve reclamation in the harbour under this Bill or even under clause 4 of the amendments, it may also be subject to judicial reviews.

Thirdly, this Bill only imposes a presumption but gives no other details, such as the conditions and criteria which public officers should follow when making a judgement. We will ultimately face a lot of uncertainties and there will be many legal proceedings in future to query the Administration as to whether it has given due regard to this provision. Such a development will undoubtedly not be in the overall interests of Hong Kong, particularly in view of the housing and traffic problems which we have to solve. We must come up with various proposals in order to provide land and infrastructure at the right place and time. Therefore, I hope that Members will carefully consider the arguments I have put forward before deciding how to cast their votes on clause 3 of the Bill.

I must reiterate that the town planning system of Hong Kong has a legal basis and it has all along been proved effective. This system is fair, open and reasonable, under which the public is also given the opportunity to raise objections and call for the Administration to consider their views. Therefore, I have serious doubts as to whether we really need to impose a presumption, which is ambiguous and difficult to implement, to upset the present system.

Thank you, Mr Chairman.

MISS CHRISTINE LOH: Mr Chairman, first of all I am glad to hear the Government takes the law seriously. It is because it respects the law that it understands if the presumption passes it will have to take a much higher degree of care. And the Administration, for the sake of their efficiency, of course, they would rather not have any kind of restriction. But actually the presumption is meant to do exactly that.

Let us not forget, Members and Mr Chairman, today, nobody is saying that they are very happy with the Government's present plans. People are concerned about the harbour being over-reclaimed because they are seeing signs of it. This is not some fiction. This is something that they can just look out of the

door here and they can see, and that is the purpose of the debate today, the debate in the past and also this Bill. So, I am not grabbing something from the air and creating controversy. The controversy is there for everyone to see. And let us not forget this terrific planning process that the Secretary is telling us, well, this is where the problem has arisen. All I am trying to do is to impose a higher degree of awareness and work on the part of the Administration when they consider planning and reclamation.

The Honourable IP Kwok-him said earlier on that if there was another choice then this Bill is not necessary, and he suggested that what the Government has done in terms of administrative undertaking is enough. As I said earlier on, I have given the Government a choice in terms of putting in law a single town plan for the entire harbour as the Honourable Edward HO has suggested. The Governor and the Administration have decided not to do this, which is why I think this so-called choice is not as good as it could be. And I repeat, Mr Chairman, the Government rejects any legal obligation to abide by or even to consider planning inputs from outside the Government itself.

The Secretary again said that in the exercise of the presumption that there were no details, so how can the Administration know how to do this? And I also said during the Second Reading debate that I think if there were lots of details, the Secretary would then be expressing today that there were too many details. What I have tried to do is simply to provide a provision that makes the minimum intrusion into the Government's internal planning process, and I believe it is going to work, Mr Chairman, and I urge Members to support it.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would just like to respond to two questions simply.

First, to control land use through legislation is not my creation. In the Country Parks Ordinance, the legislation stipulates that a certain piece land can or cannot be used for a certain purpose. Therefore it is an ordinary arrangement between the Executive and the Legislature. When a problem or a policy issue which all Hong Kong people wish to control through legislative means arises, and when the Government sees fit, it is nothing but a common and ordinary way to proceed. This practice has been in use for years. So, to control the use of the harbour by legislative means is nothing special and should surprise no one.

Why should it be regulated by legislation and why should it be proposed by Members of the Legislative Council? The reason is that Members of the Council and members of the public have no faith in the Government. This is plain and clear. Why not? In fact, the Legislative Council is to be held responsible, and so am I. Over the past few years, we have been giving support to the government for approving the funds necessary for all those large-scale reclamation works. As to the 10 core projects, Members supported almost all the funding proposals of the Government. Both the massive reclamation of West Kowloon as well as that of the on-going reclamation project at Central had our support. I am not going to get into the details of the story behind them. But we were somewhat forced to approve those funding proposals. Having been through all those bitter experience and lessons, we have become smarter. In the light of those past mistakes, we now realize how important the Victoria Harbour is, especially the central portion. As such, there is a need to establish by legislation the presumption against reclamation, hopefully to avoid the situation where Members are forced to approve funding proposals in future.

The Secretary for Planning, Environment and Lands said earlier on that we Members were playing the role of the court, which means, in other words, that the presumption we are now discussing is in fact possible in part. In drafting or examining a bill, Members have to understand and can interpret clearly for themselves the meaning of that bill or the relevant ordinance before endorsing it. It is not necessary for Members to obtain a ruling from the court as to the meaning of a clause of a bill before endorsing it. This is the spirit of law. As to the interpretation of different provisions of different ordinances, it is, of course, not at the sole discretion of Members.

We have consulted the legal advisor of this Council, and the Democratic Party itself has also consulted some members of the legal field. And we get to know, beyond doubt, that clause 3 — presumption against reclamation in the harbour — is merely a presumption prohibiting reclamation in the harbour. According to the legal opinion so obtained, including that of the legal advisor of the Legislative Council, this presumption is not a total restriction. When necessary, and when there is proof that reclamation is essential, for example, for a road to be built on that piece of reclaimed land, which is the only solution, and that there is no alternative, the reclamation can be carried out. This is an independent and objective opinion. Finding the advice reasonable and correct, the Democratic Party is therefore in support of this clause. If the Government decides not to support it, it of course can twist this opinion by claiming other

extreme legal opinions. Anyhow, we have consulted the legal advisor of the Legislative Council. May I ask Members of the Council whether they have faith in the opinion of the advisor of the Legislative Council or that of the Government? Obviously, the Government's interpretation has its political implications. Therefore, I ask all Members who have faith in the independent opinion of the advisor of the Legislative Council to support my amendment. But of course, Members can vote against the said clause after the amendment is made. If members do not agree to the Bill in its entirety, they can vote against it during the Third Reading. But since the presumption is not a total restriction, according to the opinion of the legal advisor of the Legislative Council, may I ask Members not to vote against my amendment with the reasons claimed by the Government.

Thank you.

Question on the amendment put.

Voice vote taken.

Mr Edward HO claimed a division.

CHAIRMAN: Committee shall proceed to a division.

CHAIRMAN (in Cantonese): I would like to make a note. Most of the time during the Committee stage, Members may not know what question to vote on. After clause 2 and the new schedule 1 have been passed, now it comes to clause 3, which is a consequential amendment, where "harbour" is deleted, and replaced by "central harbour". If you do not like the presumption, you vote "No" on the question: That clause 3 stand part of the Bill. The same goes for clause 4, which means that amendment to clause 3 is not important. Members should know what to vote on when doing it. I am not suggesting that you vote in favour of or against it. It is just that when I happen to see it, I tend to make a note. This is neither politics nor has anything to do with the policy. Let me make one more note. The script does not provide the follow-up action if clause 3 as amended is negatived; if the amendment to clause 3 is negatived, we will deal with it. Members only see "clause 3 as amended", is that right? Perhaps

many Members will vote against amendment to clause 3. Only when it has been passed, it is "as amended".

MR EDWARD HO (in Cantonese): Mr Chairman, I understand. It is just that I do not see clause 3 in the script

CHAIRMAN (in Cantonese): That is fine. That was only left out. *(Laughter)* It was prepared last evening, and there were a few changes. Since Members said that there would be strong feedback regarding clauses 3 and 4, the clauses would need to be treated separately. Originally, clauses 2, 3 and 4 were scheduled to be dealt with by one single vote. But since Members say that clauses 3 and 4 are different from clause 2 and schedule 1, they are being treated separately.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Mr Albert CHAN's amendment in respect of clause 3 be passed.

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

CHAIRMAN (in Cantonese): One short of the head count. Member may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

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

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 21 against it. He therefore declared that the amendment was carried.

DR LEONG CHE-HUNG: Mr Chairman, I move under Standing Order 37(4) that in the event of further divisions being claimed in respect of the remaining motions at the Committee stage of the Protection of the Harbour Bill, at this sitting, the Committee do proceed to each of such divisions immediately after the division bell has been rung for one minute.

Question on the motion proposed, put and agreed to.

Question on clause 3, as amended, proposed and put.

Voice vote taken.

CHAIRMAN: Committee shall proceed to a division. There is only one minute.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that clause 3, as amended, stand part of the Bill.

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

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 21 against it. He therefore declared that the motion was carried.

Clause 4

MR ALBERT CHAN (in Cantonese): I move that clause 4 be amended as set out in the paper circularized to Members.

This amendment is concerned with the part of approval by the Legislative Council, that is, changing "harbour" to "central harbour". As to whether Members support the approval by the Legislative Council, they can vote against it when this amendment is to stand part of the Bill. In fact, Members should not vote against this amendment. As to whether Members should support it after the amendment has been passed, it is another issue. I hope we can save some time now. Thank you.

*Proposed amendment***Clause 4 (see Annex XXIV)**

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr Chairman, from a technical point of view, I should speak on the question of whether the amendments are in any way related to the central harbour. Although clause 4 in the amendments has defined the boundaries of "central harbour", it still provides that reclamation in the harbour is subject to approval by the Legislative Council. We are of the view that such a provision will transfer from the Executive to the Legislature the responsibility of planning and land use development involving reclamation in the harbour. This will still upset the division of responsibilities between the two.

The Executive is responsible for formulating policies to serve the community. We are responsible for preparing reclamation proposals, conducting public consultation, applying to the Legislative Council for funding and implementing the proposals, whereas the Legislative Council is responsible for monitoring funding requests, which in effect has empowered it to vet reclamation proposals. The amendments will give extra power to the Legislative Council to make executive decisions and to reject reclamation proposals.

On the other hand, we think that the Legislative Council is not adequately equipped to perform executive duties regardless of the area involved, be it the harbour or the central harbour. While this Bill provides that reclamation in the harbour is subject to approval by the Legislative Council, it gives no details about how the Legislative Council will give approval to these projects. The amendments are also silent on whether the Legislative Council will allow members of the public to raise objections to reclamation proposals so that public hearings can be held to allow appeals against the decisions of the Legislative Council and so on. This Bill also fails to elaborate on the criteria for approving or rejecting reclamation proposals on the part of the Legislative Council. As I said earlier, the Legislative Council may be subject to judicial reviews if it exercises such approving authority. In view of the above, the Government is still opposed to the Bill as amended.

MR EDWARD HO (in Cantonese): I am aware that we are now dealing with the amendment of clause 4, but as the Secretary for Planning, Lands and Environment has said, if I am opposed to clause 4, I should say so at this time since I will vote against it regardless of the amendment.

The Hong Kong Institute of Planners, being one of the institutes under the Functional Constituency, is strongly opposed to the suggestion. The Town Planning Board (TPB) attended two of the meetings of the Bills Committee, and opposed strongly to the suggestion. It thinks this is like passing on a function of town planning to the Legislative Council, enabling it to do the job of the TPB. Many of the Members in this term of office think that they are returned by direct election, and they tend to mind every business, including fares and administrative matters. Is this suggesting that the Legislative Council will need administrative support, and that the Secretariat would have to employ a team of planners to do analyses to submit to the Legislative Council for conducting hearings and other procedures? Professionals of the planning field oppose to this very strongly.

The Honourable Miss Christine LOH still thinks that the Government lacks the sincerity in honouring its undertaking to accept my suggestion. This has disappointed me because the Government has in fact made some compromise. Before the Bills Committee had made this suggestion, the Government did not pass the job of considering the land use of the harbour on to the TPB. It approached the Board for consultation only. But now the Government has stated that it will do so, allowing the TPB to do the job of considering the land use of the harbour in accordance with its statutory functions, while at the same time giving members of the public a chance to express their views or voice their opposition. This undertaking is very clear. Perhaps Miss LOH wishes so eagerly to have her Bill passed that she regards this clear message not an undertaking. If this is the case, we cannot go any further with our debate.

In this respect, I urge colleagues to think clearly because Members have already supported the establishment of the presumption. What we will need to debate is whether the function of planning should be passed on to the Legislative Council. I urge Members to vote against this suggestion.

MISS CHRISTINE LOH: There are divided views in the Council as to whether the Legislative Council should take on this role, and I shall not waste Member's

time on this point anymore because I think it has been well discussed in the Committee and also we have discussed this in today's debate.

But I would suggest that in the longer term Members remember what the Town Planning Board said when it came before the Bills Committee, that it itself would like to have legal powers to exercise its work rather than just what the Government is offering, which is administrative means. This is something that the Council in future can pursue.

Secondly is the point about having a strategic planning advisory body which will look at strategic planning for the territory as a whole. This is still something we are going to need in the future, and again I just want to take a little bit of time to remind Members that this is something we can continue to pursue in the future.

MR EDWARD HO (in Cantonese): I would like to clarify this once again. When mentioning the operation of the Town Planning Board (TPB), the Honourable Miss Christine LOH has said that the Government only offers administrative support to the Board and no legal powers.

In fact, the Town Planning Ordinance already stipulates expressly the functions of the TPB. The government of course has its role to play, that is, giving instructions to the TPB as to what it should do, such as preparing Outline Zoning Plans for land uses and residential purposes and so on. This has never changed. Up to date, what we are not satisfied is that the Government does not instruct that the TPB should treat the harbour as a target of land use.

Up to this moment, the Government carries out reclamation works before instructing the TPB to stipulate the land use. But the Government has now indicated that it will accept our suggestions to instruct the TPB to consider the size of reclamation and the use thereafter before effecting the reclamation. This is not meaningless administrative means. Instead, it is a framework already provided in law.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I do not understand why Members and the Government are opposed to allowing the Legislative Council to approve reclamation works and are so surprised at this. We have done this

before, we are doing it now and we will still do so in future. At panel meetings of the past, the Secretary for Planning, Lands and Environment has talked about the importance of the Legislative Council, saying that the Legislative Council has the right to approve reclamation works in future because the Government will have to apply to this Council for funding.

As such, the Finance Committee provides that, for the past, for now and for the future, when the Government carries out reclamation works that require public funds, it has to have the approval of the Legislative Council. Government works projects can start only after their funding is approved.

But now we are being told that when the Legislative Council is being asked for approving funding proposals, it does not need any professional knowledge, and all it has to do is to approve the funding. Now the Town Planning Board is saying that professional knowledge is indispensable for approving reclamation proposals. What logic is this? I have this feeling that "we are something when we are needed, but we are nothing when we are not needed". To put it in another way, when the administration asks for funding, it tells you Members that you are well qualified and capable of approving it, and asks you to approve it right away. But once Members want to use legislative means to control reclamation projects and request that the Legislative Council be the one to approve it, the government then tells you that the Legislative Council lacks professional qualification, and that it is outside the scope of the duties of the Council. I really do not understand this logic.

We all are Members of this Council. When we are on the Finance Committee, we have to approve funding for reclamation projects. The West Kowloon Reclamation and the Chek Lap Kok Reclamation are both big ones. The Chek Lap Kok project was indirectly approved by us because the Government injected the funds into the Airport Authority (the then Provisional Airport Authority). The project for Central was also indirectly approved by us because the Government injected the funds into the Mass Transit Railway Corporation. Please do not tell me that the funds were approved when the Administration did not really understand the purpose of those projects.

I hope Members will understand their own role. Please do not say that we have the responsibility and right to give approvals when attending meetings of the Finance Committee, and that we do not have professional knowledge in that regard when attending meetings of the Legislative Council.

I urge Members to do some thinking on it. If necessary, would Mr Chairman give a few minutes for Members to consider if I am correct? If I am correct, please give me your support. If Members do not support what I said, may I ask them not to approve funding for reclamation projects during the meetings of the Finance Committee in future, because they lack the qualification and professional knowledge? Why do we not just pass the right entirely on to the Government? I sincerely urge Members to think about their own logic objectively.

Question on the amendment put.

Voice vote taken.

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

Mr IP Kwok-him claimed a division.

CHAIRMAN (in Cantonese): Please do not claim a division. I think the "Ayes" have it. Please do not claim a division, really. Mr Edward HO said earlier that it was possible to claim at this time, but it is not true. When the Clerk read out "clause 4, as amended", and I went on to say "now put", and if at that time you had stood up fast enough to speak, you could, and that is permitted by the Legislative Council. Therefore Members should wait for a time when they can speak; just now it was not a good one.

MR MARTIN LEE: Point of order.

MR MARTIN LEE (in Cantonese): Mr Chairman, I do not really want to do this, but when a Member stands up

MR MARTIN LEE : I will do it in English — "Whenever there is a vote, there is a right to call for division." I do not like it.

CHAIRMAN (in Cantonese): Mr IP Kwok-him, do you wish to claim a division? Committee will now proceed to a division.

CHAIRMAN: You are right, Martin.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Mr Albert CHAN's amendment moved in respect of clause 4 be passed.

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

CHAIRMAN (in Cantonese): Members may wish to check their votes. Are there any queries? The result will now be displayed.

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

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

Mr Frederick FUNG, Dr LAW Cheung-kwok, Mr Bruce LIU and Miss Margaret NG abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 23 against it. He therefore declared that the amendment was carried.

Question on clause 4, as amended, proposed.

MR EDWARD HO (in Cantonese): Mr Chairman, we have already taken the time to discuss clause 4, so I am not going to do it again. The Honourable Albert CHAN mentioned that I said the Legislative Council should not take on the role of planning because we lack experts, and he became very emotional. I think colleagues will understand that although the Finance Committee under the Legislative Council approves government expenditure, it does not mean that all 59 Members of this Council have the relevant professional knowledge. In considering a proposal put forward by the government, we have to count, to a certain extent, on the part the Government has done under its administrative framework. Taking the Tsing Ma Bridge as an example, when the project needed funding, we did not require the professional knowledge or have to take the time to do the calculation to check if there was anything wrong with the design, such as too much iron was used. We were not supposed to do that. The Government and we Members must complement each other. The executive authorities of the Government will carry out their work within their own professional context. In case of doubt, we of course can raise queries, or ask as much as we can during the panel meetings, and ask for the relevant information before approving anything. But most of the time, we trust the Government.

Just as I said earlier on, the Town Planning Board comprises members from various professional bodies and sectors of the community. The Board is responsible for considering town planning and drafting lay-out plans of the city, with the Planning Department providing professional support and information to enable it to carry out its work. This is all I want to clarify.

MR RONALD ARCULLI (in Cantonese): Pardon me, Mr Chairman, I would like to say something too. First, I would like to say that I respect the Honourable Albert CHAN, and second, I would like to respond. I think that in

talking about the Legislative Council and the Town Planning Board, the question of knowledge should not be the point. I share Mr CHAN's view that Members of this Council do have the knowledge to do their job. But as to whether we are as good as professionals, I have no comment. I believe that Members of the Legislative Council will be on the Town Planning Board as well at some time. Even today we have members of the Town Planning Board among us. What is most important is not the question of knowledge, but is that of role. This is all I can say. Mr Chairman, I was once a member of the Town Planning Board, and therefore I think my role as a member of the Town Planning Board is different from mine when I sit here today in the Legislative Council, or as a member of the Finance Committee, who approves funding. The way we attend meetings of the Finance Committee to consider approving funding differs, although not greatly, from that when we hold a relevant debate in the Legislative Council, at least in terms of roles. One of our duties is to determine whether the Government's proposal is correct, to consider the effectiveness of public funds and to see if that proposal is the best way out. I do not want to say too much on it, since colleagues all know the role of the Finance Committee well.

Mr Chairman, I just want to emphasize one thing. I think the role of the Legislative Council or Members of the Council is not to take on the duties of members of the Town Planning Board.

Thank you, Mr Chairman.

DR YEUNG SUM (in Cantonese): Mr Chairman, I have only two points to make. First, colleagues need not worry too much that the use of land or its planning by the government be approved by the Legislative Council. Just as the Honourable Edward HO has said earlier on, when we are on the Finance Committee, we have a great deal of trust in the Government. Who drafts the papers of the Government tabled in this Council? Not Members of this Council, but the Government itself. Since Honourable colleagues have trust in the Government when we are on the Finance Committee, we can still have that trust in the Government when we do the job of approval in the Council. And the Government will still lobby Members. Is that right? The papers are not drafted by us, nor by the Honourable Albert CHAN; otherwise, colleagues can question Mr Albert CHAN's and my expertise. For the time being, the papers and information are tabled by the Government, and Government officials come before the Council to explain the policies too. We can trust the expertise of the

Government when we are on the Finance Committee, so why should we change our stance abruptly and show not trust to the Government when things are tabled in the Council for approval? So colleagues need not worry too much about it.

Professionalism comes ahead of everything in Hong Kong. The Government is being so professional. Let us keep it that way and not change it. But we need go one further step. Mr Chairman, why need we go one further step? Why have the Honourable Miss Christine LOH and Mr Albert CHAN proposed this one further step? Why do we request the Government to go one further step on its policy? We are all busy; so is the Government. Why need we go one further step, then?

I would like to ask colleagues a question. When you take the ferry to cross the harbour, or when you and your family walk along the promenade, seeing many reclamation works going on in the harbour, what will come to your mind? What will you see when you look down from the Peak? If Members feel a little alarmed, you should then support the proposal of Miss LOH and Mr CHAN to ask the Government to table their proposal and let us have a discussion again. Perhaps we will applaud the proposal and let the Government have it, just like the cases when some of the motions got passed with our passionate support. We may support the Government just like that every time, saying that it has done a good job. All we want is a chance to discuss it so that we can save the harbour for the next generation. Houses can be built, and the harbour should also be retained. This is all we want.

Thank you, Mr Chairman.

MR ALBERT CHAN (in Cantonese): I would like to thank the Honourable Ronald ARCULLI for his opinion. In fact my viewpoint is no different from his. I was just rebuking those who people who say that the Legislative Council lacks professional knowledge and therefore cannot approve certain projects. I was rebuking this opinion only. As to the division of responsibilities on the constitutional level and in terms of roles, it is another issue. I just cannot agree with the idea that we are not professionals and therefore cannot give approval. It is a contradiction.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr Chairman, I personally feel that there is some confusion in Members' debate. In the first round of debate, it should have been about which harbour on earth should

CHAIRMAN (in Cantonese): Mr Martin LEE, is it a point of order?

MR MARTIN LEE (in Cantonese): Government officials cannot express their personal opinions. If that was a personal opinion, he should not speak. He represents the Administration.

CHAIRMAN (in Cantonese): Secretary for Planning, Environment and Lands, please clarify if that was a personal opinion or one on behalf of the Administration. *(Laughter)*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr Chairman, maybe I should say that the Administration thinks that Members were a bit confused in the debate as the subject in the first round of debate should be about whether the term "harbour" should be revised to "central harbour" and this should be the vital part of the debate. Now the central point is whether according to the amendments, all reclamation works in the central harbour are subject to approval by the Legislative Council.

The Government is of the view that such approval has many implications. Members may opine that the Finance Committee has been vested with the approving authority for reclamation in the harbour by virtue of its responsibility to vet and approve funding requests. However, in practice, the confusion caused by such legislation is not as simple as that because all relevant ordinances on reclamation works over and upon any foreshore and sea-bed will be covered. As a result, all provisions in any other related pieces of legislation and the necessary works must also be submitted to the Legislative Council altogether. What will these include? What I said just now was how on earth the Legislative Council would give approval to these proposals? Will members of the public be allowed to express their views? Will the Legislative Council hold public

hearings? Will members of the public be allowed to raise objections to or lodge appeals against decisions made by the Legislative Council?

This Bill is completely silent on all of these issues. Therefore, we have all along been of the opinion that if the Legislative Council goes beyond its power, which is to examine and approve funding requests for projects through the Finance Committee, and gets itself involved in other ordinances, then as pointed out by Mr ARCULLI, the roles of the Executive and the Legislature will be totally confounded. Therefore, the Government cannot accept and support this Bill in its original form, including the amendments incorporating changes to the geographical areas.

Thank you, Mr Chairman.

MR EDWARD HO (in Cantonese): Mr Chairman, I would like to thank you for giving me a second chance to speak before the Honourable Miss Christine LOH responds.

Initially, Miss Christine LOH agreed that the planning of reclamation should be done by the Town Planning Board (TPB). Mr Chairman, since you pointed out that it had a charging effect, and therefore vetoed the suggestion. I would like Miss LOH to clarify why she now insists so much on it, because I think that she did not want to do it in the first place, and why Mr CHAN and she insist so much on it. I hope Miss LOH will clarify that later on. If she really wants the TPB to do it, we should not support clause 4, which she proposed. Instead, we should support my suggestion, which the Government has undertaken to honour, that is, to let the TPB take care of the work concerning harbour reclamation.

As most Members, but count me out, have supported the presumption, Miss LOH's purpose has actually been met. The question now is about the second part — who should be the decision-maker? I hope Miss LOH will have a second thought about it. If she needs a few minutes to discuss it with Mr CHAN, Mr Chairman, I hope you will give her leave too, just to see if she will reconsider it.

CHAIRMAN (in Cantonese): Let me explain this. Clause 4 is about whether clause 4 in Miss Christine LOH's Bill needs to be amended. If the question is: that a certain clause or a clause, as amended, stand part of the Bill, that is an automatic procedure under Standing Orders. But if the sponsor of the motion wishes to speak, he or she can do so at any time, and it is still his or her right to speak the last word after other Members have spoken.

MISS CHRISTINE LOH: I obviously do not object to clause 4. If I object to clause 4, I would have withdrawn it. The Town Planning Board was a compromise and I was prepared to consider that compromise, but since I am not able to raise that compromise I go back to my original position, which is this Council.

But let me just explain clause 4. Clause 4 does not give Legislative Council any town planning powers. It only allows Legislative Council to approve or reject reclamation works as a whole. So, this is essentially a matter of judgement about whether a particular reclamation is necessary or not, whether it is acceptable to the community or not. And therefore, I believe this Council is eminently qualified to make those judgements.

Also, this Council can request the Town Planning Board's view to be tabled before Members. And I think this is a good way to proceed, Mr Chairman. As I said, I understand that people have reservations about this and I really do not wish to prolong what will be a very long debate this afternoon on other issues.

Question on the motion put.

Voice vote taken.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): One minute only. If you need to get anybody, you have to do it quickly.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that clause 4, as amended, stand part of the Bill.

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

CHAIRMAN (in Cantonese): Before I declare the result, Member may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Miss Margaret NG abstained.

THE CHAIRMAN announced that there were 25 votes in favour of the motion and 27 against it. He therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): That means there is no clause 4 now.

Clauses 6 to 13

MISS CHRISTINE LOH: Mr Chairman, there is a consequential amendment in the case that clause 4 is approved. Since clause 4 has been negated, we should vote against those clauses. I mean, I do not know if it is possible to withdraw, but actually they will not make sense if people vote for these.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would like to ask a question about point of order. Would you please tell us if we still need to vote on clauses 6 to 13, since clause 4 has been negated earlier on?

CHAIRMAN (in Cantonese): Please hold. Mr CHAN, do you wish to ask a question about point of order or do you wish to ask me if it is necessary at all to call out clauses 6 to 13? Is that what you mean? I will just have to check. Miss Christine LOH just spoke on the question that clauses 6 to 13 stand part of the Bill, and asked Members to vote for or against them. You two have confused me. Let us deal with the question of point of order first.

MR ALBERT CHAN (in Cantonese): Mr Chairman, it is a question about point of order. I would like to know if we still need to vote on clauses 6 to 13, since clause 4 has already been negated.

CHAIRMAN (in Cantonese): I do not see any problem in that. Regardless of whether there is clause 4, whether it needs the Legislative Council to pass it, it has nothing to do with clauses 6 to 13.

MRS SELINA CHOW (in Cantonese): Mr Chairman, in fact, we need a motion when we come to clause 13. Has that motion been dealt with? If not, the clauses can be withdrawn.

CHAIRMAN (in Cantonese): Not so. At the Committee stage of the Bill, if I say, "that the following clauses stand part of the Bill", then the Clerk will call out the respective numbers of the clauses. In so doing, the questions will be proposed to Members. Therefore when the Clerk has called out clauses 6 to clause 13, the questions will be there, just as after clause 4, as amended, had been called out, the question was there. Most of the time Members feel fine about that, so the questions can be put right away, but if Members wish to speak, they can do so. Now we are dealing with clauses 6 to 13. Once the Clerk has called out the respective numbers of the clauses, we have the question, which is: that clauses 6 to 13 stand part of the Bill. The question "that clauses 6 to 13 stand part of the Bill" is deemed to have been proposed according to Standing Orders. Have I made myself clear? The Clerk will now call out clauses 6 to 13. Mr CHAN said there was a question about point of order. But I think clauses 6 to 13 are independent of the fact whether clause 4 has been passed or not.

MR RONALD ARCULLI (in Cantonese): It is now lunch time. May I suggest that the sitting be suspended until two o'clock, so that colleagues as well as Mr Chairman can make use of the time to determine whether we should proceed and whether there are any inconsistencies. We seem to have two different views among us. There will be some trouble if we do not take a chance to sort it out,.

CHAIRMAN (in Cantonese): I now suspend the sitting. Council will resume at two o'clock.

12.45 pm

Sitting suspended.

2.00 pm

Council then resumed.

PRESIDENT: We will now resume the sitting. Council is now in Committee.

CHAIRMAN: Before I suspended the sitting for lunch, the Committee had voted against the question: That clause 4 as amended by Mr Albert CHAN's motion stand part of the Protection of the Harbour Bill. Clause 4 was therefore deleted from the Bill. I have studied the Bill in its present form and the impact of the absence of clause 4 on the rest of the provisions in the Bill. The Clerk has called out clauses 6 to 13, which means the question: "That clauses 6 to 13 stand part of the Bill" had been proposed. As Members know, clauses 6 to 13 are intended to make consequential amendments to other relevant Ordinances, and there are at least six of them, if clause 4 successfully stands part of the Bill. As clause 4 has been deleted, I order that clauses 6 to 13 may not be called. In clause 2 of the Bill, which Members have voted in favour, the definition of "foreshore" and "sea bed" is included and referred to in the original clause 4. For the same reason, the definition is redundant. In accordance with Standing Order 51(2), I regard this inclusion in clause 2 as an oversight. The definition is therefore ordered to be deleted. We will now proceed to the Third Reading of the Bill.

MR ALBERT HO (in Cantonese): Mr Chairman, point of order. Yesterday or the day before yesterday you mentioned the consequences of passing the clauses, and I remember that you said, but I do not know if that was a ruling, that Members themselves were to be responsible for the clauses, that they should consult lawyers when they had questions about the clauses, and that as Chairman, you would neither give advice nor ask the Government to do so. In other words, whether or not to pass every single clause is to be decided by Members themselves. But you just ruled that as Chairman you can decide not to vote on some clauses. I see some inconsistencies. Will you care to explain.

CHAIRMAN (in Cantonese): At the Committee stage of a bill, if there exists inconsistencies which cannot co-exist, which I am aware of, I can exercise my rights, for example, to order the Clerk not to call out the number of the relevant clauses, thereby preventing Members from making the decision, or in other words, disallowing Members from making the decision. If I fail to spot those inconsistencies, that is nobody's fault. If some strange results turn out after the bill has been passed which are not sheer inconsistencies, then I should not bother as to what strange results the clauses will give rise to.

Council then resumed.

Third Reading of Bill

MISS CHRISTINE LOH reported that the

PROTECTION OF THE HARBOUR BILL

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

Question on the Third Reading of the Bill put.

Voice vote taken.

Miss Christine LOH and Mr Edward HO claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: This is a three-minute division bell.

PRESIDENT (in Cantonese): The question on the motion agreed to earlier on only said that one minute was available at the Committee stage. Now you have three minutes, so you need not rush.

PRESIDENT (in Cantonese): I already explained that the motion moved by Dr LEONG Che-hung concerned only the Committee stage.

PRESIDENT: I would like to remind Members that they are now called upon to vote on the question that the PROTECTION OF THE HARBOUR BILL be read the Third time and do pass.

Will Members please register their presence by pressing the top button in the voting units and then cast their votes by pressing one of the three buttons below?

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, 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, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

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

THE PRESIDENT announced that there were 29 votes in favour of the motion and 22 against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL

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

DR LEONG CHE-HUNG: Mr President, I rise again to speak as Chairman of the Bills Committee that has studied the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and three other equal opportunity Bills.

This Bill introduced is a Members' Bill introduced by the Honourable LAU Chin-shek and it is to render unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in various areas and to make provisions for remedies for such discriminations.

Mr President, I shall not speak on discrimination on the grounds of family status as Mr LAU will propose subsequently to delete Part II of this Bill which, as I said earlier, overlaps in substance with the Family Status Discrimination Bill, which has been passed earlier in this sitting.

Let me now look at Part III of the Bill about discrimination on the grounds of sexuality. In the Bill, sexuality is defined to mean homosexuality and heterosexuality, while homosexuality would include lesbianism and bi-sexuality.

The Administration has conducted a study and public consultation exercise on this issue since 1995 and 1996 and announced its findings in June 1996. More than 10 000 submissions were received by the Administration, as is claimed, and an overwhelming majority, about 85%, opposed legislation. Instead, their submissions supported administrative means such as public education to promote the principle of equal opportunities and enhanced support service for sexual minorities. In view of the public opposition to anti-discriminative legislation on the grounds of sexuality and that its introduction at the present time would be premature, the Administration cannot support the provisions in Part III of the Bill.

Whilst the Equal Opportunities Commission (EOC) supports the spirit of equal opportunity as expected, it will respect the opinion of the public and the decision of the Legislature in respect of anti-discrimination legislation. It would be desirable for the EOC to be charged with the function of implementing such legislation, and to avoid confusion to the public, it is recommended that a consistent implementation machinery to be in place.

Like all other equal opportunity Bills before this Council this session, the Bills Committee cannot reach a consensus on the Bill. Some members of the Bills Committee share the views of the Administration and support the step-by-step approach in anti-discriminatory legislation. Other members consider that anti-discrimination legislation is a more effective way to protect the interests of those being discriminated, even though they might be the minorities. Public education only plays a complementary role to publicize and promote the legislation.

Mr President, let me now turn to Part IV of the Bill which is about discrimination on the grounds of age. The Administration also conducted a consultation exercise on discrimination in employment on the grounds of age in June 1996. The Administration considers that the low response rate of the public consultation paper with only about 68 submissions received by the end of the two-month consultation period indicated that this is not a pressing issue to the community.

There are also divergent views as to whether age discrimination legislation should be introduced. The Administration is therefore of the view that it is premature to introduce any age discrimination legislation at this present time. The more prudent approach to deal with the issue is through a programme of publicity, public education and self-regulation. The necessity for legislation will be reviewed as the Administration has promised in the light of the outcome of the public education exercise and self-regulatory efforts.

The Administration has also completed an analysis of the likely impact of Part IV of the Bill focusing mainly on Government policies and practices. The analysis clearly indicated that, in addition to the field of employment, the Bill would have far-reaching implications on the community and would lead to considerable problems in a wide range of areas. It is likely that other private sector activities would also be adversely affected by the Bill, so the Administration claimed.

Some members of the Bills Committee disagreed with the Administration's argument. First and foremost the approach of the Administration's consultation exercise and the resultant statistics are questionable. Furthermore, they consider that many, particularly women, cannot find a job because they are discriminated against on the ground of age. The issues unrelated to

employment pointed out by the Administration are indeed areas of discrimination that needed rectification.

In response to the views of the Bills Committee, the Administration and deputations, Mr LAU will be proposing some amendments to his Bill, including parallel amendments to the Sex and Disability Discrimination (Miscellaneous Provision) Bill 1996 which was passed in this Council on 11 June this year.

I would like to say something about clause 103 of the Bill. After the introduction of this Bill and the Equal Opportunities (Race) Bill which will follow later, the Attorney General's Chambers advised us that the consequential amendments provisions in clauses 103 and 55 of the respective Bills are neither consequential to the Bills in question nor relevant to their long titles. As such they offend the prohibition on inter-mixing of subject matters in clause XXV(3) of the Royal Instructions.

After examining the arguments of the Members in charge of these two Bills and the Administration, Mr President, you came to the view that both clauses are not properly related to the rest of their respective Bills. Despite your ruling that these two Bills offend clause XXV(3) of the Royal Instructions through the inclusion in the Bills of the two clauses mentioned above, you are reluctant to order that the two Bills not to proceed with, both Bills having been referred to the House Committee and being studied by a Bills committee. So, you have decided that if the two Bills receive Second Readings recommendation in Council and were committed to the Committee of the whole Council you would direct the two clauses in question not to be called so that they would not stand part of their two respective Bills. If the two Bills receive a Third Reading they would be passed without the two clauses and their resultant ordinances would not offend clause XXV(3) of the Royal Instructions.

The Bills Committee recommend that a Second Reading of the Bill be proceeded with.

Mr President, I would like to turn to say a few words of my own thoughts. Firstly, sexuality. Mr President, it has been many years since this Council debated and passed that homosexuality or homosexual activities be decriminalized. Yet, how much has the Government done in relation to education and to promote anti-discrimination of the homosexuals, who in the medical sense are normal behavioural patterns within the spectrum of normality?

But discrimination still abounds. If Government has not done enough, Government has the duty to respond to explain why they have not done enough. But, on the other hand, if Government has done its part and there is still discrimination, then legislation would have to be considered.

Finally, I am surprised that the Government is not convinced that age discrimination is present all the time. The issue that if you are a female over the age of 40 then it is very difficult for such a person to find a job, is clearly written all over the wall. And it is the main voice of complaint to this Chamber whenever the Bills Committee meets to receive public submissions. Yes, there could be associated operational difficulties, but such should not deter the making of legislation.

With those remarks, Mr President, I personally recommend the Bill to Members. Thank you.

MR ALBERT HO (in Cantonese): Mr President, at the many hearings on reports on human rights submitted by Britain on behalf of Hong Kong, the United Nations Human Rights Committee (UNHRC) has repeatedly criticized the British Government for its failure to discharge the obligations as a signatory by introducing domestic legislation to address discrimination in the territory across the board. The UNHRC further pointed out clearly that legislation must be made in a comprehensive manner, and that it must be made at one go, instead of proceeding in phases or using a step-by-step approach to address discrimination because it is simply wrong in principle. My understanding is that the Government has been using different methods to deal with different kinds of discrimination. This shows that the Government has been selective in addressing the issue. In other words, the Government takes the view that certain kinds of discrimination should be accorded priority and that certain aggrieved persons should have priority for protection rendered by law. As for others who feel aggrieved at being discriminated against, the Government may consider it unnecessary at this stage to take them into account and protect them by law. If this is the case, the Government is, in fact, using a discriminatory approach in treating the aggrieved parties of different kinds of discrimination, thus depriving the aggrieved persons of equal protection in law. Mr President, this, I think, is wrong in principle and I hope the Government can rectify this mistake.

Secondly, the Government has time and again said that discrimination has to be addressed by taking measures in phases, which means making legislation in

phases to deal with different kinds of discrimination, and in the meantime, using different approaches to promote the so-called education. However, we do not think this is the way to effectively eliminate discrimination across the board. In fact, the international community, to my belief, also agrees that legislation is the most effective way of public education because people know that not only is it a civic obligation but also a social duty and a moral duty to abide by the law. For this reason, with the enactment of legislation, public awareness will be further enhanced, with the people being conscious that they should, and must, comply with the law and that they must not seek to prolong unfair and discriminatory policies or administrative practices on other pretexts. In a company, discriminatory acts or attitude should not in the least be considered tolerable.

Mr President, the Government has always used one excuse by saying that there will be extensive consequences affecting particularly the employers, who very often cannot adapt to the new requirements. For this reason, more time is needed to carry out public education. Let me emphasize that it has been several years since Hong Kong worked on legislation on equal opportunities and anti-discrimination. If we are to defer making laws, people with a contrary view on discrimination may have the feeling that discrimination is not a big problem and that the extent of the problem does not warrant prohibition by legislative means. Consequently, they will never have themselves prepared and duly initiate reforms to enable the community to genuinely fulfil the requirements of the conventions on anti-discrimination. In fact, so long as legislation is in place, the industrial and commercial sectors or employers will adapt to and prepare themselves for the legislation very soon. Determination is most important. Besides, it is particularly important that codes of practice must be drawn up following the enactment of law, so that people who are affected will be given the impetus to face up with the problem squarely and consider the incorporation of the relevant codes of practice administratively. Therefore, I am of the view that the Government should expedite its work on legislation and then provide the necessary assistance to facilitate the drawing up of the codes of practice.

Mr President, I understand that Mr LAU Chin-shek is left with no choice but to introduce this Member's Bill because while the Government has the duty to legislate in this respect, it is reluctant to shoulder its responsibilities. Many a time the Government has complained that people can hardly find it acceptable if the Bill as such should be passed, without the assistance of the Equal Opportunities Commission (EOC) in arranging conciliation for disputes and in promoting public education on legislation, or even without the involvement of

the EOC in litigation where appropriate. However, Mr President, we think that if the Bill is passed today, the Government should have sufficient time to make remedies. Our view is that if the Government agrees, it can propose consequential legislation to expand the powers of EOC to put EOC in a position to deal with matters relating to the prohibition of discrimination. We are of the view that as long as the Government is determined, and as long as it is willing to inject resources in this respect, the community and this Council will throw their weight behind it.

Mr President, regarding discrimination on the ground of "sexuality", or racial discrimination which we will discuss later, the Government likes to use the so-called feedback from the public, and that is the response to the Government's consultation, as the basis of its arguments. With reference to the survey on discrimination on the ground of sexuality, the Government has pointed out that 85% of the respondents are opposed to legislation. When analyzing the results of the consultation, we should, first of all, study very carefully the way the Government conducted the exercise and the wording the respondents used in answering the questionnaires. I have noticed that the wording that the public used includes "not necessary", "undesirable" and "opposed to". They, in fact, carry different meanings and reflect different attitudes. When one replied that it is "not necessary", for example, it may only be the person's evaluation of the extent of the problem. While the person may not consider it a serious problem, he or she may not necessarily be opposed to legislation in principle. Therefore, we have to study very carefully how the Government classified the feedback of the consultation. We have to emphasize that when dealing with matters pertaining to discrimination, especially when conducting opinion surveys or collecting public opinions, under no circumstances should the findings be quantified and be subsequently used as any important yardstick. We have to bear in mind that discrimination usually involves the minority groups. These minority groups consist a small number of people and their voices in the community are weak. Worse still, they very often dare not give their views or stand out because of pressure coming from the community. They even have the feeling that it is shameful to stand out. Such phenomena do exist in respect of discrimination on the ground of sexuality. Homosexuality used to be an offence and now, in spite of its decriminalization, many traditionalists who cling to the outmoded way of thinking still consider homosexuals abnormal, unnatural, freaky and an inducement to degeneration. It is still very common to hear people speaking against homosexuals or bisexuals. Such attitude is absolutely intolerable. Nonetheless, this attitude has created a kind of social pressure,

making it impossible for the minority groups to voice their opinions. It is because of this reason that when being asked to give their views in surveys or consultation exercises, they dare not speak frankly. After all, they are the minority groups. It is absolutely unfair to them if the Government adopts a quantifying approach to assess the feedback and then comes to a conclusion that there is no need for legislation. Besides, those who oppose to legislation may, because of their discriminatory attitude, consider discrimination a matter of course and may not find anything wrong with discrimination so they see no reason why it should be prohibited by legislation. In this connection, that 85% does not mean anything. These opinions may not depict the true picture and may infringe human rights. Therefore, I hope the Government can deal with these so-called feedback from the public carefully, instead of simply looking at the number of replies. Meanwhile, as we all know, the Government has said that the Bill may, in future, have an impact on employment.

I remember the Government has said that if the Bill is passed, discrimination on the ground of age or sexuality will be greatly affected. But I have to emphasize that the Bill, in fact, has two provisions for exemption. First, clause 76 provides for an exemption relating to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are minors, and stipulated that if the object of any law is to protect the welfare of those persons, the law will not be affected by the Bill. Clause 90 provides for the second exemption under which the Secretary for Home Affairs is given considerable powers during the transitional period. The ordinances or measures to be exempted are set out in the Schedule. Clause 90 is, in fact, a big concession. Personally, knowing that the issue is very controversial, I agree with the imposition of a transitional period, hoping that the goal will be achieved expeditiously after the expiry of a short transitional period. This is a very big compromise to make. Nevertheless, if we fail to legislate today to clearly show to all sectors of the community the determination of this Council or the Government, and facilitate public education through the enactment of legislation, I believe that it will be difficult to tackle the problem of discrimination effectively.

Mr President, I would like to talk about age discrimination. Again, the Government has pointed out that the survey conducted in this respect has a low response rate, with only several tens of questionnaires returned. Yet, I have to point out that it is just a consultation exercise, not a formal opinion survey conducted by the Government on its own initiative. If a formal opinion survey

had been conducted, and if those interviewed were unemployed, the results, we believe, would have been very different. Replies from a large proportion of respondents may reflect the seriousness of age discrimination.

Mr President, as regards age discrimination, the Democratic Party has conducted a survey in which over 50% of the respondents opined that age discrimination did exist, affecting many people in employment, so they urged for prohibition through legislation. A mere of 30% were opposed to legislation. Dr the Honourable John TSE of the Democratic Party, who was responsible for this opinion survey, will explain in greater details later. Our view is that the Government should immediately introduce legislation to prohibit age discrimination. In fact, I believe that not only colleagues engaging in the work of trade unions, but also Members elected in geographical constituencies are aware of the seriousness of the problem when they come into contact with the grassroots. Two years ago we conducted a number of surveys in Tuen Mun by way of, for example, interviews and signature drives. According to these surveys, many people had the feeling that they had been deprived of equal opportunities in employment due to age discrimination, and consequently, public resentment and discontent were resulted. As the saying goes, "it is difficult for a woman over 30 years of age to find a job". The "job" here refers to manual works, particularly those in the retail industry. People have the feeling that nobody wants to take on persons over 30 because employers tend to hire those in their teens or early twenties. Therefore, Mr President, I think the problem of age discrimination should be addressed immediately. It is my hope that Members will take the matter into serious consideration and support the Bill today, so that through the enactment of specific legislation, Hong Kong will be able to eliminate discrimination and discharge its obligations imposed by the conventions on the elimination of discrimination.

These are my remarks.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I speak on behalf of the Hong Kong Federation of Trade Unions (FTU). Mr President, I have been engaged in labour and women movement for over 20 years. In these two decades or so, I saw in our society many cases of discrimination against workers on the ground of their age, which were not limited to women. Middle-aged workers were victimized as well. At the same time, our society as a whole tends to share the same concept that everyone has his or her rights, including the right

to work. In comparison, Hong Kong is obviously lagging behind in this respect. Mr President, just now I said that from my experience for over 20 years, the problem has all along existed and I am not speaking out of nothing. Government statistics on the labour participation rate over these years clearly show that age discrimination seemed less significant when the economy was sound, but the problem became serious during economic downturns.

Let us look at the figures of 1989. The labour participation rate of women by age in that year was 72.4% for those aged between 25 and 29 but dropped to 53.4% for those aged 40. In that year, there was once a labour shortage in Hong Kong and it was the year that the Government introduced the General Labour Importation Scheme. Yet, age discrimination still existed despite the prosperous economy. What is the situation now? Figures of the year 1995, which are the latest I can get, indicate that the participation rate of young women was 82.8%, but the rate dropped to around 30% for those aged between 40 and 50. The trend deserves our attention. I do not make up these figures; they are extracted from government statistics on the labour participation rate. What about the male workforce? Men are also subject to age discrimination, though to a less extent. My experience gained in participating the labour movement over the past 20 years serves good proof of the situation and impresses me deeply. Now, the economic restructuring that Hong Kong undergoes is different from the transformation of the past, which did not involve changes in the essence of our labour-intensive economy, regardless of the magnitude of such changes. But clearly enough, we are now shifting from a labour-intensive market to a non-labour-intensive one. This is, indeed, more alarming.

Just now the Honourable Albert HO has said that the problem seems to be more serious in the retail industry. Since Mr HO is not closely associated with the labour movement, his view on the matter may be somewhat superficial. In fact, the problem has posed wide-ranging consequences and become all the more serious even when compared to the situation in a sound economy. So how serious is the problem? Firstly, a plunge in the participation rate may be the case only for the age group ranging from 40 to 50 in the past. As I said just now, it was in the neighbourhood of 80% for people in their twenties but dropped to some 30% for those aged between 40 and 50. But now, according to the participation rate of each age group, it is found that those who cannot find a job are gradually younger. In 1988 or 1989, the participation rate decreased drastically only for people aged around 40; but now, a low participation rate is

already recorded for those in their thirties. This indicates a trend that the people now affected are not only confined to those who were normally discriminated against in the past, but also the younger working population. Besides, the problem exists not only in the retail industry. It has become increasingly serious for jobs of the grassroots in general.

Mr President, let me tell you a story. Two weeks ago I attended a funeral where a couple in late thirties came and told me that the husband, who used to be a moulding worker, had been unemployed for two years because no moulding job was available in Hong Kong now. It is even more difficult for the wife, being a woman, to find a job. People in their thirties should be in the prime of their career. Why does the society not give them a chance? What has brought about this situation? People, like us, who campaign for the rights of women and workers have continuously urged that these people should be given opportunities, pointing out that these people also have talents. People who engage in labour and women movement, including myself, are often distressed because when the economy flourishes, employers try every possible means to attract workers but where there is a downturn in the economy, they become harsh and apathetic. At meetings with the Education and Manpower Branch, whenever government officials disputed the existence of the problem, we confronted them with the statistics, asking for an explanation of the scenarios the statistics depicted as well as situations like the case I described just now. The case I just quoted is not unique. A laundry located downstairs of the place I live is another example in which women workers are again affected. They are in their thirties and have difficulties in finding a job. Therefore, I would like to say that these are not individual cases but very common phenomena.

Today, some people say that the labour sector has gone too far in asking for legislation against age discrimination. I have to point out that we are not asking for too much. One of the reasons is that age discrimination, as I have said at the outset, has long existed. It exists not only when the economy slumps, but also in times of an economic boom according to government statistics on labour force over a long period of time. But we were fortunate in the past as the downturn lasted just for a while and the economy revived shortly so people thought nothing had really ever happened. Besides, we were able to solve the problem gradually by other means. Nevertheless, the situation is imperative now. If legislation is to be deferred, how can we tackle the problem? Let me tell you that in actual fact, not only the retail industry is affected. All workers who are not professionally-trained will have difficulties in finding a job as soon

as they reach their thirties. Of course, I agree that under our encouragement, some employers are already willing to employ this type of workers. Just now I saw Mr James TIEN's reaction as his younger brother's G2000 shops have started to take on this type of workers. However, this is not something that can be easily achieved. The fact is very few employers are willing to do so and those who have taken on these workers may refuse to hire them at any time. So, what if this is the case? Mr TIEN may rise to say that "I am a person of conscience and please do not force me to legislate in this respect. Michael TIEN, for instance, is a good employer for he has agreed to take on these workers." But I would like to tell Mr TIEN that very few employers have conscience

PRESIDENT (in Cantonese): Mr James TIEN, is it a point of order or are you seeking for elucidation?

MR JAMES TIEN (in Cantonese): I am seeking for elucidation.

PRESIDENT (in Cantonese): On which part?

MR JAMES TIEN (in Cantonese): I do not want to discuss this point with her today.

MISS CHAN YUEN-HAN (in Cantonese): Okay, that is all for this point. In fact, I was praising him but maybe he did not get it. The Government argues that the society as a whole is gradually absorbing these workers so there should not be any problem and hence, legislation is unnecessary. I think what the Government has said is a far cry from the situation in society. It has been for some years since I took to the streets, organizing social campaigns. During these years, I was astonished to find that the age of people facing difficulties in finding a job had been descending. Initially, only those who were approaching 50 had difficulties in finding a job. Later, it was those at the age of 40, and then those in their thirties. Now, even those who are 30 of age are affected. Unskilled workers of a low education standard are facing discrimination in various aspects. Such being the case, can the Government still say that

legislation is unnecessary? Will actions be taken only when more and more people take to the streets to demonstrate? I am of the view that it is necessary to introduce legislation against age discrimination, as proposed by our colleagues today. Some people, and even social activists, may ask whether legislative measures can really fulfil the pursuit of the labour sector. Some may even tell us that the enactment of legislation against age discrimination may end up with more workers being unemployed. I beg to differ on this point because "the working class" will certainly be better protected after the enactment of legislation. There are cases where a worker, who has attended a job interview and whom the employer has found suitable, is eventually told to go home after the employer has looked at the worker's identity card. If legislation is in place, at least job-seekers will be safeguarded against such discrimination. While employers can find other excuses to sack their workers, I think it will be another matter and we may institute legal proceedings in those cases. For the time being, at least there are many grassroot workers asking for legislation. With the protection of the law, at least workers do not have to disclose their age in interviews and will not be discriminated against on the ground of their age. Similarly, when legislation is in place, married women, who revealed their marital status, will not be deprived of the chance for an interview. Therefore, while I agree that new problems may arise after the enactment of legislation, I think it should not be difficult to deal with them from my 20-odd years' experience in labour campaigns and women's work. Even if new problems did arise subsequently, legislative amendments could be made to the ordinances concerned for further improvement, and this is far better than not putting in place any legislation at all.

Mr President, in addition to age discrimination, I would also like to say a few words on sexuality. The Women Affairs Committee of the FTU fully appreciates the concerns about discrimination on the ground of sexuality. We also agree that everyone should have a place in society. Yet, I would like to tell colleagues in this Council that there is divergence of opinions in the labour sector on this issue, and some of the views are very much influenced by the traditional morality. In this connection, continual efforts on the part of social activists are required. However, as the representative of the Women Affairs Committee of the FTU, I will vote in support of the Second Reading of the Bill.

Mr President, these are my remarks. Thank you.

MRS MIRIAM LAU (in Cantonese): Mr President, on behalf of the Liberal Party, I would like to speak on the Bill introduced by the Honourable LAU Chin-shek.

First of all, let me reiterate that the Liberal Party fully supports the broad principle that all are entitled to equal opportunities. Yet, we always believe that in order to promote equal opportunities effectively, we must secure support from the general public and in the meantime, the public have to know what it is all about. In this connection, the Liberal Party is of the view that the introduction of anti-discrimination legislation to Hong Kong must proceed in a step-by-step manner. At a meeting of the Bills Committee I asked Mr LAU Chin-shek if anything had happened in society since the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance in 1995, making him feel that it is now necessary to introduce the third anti-discrimination law for the consideration of this Council. Mr LAU did not answer my question directly at the time. All he had said was that a comprehensive range of anti-discrimination legislation should be introduced to Hong Kong expeditiously. These remarks, in fact, echo the position that Mr LAU consistently takes. He has all along supported a comprehensive range of anti-discrimination legislation covering various aspects be introduced to the territory expeditiously. However, we hope he can respect the position that the Liberal Party consistently takes. We are not opposed to anti-discrimination legislation but our view is that anti-discrimination legislation should be enacted steadily in a step-by-step manner.

In this Council we have time and again pointed out that "equal opportunity" is a concept relatively new to the people of Hong Kong. The anti-discrimination laws now under the scrutiny of this Council are proposed by our colleagues. They have made reference to overseas experience, and provisions in the bills also modelled on the anti-discrimination laws in such countries as Australia and Canada. The problem is that while they have made reference to laws in overseas countries, it seems that they have not studied the process through which anti-discrimination laws were introduced in these countries. In Australia, for example, the introduction of anti-discrimination laws began in the 1960s but it is only now, after two to three decades have lapsed, that a relatively comprehensive range of laws catering for a diversity of aspects is in place. Australia has adopted a step-by-step approach. After the enactment of one piece of legislation, reference is made to the experience in implementation before another piece of legislation to address discrimination in another area is drawn up. Australia is one of the advanced countries that pioneer the promotion

of equal opportunities. They have made so much reference to other countries and yet, for the most important aspect, and that is the ways anti-discrimination laws developed, why do they just ignore overseas experience in the adoption of a step-by-step approach, but insisting on the necessity for a comprehensive range of legislation be introduced to Hong Kong at one go, and preferably borrowing the legislation in its entirety for incorporation in local laws? Looking back on the way Hong Kong has gone through in the introduction of anti-discrimination legislation, we have, in fact, done fairly well. The Sex Discrimination Ordinance and the Disability Discrimination Ordinance were enacted in 1995, and the Family Status Discrimination Bill was passed earlier. At this stage, the Liberal Party is of the view that the public still has to make considerable efforts to understand and digest these ordinances. They have to understand the underlying concepts of the ordinances before they can know clearly the protection given to them and the obligation required of them under the ordinances. As for employers, they have to make extra efforts to understand the provisions in the various anti-discrimination laws in order to avoid breaching them inadvertently, which may result in serious consequences because it is often the case that the ceiling for compensation in the bills is removed and non-compliance is subject to unlimited liability.

Mr President, since the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, employers have made many preparations for compliance with these two ordinances. Employers have endeavoured to review, in accordance with the Labour Department's codes of practice on employment, their personnel policies and administrative procedures for adjustments where appropriate, hoping that their policies or procedures are consistent with the statutory requirements. Some companies even commissioned consultants to make recommendations for improvement. These arrangements involved substantial manpower and resources and we cannot make light of their efforts.

As an on-going effort to promote equal opportunities, another bill, namely the Family Status Discrimination Bill, was passed in this Council earlier. In addition to the efforts being made to address discrimination, employers also have to examine in detail the third ordinance, and that is the Family Status Discrimination Ordinance. They will have to look at their policies and procedures and see if any measure can be adjusted in the light of this newly-enacted Ordinance.

Why do we have to endorse another bill at a time when both the public and employers are trying hard to understand the three existing anti-discrimination ordinances? If Mr LAU Chin-shek's Bill is passed today, even though he is going to withdraw the part on family responsibility, we still have to deal with discrimination on the grounds of sexuality and age. We have to consider very carefully whether it is really necessary to introduce some other laws at this point in time to deal with discrimination in a diversity of areas. The Bill introduced by Mr LAU Chin-shek covers discrimination on the grounds of age and sexuality, and Mrs Elizabeth WONG will put forward another one in respect of racial discrimination later. Do we have to introduce additional anti-discrimination laws at this time? Besides, we have to ask whether employers have adequate manpower and resources to meet with the requirements following the enactment of these laws.

We note that there is no grace period for proprietors of small companies under the Bill. The Liberal Party considers it unacceptable. It is not easy for large companies to adapt to several anti-discrimination laws at a time, let alone the small companies, which have very limited manpower and resources. If no grace period is given to them, I believe that they may be forced to close down so as not to breach the law.

While the Liberal Party fully supports the spirit of the Bill, we hold that before a decision is made on the need to legislate against discrimination on the grounds of sexuality and age, we should first consider the acceptability of the community in general and whether the problem has become so serious that legislation is the only solution. In 1996, the Government conducted a consultation exercise on discrimination in respect of sexuality, as the Honourable Albert HO mentioned earlier on. Over 80% of the respondents disagreed on legislation against discrimination on the ground of sexuality and supported the use of other administrative measures by the Government to eliminate discrimination on the ground of sexuality. I do not quite understand the views of the Democratic Party on the findings of surveys. In certain surveys, they considered the findings dependable. For example, regarding the Legal Services Legislation (Miscellaneous Amendment) Bill which was debated in this Council two days ago, the Democratic Party conducted a telephone survey. The response rate was low with only some 10% of people responded. Yet, Mr HO maintained that the findings were very important and that they could still reflect the public opinion on the necessity of legislative amendments in respect of legal

services. He came to the view that these findings constitute a very important factor for consideration.

Speaking on behalf of the Democratic Party today, Mr Albert HO mentioned the findings of the survey on discrimination in respect of sexuality. While 80% of the respondents disagreed on legislation, he still opines that the respondents' disagreement does not necessarily rule out the possibility of legislation because their views may differ from one another. He insists on legislation disregarding the findings of the survey. I find it very confusing and can other Members of the Democratic Party explain in clear terms what it actually thinks about opinion polls? Does it mean that where the findings support their arguments, they make great play of them but when they are found to be unsuitable, they simply say they are useless? If this is the case, I doubt if there is still need for surveys to be conducted.

The Liberal Party is of the view that under the profound influence of the Chinese culture, it is only to be expected that the public considers homosexuality and bisexuality a gross transgression of traditional morality. However, while the public oppose legislation against discrimination on the ground of sexuality, it does not mean that they concur with discrimination against homosexuality and bisexuality. They are just worried that once there is legislation against discrimination on the ground of sexuality, it means giving consent to homosexuality or bisexuality. I think many people still find such behaviour unacceptable.

Having examined the Bill very carefully, the Liberal Party has other doubts about the Bill. With the enactment of the Bill, will it be the case that employers cannot refuse hiring a domestic helper on account of his or her sexuality? Can an employer terminate the employment of a domestic helper who is found to be a homosexual or bisexual? Parents are worried that they may have taken on domestic helpers who are homosexuals and bisexuals. They are worried that such sexuality will affect their children and that it will have an impact on the psychological development of their children. While they are concerned about the effects on their children and hence terminate the employment of their domestic helpers, they may have other concerns about the legal consequences in so doing, fearing that it may breach the law and that they may have to make compensation and so on. Is it fair if parents are subjected to such anxieties?

We must bear in mind that domestic helpers differ greatly from other employees in terms of the job nature. Domestic helpers work at the homes of their employers, living with their employers and their employers' families. It is indeed unfair to employers if they are deprived of the right to choose the ones who will work at their private residence. I would like to point out that in advanced countries like Australia, so far as sexuality is concerned, domestic helpers or caretakers of children under age are exempted from the anti-discrimination legislation. Hong Kong is indeed *avant-garde* in this respect. Compared with Australia and Canada, I think Hong Kong is indeed more aggressive and pragmatic in the promotion of equal opportunities.

The Liberal Party also notes that even if the Bill introduced by Mr LAU Chin-shek is passed, there will be operational difficulties because unlike the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, and the Family Status Discrimination Bill which has been passed, the Bill does not provide for any mechanism of conciliation between the claimants and the accused similar to the Equal Opportunities Commission. Besides, as all the claims have to be lodged with the District Court, claimants have to go through lengthy and costly procedures to establish their claims. Obviously, there will be a substantial increase in the workload of the Court.

We have to ask: is it appropriate to enact an ordinance with operational difficulties? With regard to age discrimination, the areas covered by the Bill may contradict with the existing policies and measures of the Government. For instance, the Government provides a different housing welfare scheme for civil servants aged 45 or above; and there is also the Superintendent's Discretion Scheme for minors and first offenders. Moreover, government services, such as homes for the elderly, the Senior Citizen Card Scheme and so on are provided exclusively for the elderly. In what ways will these policies or measures be affected after the enactment of legislation on sex discrimination and age discrimination? So far we do not have the least idea and we are unable to make any assessment at all. If legislation is passed hastily before we are absolutely clear about the impact of age discrimination legislation on these policies and before any overall assessment is made, the society will be greatly affected eventually. Mr Chairman, for these reasons, the Liberal Party opposes the Bill introduced by Mr LAU Chin-shek.

Thank you, Mr President.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, the Honourable LAU Chin-shek has introduced an anti-discrimination bill to promote equal opportunities in respect of family responsibility, sexuality and age. In this connection, the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that a step-by-step and well-considered approach should be adopted but I must state here that Members should not put labels on the DAB on this account, accusing the DAB of supporting discrimination. We take this position because we appreciate the complexity of the issue as well as the disadvantages of going about things hastily and therefore, we do not want to act recklessly. The Sex Discrimination Ordinance and the Disability Discrimination Ordinance have come into operation for less than a year only. The public still need time to understand and adapt to these ordinances. If a few more ordinances of a similar nature are enacted at one time, the public may not be able to digest them.

While the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill introduced by Mr LAU Chin-shek intends to protect the public from being discriminated against on the ground of family responsibility, sexuality and age, the Bill in itself has many loopholes. The Bill, if passed, may have far-reaching implications on the community. Taking age discrimination as an example, under the existing policy on small houses, only male indigenous inhabitants aged 18 or above are eligible to apply for the construction of small houses. The passage of the Bill may render the policy on small houses unlawful.

Let me cite another example. In processing the application from a 70-year-old customer for a mortgage loan to be repaid in 25 years, the bank will consider the age of the borrower so as to safeguard its own interests. However, as the Bill does not provide for exemption in this respect, the bank will breach the law if it considers the age of a customer in deciding whether or not the loan should be approved.

As regards age discrimination, the DAB is of the view that the Administration should study the issue carefully, giving due regard for the capacity of the community to cater for legislation against age discrimination so as to avoid things being spoilt by excessive enthusiasm and the progress of anti-discrimination efforts in Hong Kong being hindered consequently.

Regarding sexuality, it remains an extremely controversial and highly sensitive issue in Hong Kong. Last year, the Home Affairs Branch conducted a public consultation exercise in this respect and received more than 10 000

submissions, of which 85% opposed legislation. The findings of the consultation exercise indicates that the public actually disagree on legislation against discrimination on the ground of sexuality.

Mr President, whether the public accept the underlying values of the Bill is vital to the effective implementation of the ordinance in future. If Members of this Council fail to identify public opinions and hastily endorse a bill unacceptable to the public, the Government will only face difficulties in the implementation of the legislation. At the same time, adverse effects will be resulted in a way that the problem of discrimination, which the ordinance seeks to address in the first place, will become all the more serious. In that case, Members, though in good faith, will be doing evil deeds instead.

For these reasons, the DAB is opposed to legislation against discrimination on the ground of sexuality. Yet, we support administrative measures such as public education to promote the principle of equal opportunities, with a view to dispelling the general misunderstandings about the sexual minorities, thereby gaining greater public acceptance of the right of the sexual minorities to equal opportunities.

Besides, since the Equal Opportunities Commission will not be involved in the implementation of the ordinance, the aggrieved persons will have to undergo prolonged and costly procedures to have their claims lodged with the District Court. This has aroused concerns that the Bill, even if passed, may not be able to protect the aggrieved persons effectively.

Mr President, with these remarks, I oppose the Second Reading of the Bill.

MISS CHRISTINE LOH: I support the Honourable LAU Chin-shek's Bill and I urge all Members to do likewise. In fact, I believe the majority of this Council are ready to support legislation against age discrimination, so I will not spend any time going into it, and I believe the Honourable Miss CHAN Yuen-han has given much food for thought for anyone who is still wondering whether we need age discrimination legislation or not.

I would therefore like to appeal to Members to go one step further and do this in the concluding sitting for this legislative session to further enhance equal opportunities in our community. I want to appeal to Members to support or at

least not to oppose the provisions in this Bill which seeks to combat sexuality discrimination.

In all the time that the Administration has looked into this particular area, it has never mentioned the International Covenant on Civil and Political Rights in connection to sexuality discrimination, but the fact is that the Covenant obliges the Hong Kong Government to provide effective remedies against such discrimination. Although the Covenant does not expressly refer to sexual orientation, the Covenant's general obligation to eradicate discrimination applies to discrimination on that ground no less than it applies to discrimination on the ground of sex, disability or indeed age.

The commonest application to sexuality discrimination was underscored in 1994 in a decision of the United Nations Human Rights Committee whose view on the meaning of the Covenant are highly authoritative. The decision concerned a challenge against legislation in the Australian state of Tasmania which criminalized private homosexual activity, legislation of the type repealed here in 1990. What is relevant to our debate today, Mr President, is that the Human Rights Committee expressly indicated that the Covenant's anti-discrimination provision applies with full effect to discrimination on the basis of sexual orientation.

But despite that obligation, the Administration urges Members to back away from legislating because it says the community is not ready. This argument is deeply unsatisfactory. The Administration's job is to lead, not to follow or to stand still, and nowhere is the need for leadership more acute than where fundamental human rights are at stake. It is precisely the Administration's application of leadership that has forced Members so often to bring forward Bills of their own, and as you know, Mr President, it is not easy for Members to bring up Members' Bills. It involves a lot of work and a lot of our very meagre resources.

The Administration's refusal to lead is especially disappointing because where sexuality discrimination is concerned there is in fact so little distance to be traversed. It is simply wrong to assert that the community is not ready for this legislation. The Administration bases that assertion on last year's consultation results. The consultation generated 184 of what it termed substantive written submissions. 81 of these supported legislation and 84 were opposed. That is hardly, Mr President, a decisive result. The Administration's negative stance,

therefore, rested heavily on 9 850 pre-printed forms, 85% of which opposed legislation. Of those no fewer than 8 329, that is, Mr President, virtually all of them, were identical forms solicited from a single religious group. Is this really a sound indication of the whole community's view on this subject? In my opinion, to reject discrimination legislation on such a basis makes a joke of the Administration's purported commitment in principle to equal opportunity.

The Administration also took a poll as part of the consultation and, deeply flawed though the poll was, its result was revealing. The poll made no effort, I suspect, deliberately to engage Hong Kong people's sense of tolerance and fairness. Indeed, it asked questions designed to elicit and explore aspects of prejudice against homosexuals. What is striking is the superficiality of the prejudices it uncovered. The poll did not reveal any strain of hatred or of ideologically concentrated animosity towards gays or lesbians. What it did show was discomfort, for example, about adoption by homosexual couples, about homosexual school teachers, or about sharing a flat with a gay or a lesbian. In other words, Mr President, it showed reservation about intimacy and about child-raising, areas where caution naturally reigns supreme, as the Honourable Mrs Miriam LAU highlighted earlier on.

This is the kind of prejudice that is borne of ignorance and unfamiliarity, the kind that is readily susceptible to a sustained and serious effort to open people's minds. Unfortunately, the Administration does not want to make that effort. The public education initiated last year has been ill-informed and grossly under-funded. A few crumbs are being thrown to social service providers in the gay community, a pittance drawn ludicrously from an off-budget, charitable Cemeteries controlled by the Secretary for Home Affairs. Let there be no mistake that this is not a serious programme.

Most importantly, we know that public education on equal opportunity cannot really be effective unless it is backed by law, a step the Administration resolutely resists. And Mr President, we must not forget what drove the Administration to propose legislation on disability discrimination. It is precisely because there were heart-breaking examples before they were willing to do anything.

Meanwhile, public prejudice remains the norm and is the cause of a great deal of silent suffering in the community that remains for the foremost part invisible. Members should not mistake such invisibility for non-existence.

Invisibility is a result of discrimination and not a reason to allow discrimination to continue.

For these reasons, when voting in regard to sexuality discrimination, I urge Members to follow their conscience rather than the Administration's backward-looking lead. No one will find himself or herself politically embarrassed by doing so. Legislation against sexuality discrimination is controversial primarily because the Administration chose to make it so. If the Administration had taken the lead I believe the way forward would have been much smoother. It still could be. Hong Kong is basically a tolerant and fair-minded community that cares much more about productivity than about identity. What counts is what you can do, not who you are.

In that spirit, I hope, Members will support these Bills to prohibit sexuality discrimination.

DR JOHN TSE (in Cantonese) : Mr President, the Democratic Party supports the Honourable LAU Chin-shek's Bill. I want to emphasize that the most important point is that the Government has conducted consultation only, so what we consider is the result of the consultation only, and not that of an initiative survey. It seems that the Honourable Mrs Miriam LAU cannot distinguish consultation from surveys, as when she finds that 85% of the people consulted do not accept homosexuality, she infers that they do not support the introduction of legislation to protect homosexuals. This argument is extremely wrong indeed as consultation is different from surveys. Consultation is not based on sample taking. In other words, only those who wish to express their views will do so in writing or by various other means. But a survey is different in that it is sample taking, so its credibility is absolutely much higher. I must emphasize that as the Government collects views by means of consultation paper only, it is not fair that the Government infers from such data that 85% of the respondents oppose homosexuality. On the other hand, it seems that the more the people who do not accept homosexuality, the more serious the situation of discrimination in Hong Kong may be and it is more necessary to legislate against it. Those data should not be used to support the objection to legislation. As a matter of fact, whether we like it or not, we know that at least 4% to 5% of the population of Hong Kong are homosexuals. Their basic human rights cannot be disregarded.

Secondly, many Members and even quite a number of people think that to legislate against the discrimination of homosexuals is tantamount to encouraging homosexuality. This concept is totally wrong indeed. The purpose of legislation is to protect natural human rights and the rights of people with different sexuality from exploitation. We are not advocating homosexual activities in Hong Kong, but we must respect the decisions made by adults to avoid discriminating against homosexuals. Therefore, I have to emphasize once again that the stance of the Democratic Party is to ask for legislation, but that does not mean that we support homosexuality.

Some Members point out that it is enough to educate people in this regard. They ask for the reasons for legislation. But how can the work of anti-discrimination be accomplished through education only? If education alone worked, it would be unnecessary to impose fines for spitting in order to make Hong Kong clean and Hong Kong could maintain its order properly even without legislation. Thus, it is in fact self-deceiving for Members to use education as an excuse. It is clear to everyone that legislation and education must complement each other to be effective. I believe the Government will certainly point out later that discrimination is not serious at present and it will not be too late to legislate when the situation gets worse. However, how can human rights be treated in such a light-hearted manner? Even if only one person suffers from discrimination, we have to protect him or her. We cannot just stop there and wait until thousands and thousands of people suffer from discrimination, which I think is absolutely irresponsible.

Some people put forward the argument that traditions must be respected. They say that homosexuality is unacceptable in terms of social value. But when will the society accept it? After having heard the speech of the Honourable Mrs Miriam LAU, I thought we had returned to the times of the seventeenth century as unfair ways of discrimination were used to punish homosexuals. Social values are of course important, but we are not advocating the values of homosexuality. What we are advocating is another value. Everyone is equal before the law and has the same natural rights. Why can one, because of his or her different sexuality, be disallowed to enjoy the same social services as others and is even affected in education, employment and promotion?

Mr President, how unfair it would be if it were required that no homosexual Members of the Legislative Council should be the President of the Council. What we should consider is ability, not sexuality. Mr President,

although the wish of the general public is very important, protection of the basic human rights of the minority against discrimination is more important. This is the main topic of today. Responsible legislators should not use tyranny of the majority to deprive the minority of their basic human rights and exploit them. What do we actually ask for? We only ask for this: Despite the difference in sexuality, the people concerned should be treated the same as others in such areas as employment, application for posts, entry into professional fields, as well as in education, social service and residence. These are all basic needs. In fact, we only request that homosexuals should have the right to take part in the society. We cannot let this group of people confine to themselves.

Mr President, if the legislation cannot be passed today, it is really a great retrogression for human rights. Very often, people say Hong Kong is very advanced. It may be true in economy, but in the protection of human rights, it is quite backward indeed.

Mrs Miriam LAU, as well as several political parties, also point out that we should follow the golden rule of gradual progress and adopting a step-by-step approach. However, they have just uttered these few words but put forward no time table. They do not have any specific proposal to tell us what it means by gradual progress and step-by-step approach. As a matter of fact, I can say that we are progressing gradually and adopting a step-by-step approach now. No one requests that all anti-discrimination legislation be introduced at a stroke today. If I make it right, it is the fourth step today. The first and second steps were taken two years ago. Is it not a gradual progress? I hope Members will no longer rely on the pretext of gradual progress in an attempt to eradicate some basic human rights.

Mrs Miriam LAU of the Liberal Party further says that the Liberal party very much supports equal opportunities indeed and she also supports anti-discrimination. But the Liberal Party will vote against the Bill. What exactly is its logic? What kind of spirit is it? This is called dual standard, that is, to advocate it but not to put it into practice. If this is the attitude of the Liberal Party, there is no need to talk about it. They pay much lip service to support it, but vote against it in the poll. They were eloquent in the record of proceedings. But what explanations can these parties give when are faced with some homosexuals? Can they say that they support them, but they have to deprive them of their human rights? How can it be spoken out? Very often, other parties claim that the Democratic Party has conducted a lot of research and

often make use of the data collected. They ask: Can the Democratic Party use the data today to explain why it does not support the opinion data concerned this time? I want to spend some time describing a telephone opinion survey conducted by the Democratic Party last year. At that time, we successfully interviewed 528 people, of whom 70% opined that age discrimination existed in Hong Kong and over 70% opined that the Government had not done enough to eliminate age discrimination. It can be seen that the Government really needs to improve its efforts in the elimination of age discrimination. The results of our survey also indicate that nearly 55% of the respondents are in favour of introducing legislation against age discrimination, and only just more than 30% do not agree. However, to sum up, I think the part on age discrimination can be passed in this afternoon, but it seems that the part on sexuality will be voted down as the political parties are too conservative and disregard human rights. However, no matter what the results will be, age discrimination is still not right. We should consider a person in terms of his or her working ability, but not the age. If we are going to employ or promote a person, or to see whether a person should receive training, we should do so based on his or her basic ability instead of the age. Therefore, we should legislate to ban the use of certain unreasonable criteria, such as age and so on. I hope Members belonging to various political parties can think it over before casting their votes and give it a serious consideration as we are not actually advocating homosexual activities amongst Hong Kong people. I am not asking people to support homosexuality either. We just want this minority group of people to enjoy the same human rights as you and I do.

Thank you, Mr President and I so submit.

MR LEE CHEUK-YAN (in Cantonese): Mr President, it is very clear to all of us that the debate today is an extension of the equal opportunities debate held at the last sitting in the 1995 legislative session. I very much hope that the result of the debate will be different from that of the last time.

Last time, Ms Anna WU pointed out in her speech: "There are many people both within and outside this Council, who support the Equal Opportunities Bills; they are most resolute; if today the Bills founder, they will come back tomorrow to have another go." I am among these people that she referred to. Now here comes Ms Anna WU. All of us can see that she has really come. Today we have really brought the Bill back to the this Council to

debate it once again. I very much hope that the result this time will be different from that of the last time.

The Honourable Mrs Miriam LAU has just said that employers will find it unbearable indeed to accept things one after another frequently. Why do we, in my opinion, not enact a complete and comprehensive Equal Opportunities Ordinance at one stroke, so that employers do not have to understand sex discrimination today, disability discrimination tomorrow, as well as family status discrimination and age discrimination the day after tomorrow. Is it much easier if we tell employers once for all that people should have equal opportunities? Ms Anna WU did in fact propose her own Bill to the Government at the end of 1993, but the Government was reluctant to legislate in this regard. In July 1994, when Ms Anna WU reintroduced the Bill to the this Council, the Government had no alternative but to choose to accept two of the things concerned. If the Government were willing to accept the Bill in its entirety at that time, Hong Kong people could have understood the concept of equal opportunities at once, and the employers and the general public of Hong Kong would have been more ready to receive a new education, that is, the education on equal opportunities. What exactly is the inherent significance of the equal opportunities legislation? It can be explained by using a saying of Mr DENG Xiaoping that "be they white or black cats, it is a good cat that catches rats." As long as employees have working ability, there is no need for employers to take into account their sex, age, sexuality and family status. Why do employers not employ workers who are efficient in performance? I remember that some time when I listen to the radio broadcasting, some employers make a phone call to the programme to voice their opposition against the employment of homosexuals. They say that even if homosexuals are very clever, they are not willing to employ them. This concept must be changed indeed because it is not a good management approach with which we are concerned today. A good management method refers to the way in which the selection of employee and the assignment of job are made according to one's talent instead of other factors which are irrelevant to the job and one's talent. Therefore, it can be said that this time the entire legislation is expected to liberate employers from some concepts of discrimination, and to encourage them to use good management methods and employ people based on their talent, so as to increase the competitiveness of Hong Kong and to make people and workers live by their own exertion and free from discrimination arising from their own special features.

The Liberal Party says that it supports equal opportunities and the DAB has also expressed its hope just now that we should not allege that they support discrimination. I do not think that they support discrimination, but we have to point out that they tolerate it. I believe that they do not support discrimination, but they tolerate it. To put it more seriously, toleration of discrimination is, in fact, a sin. It is hoped that we do not tolerate discrimination, so we should vote for the elimination of it. Just now the Honourable Mrs Miriam LAU doubted the seriousness of the problem. She said she had asked Mr LAU Chin-shek what happened in the past two years that prompted him to raise the issue of anti-discrimination of age. I think it is basically not an issue of what happened in the past two years, but what happened in the past 10-odd years.

We can see quite clearly that women have been suffering from discrimination in the service sector since the economic restructure. One of the reasons why manufacturing workers cannot change their fields of employment is because of age discrimination. For example, we, the Confederation of Trade Unions, have conducted a survey of job advertisements in the newspaper. We also engaged some people to attend job interviews and make telephone enquiries about the posts. As a result, 90% of such jobs involved age discrimination and 60% of the employers were willing to employ workers under 30 years of age only. What is the reason for that? Why only will people under 30 be employed? This is the case of some cake shops, for example. Nowadays, as I have long been saying, cake shops still employ women under 25 only. I remember that I also mentioned this in my speech last time, but the situation has not changed hitherto. This is totally due to the non-existence of legislation in this regard. Moreover, there are still some department stores which will only employ people under 30 or 35 and the case is the same with restaurants. The situation remains the same today. What happened in the past two years? The only thing that happened in the past two years was that the situation remained unchanged. Age discrimination has continued. Therefore, women workers still face the hardship that "it is difficult for a woman of 30 to find a job". If we talk to women workers, we will easily feel their distress, that is the suffering of being unemployed. The Joint Meeting of Employment for Women has gathered more than 2 000 signatures in just two hours. Each signature implies this feeling: "I am a woman and I think age discrimination against women generally exists in society, which gives rise to unfair treatment to them in employment." I therefore strongly urge the Government to legislate against age discrimination. This represents the wishes of many women and it is hoped that we will not ignore their wishes. If the Bill is passed today, we very much hope that workers or

women workers can have "equal opportunities in employment", instead of suffering from age discrimination and being told that they will not be employed when their ages are known in the process of seeking employment or being told to return home to wait for the result notified by telephone. We hope that such anxiety and distress will not appear again. Of course, someone has just said that we should educate instead of legislate. However, as a matter of fact, we are well aware that legislation is the beginning of education. If legislation is not proceeded, education cannot be started. If we can set a standard for the community, the law will be highly respected in the Hong Kong society. If the law is respected, employers will start to change their concepts. This is where education is.

Finally, I want to put forward my view on sexuality. Many trade unions may say that their members do not accept legislation on sexuality discrimination. I understand that their members may not necessarily accept it. However, we should not look at the issue from the perspective of the general public in Hong Kong. Instead, we should take the victim's point of view. How will the victim feel if he or she is forced to accept discrimination arising solely from his or her own sexuality? I opine that we should free them completely from fear. Many people with special sexuality have told us that basically they dare not reveal their sexuality. They have to hide it, as once they have disclosed it, they will suffer from discrimination. Why should such phenomena exist in our society? In fact, on many occasions, the majority of people oppose the introduction of legislation to protect people with special sexuality, but we cannot accept the views of the majority in this regard. Why? It is because we are now talking about the dignity and human rights of an individual. Even if there were only one person suffering, with his or her dignity being harmed, we should protect him or her and safeguard his or her rights, irrespective of the endorsement of the whole world. I think this is my own strong principle — we cannot accept discrimination against any person, even if the majority have endorsed it in respect of certain people.

Therefore, I very much hope that we all support Mr LAU Chin-shek's Bill today. Thank you, Mr President.

MR BRUCE LIU (in Cantonese): Mr President, I speak briefly on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL) to express our views on these two Bills.

First of all, I would like to talk about age discrimination. Does age discrimination exist in Hong Kong? The conclusions of the Government's consultation paper are very interesting. According to the consultation paper, interview surveys have shown that age discrimination does exist in that younger or older job-seekers are faring more disadvantageously in the labour market. On the other hand, the document also points out that from the non-interview surveys such as researches on recruitment advertisements and age-group studies, the Government cannot certainly tell whether age discrimination exists in our community. However, the ADPL knows that age discrimination does exist, and trade unions have also reported instances which present a very realistic picture of age discrimination in the territory. We therefore believe that age discrimination exists in Hong Kong.

With regard to age discrimination and equal opportunities, the ADPL supports equal opportunities for everyone and an anti-discrimination policy. In the past, the ADPL supported the passage of three ordinances on sex discrimination, disability discrimination and family status discrimination. Today, we are going to discuss another two pieces of legislation. At this point, we want to make clear our stance. In our view, if anti-discrimination laws are to operate effectively and render concrete help to the public, in particular the working class, it is most desirable to have in place an effective enforcement mechanism and a proper mediating system. We therefore concur with the Government at the point that for effective implementation of such legislation, we need an effective enforcement mechanism such as the existing Equal Opportunities Commission (EOC), which serves as a mediator so that members of the public need not go to court immediately when they have complaints. In fact, it is neither in the interest of the employer nor the employee to bring the case to court. Only the lawyers will benefit from this. As regards the handling of complaints about discrimination, the EOC is now dealing with such complaints in accordance with the provisions of the three ordinances enacted. Today the EOC is playing a very important role. Despite the need for further legislation to that effect, we hope that the EOC can play an important part in that area as far as possible to avoid confusion.

Why do we support the move against discrimination on the ground of age? The reason is that the Bill in question is a Member's Bill in which the EOC cannot take part. Members of the public might not know about this point. Why does the ADPL support legislation against age discrimination? We have a

few major observations. First of all, we believe that although the EOC does not have a role to play in the process of legislation, it is fully prepared psychologically to take up the role as the enforcement body and the mediator. Regrettably, up to this moment, the Government is still reluctant to make a firm commitment to addressing age discrimination by legislation. Hence, we are now in a situation where everything is ready except one thing — we need to force the Government to do one more thing which is now lacking. We have therefore made a judgement that upon the enactment of this piece of legislation, the Government will, as a corollary, do that one more thing: to introduce the necessary supplementary legislation or amend the ordinance to incorporate the role of the EOC into the legislation. This will inject life into the ordinance, rendering it a complete law which is in the interest of complainants and relevant to the situation in Hong Kong. Before making the above judgement, we have studied the present social situation and obtained relevant information from the Government and the EOC through which we noted their intention. Therefore, the ADPL today will vote for Part IV of the Equal Opportunities Bill in respect of age discrimination.

Finally, if that part of legislation on age discrimination is passed today in this Council, we urge the Government to introduce supplementary legislation as soon as possible. Meanwhile, the role of the EOC should be incorporated into the legislation.

Regarding discrimination on the grounds of sexuality and race, we believe the Government is still conducting the consultation and the review. Hong Kong is not yet ready to accept legislation in such areas. Without a supportive environment, it can hardly achieve anything even if legislation is forced through. Reluctance is good for nothing. For this reason, we hope the Government can conduct the consultation and review in a detailed and comprehensive manner, and introduce legislation in due course so that laws are in place to provide protection against all forms of discrimination in Hong Kong.

Mr President, these are my remarks.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, the discrimination bill under debate today actually involves an important contentious point, that is whether it is the appropriate time for us to legislate at this moment.

I recall that the colleagues of the Education and Manpower Branch deployed much manpower and material resources to conduct a study on this issue last year. They even sent some officials to Australia and New Zealand to make an on-site investigation with a view to looking at the effects of enacting legislation on the community. At that time, the Honourable LEE Cheuk-yan also joined the trip at his own cost. All these efforts reflected the positive attitude taken by the Government in finding out the consequences of the legislation. I really appreciate the efforts of the Government in this respect because it has taken a very positive attitude to handle the issue and tried to find out the consequences to the community after the enactment of the legislation. Thus, such efforts cannot be denied.

On the other hand, if I have not misunderstood the remarks of the Members in this Council and mistaken the facts in the past, I think the debate on discrimination actually started a long time ago, not just in the recent one or two years. If the Government continued to adopt a positive attitude at an earlier time and deployed adequate manpower and material resources to deal with the issue, the situation would have been different. Unfortunately, the Government has not done so.

The Government emphasizes that we can promote public education on this issue, which I am not totally against, instead of enacting legislation. But let us ask ourselves: What has the Government achieved in terms of public education in the past couple of years? What are the effects of their publicity programmes? What are the consequences of public education and publicity? What I concern most is that when our economy was going down at the end of last year and two years ago, the shrinkage of the manufacturing sector no longer allowed a number of workers to stay in their trades and they were forced to look for a job in the service sector. Unfortunately, these workers could not switch to other trades during the economic depression notwithstanding their past contribution to the economy of Hong Kong at the cost of their youth and endeavour. Limited by their ages, they could not find a job in the service sector and this has led them to a difficult life. If the Government has devoted enough efforts to public education and publicity, why does such situation still exist in the community? Therefore, despite the Government's emphasis on addressing the issue by public education, I really do not notice any achievements in this respect in the past. As such, I hope the Government can show us evidence to prove that there are already achievements, and convince us that the issue can be addressed

successfully through public education without enactment of legislation. I hope we can see such proof.

Several colleagues have just said that we are forced to legislate because the Government has done nothing indeed and it cannot change the reality of the community. Meanwhile, the most important thing is that enactment of legislation and public education are not mutually exclusive. Public education work can still go on after the enactment of the legislation. It does not mean that we do not have to do any education work after legislation. Mr President, I want to emphasize that after the passage of this Bill today, I hope the Government can follow its former spirit and actively proceed with public education work and the publicity programme on the content of this legislation. This will help more people understand the real concept of this piece of legislation and its scope. This will also enable members of the public to grow through the legislative process and the whole community will understand this concept better. I think this is a very important point. No one should think that we are here in the Legislative Council just to legislate, without doing anything to follow up. I hope the Government will allocate more resources and manpower to promote the application of this legislation in depth and detail so that we can really eliminate discrimination in our community.

Mr President, these are my remarks.

MR WONG WAI-YIN (in Cantonese): Thank you, Mr President. I will not repeat the points already mentioned by many of my Honourable colleagues, so my speech will be very brief.

Having heard the speeches just delivered by quite a number of my colleagues belonging to several political parties, I find the stance of the Liberal Party very clear. Its stance is the same as it was when the Bill was debated two years ago. The Liberal Party still holds that it is not the right time to legislate now. Today, two years later, it still puts forward the same reason. The Honourable Mrs Miriam LAU has just probably repeated her speech prepared two years ago. The stance of the Liberal Party is very clear. Basically, the Liberal Party does not agree to eliminate discrimination by means of legislation. This gives rise to a contradiction in that they claim that they support the elimination of discrimination, but they basically do not support legislation in this regard. Nevertheless, I would like to emphasize in particular that Mr TAM

Yiu-chung of the Democratic Alliance for the Betterment of Hong Kong (DAB) and the Honourable Frederick FUNG of the Hong Kong Association for Democracy and People's Livelihood (ADPL) were supportive of the introduction of legislation to eliminate discrimination two years ago. When I say that, you may think that I have brought up old scores again, but the Hansard cannot be changed. Two years ago, Mr TAM Yiu-chung of the DAB and Mr Frederick FUNG of the ADPL supported legislation to eliminate discrimination. Apart from age discrimination, Mr FUNG even pointed out that discrimination existed in such areas as race, family responsibility, sexuality, religion and political belief. Accordingly, these two colleagues both voted to support Ms Anna WU's Bill at that time.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, is it a point of order?

MISS CHAN YUEN-HAN (in Cantonese): Yes, it is a point of order, Mr President. The Honourable WONG Wai-yin said a moment ago that Mr TAM Yiu-chung belonged to the DAB. I do not deny that Mr TAM belongs to the DAB, but I want Mr WONG to know clearly that Mr TAM is also the Vice Chairman of the Hong Kong Federation of Trade Unions (FTU). I just want to remind him that Miss CHAN Yuen-han of the FTU will support the legislation today.

PRESIDENT (in Cantonese): Sorry, this is not a point of order.

MR WONG WAI-YIN (in Cantonese): Thank you, Mr President. I just want to point out that Mr TAM Yiu-chung represented the DAB and I did not say that he represented the FTU. I know that the FTU supports the legislation. However, the Honourable NGAN Kam-chuen of the DAB has just said that the gradual progress approach should be adopted. Hearing that, I wonder if we are conducting a debate on the proposal of political reform which requires a gradual progress approach. It is, however, not the case, but that the DAB prefers the gradual progress approach in all cases. What exactly does the "gradual progress approach" imply? To my understanding, the gradual progress approach referred to by the DAB implies obedience to Beijing's orders. If Beijing says yes, it will say yes; if Beijing says no, then the gradual progress approach must be adopted.

Why has there been such a great change in its stance in just two years? Why does it oppose the legislation that it supported two years ago?

Mr President, I do not want to be lengthy in my speech. At last, I do not know the reasons and arguments for such a great change in the stance of the ADPL in the past two years. The ADPL said earlier that its four votes in this Council have the greatest strength which can affect the result of voting in the Council. Is it true that the reason why Mr Frederick FUNG supported the legislation two years ago was because he knew that Ms Anna WU's Bill would not be passed even with his support as his vote could not affect the result? And does he want to emphasize that the four votes of the ADPL have the greatest strength which can affect the result, so he is not willing to support the Bill this time? The reason is if he gives his support this time, it is possible that the anti-discrimination legislation can be passed. Finally, I think the greatest strength lies in the support for justice, that is to do something fair and square.

Thank you, Mr President. I support the Bill.

Mr Bruce LIU tries to speak again.

PRESIDENT (in Cantonese): The Second Reading debate is now in process and Members cannot speak again. I thought you had a point of order or asked for clarification.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I will only focus on the part of the Bill on discrimination on the ground of age. Later on, the Secretary for Homes Affairs will address the parts of the Bill on discrimination on the grounds of family responsibility and sexuality. I would like first to give my views on the Bill on the whole and go on to discuss the relevant consultation exercise. Firstly, this Bill will bring far-reaching implications not only to our community, but also to many existing policies and services. In this connection, without making a comprehensive assessment on how the Bill will affect the community, it is not in the overall interests of the community to introduce the Bill to this Council so hastily. I would like to point out that some members and the Administration have requested the Bills Committee to consult interested parties widely on the part of the Bill covering discrimination on the ground of age. To my understanding, the Bills Committee considered that there was not enough time and therefore

declined the request. I do not understand what it meant by "there was not enough time". In this regard, I would like to put this on record. In due course, I will cite some obvious examples to show that age is an essential factor in areas other than employment.

The second point that warrants our concern is that under clauses 74 and 76 of the Bill, several existing policies and pieces of legislation which may be regarded as discriminatory in nature can be exempted. However, as far as I know, these two clauses have been modelled on relevant overseas legislation and the scope of application and effect of these overseas legislation are still open to the courts' interpretation. As such, uncertainties will arise if these two major exemption clauses are invoked in Hong Kong. We therefore should take note of this point.

Both Legislative Councillors and members of the public have expressed many views on age discrimination in employment. I would like to take this opportunity to reiterate the Government's position. We believe a programme of sustained public education, publicity and self-regulation is the most appropriate approach to deal with discrimination in employment on the ground of age. If public attitudes are to be changed, this approach should be more effective than legislative sanctions. We have embarked on relevant measures which include the following:

1. Starting from mid-March, by means of Announcements of Public Interest on television, we call on employers to consider the ability, and not the age of applicants, when recruiting employees.
2. We will issue practical guidelines for employers shortly to advise them how to eliminate age discrimination in employment.
3. The Labour Department will, by means of various publicity activities, promote the concept of equal opportunities in employment and provide services to persons who are discriminated against on the ground of age in employment.

As a response to what the Honourable Miss CHAN Yuen-han just said, we have in fact not overlooked the difficulties which may be faced by some members of our community. Neither have we denied the existence of age discrimination in our society.

As usual, the Honourable LEUNG Yiu-chung in his speech has just showed his appreciation for the work of the Education and Manpower Branch. Yet, he seldom supports the Government's stance. I hope that he will appreciate what I am going to say, though. We will review the effectiveness of the measures described above early next year. If these measures fail to change public attitudes, we will not rule out the possibility of legislation. In other words, once the need for legislation is justified, we are willing to consider adopting a dual approach of legislation and education with a view to further eliminating age discrimination. However, as a responsible government, we do not agree to passing a bill so hastily despite its many flaws. The clauses of the Bill on discrimination in employment on the ground of age have aroused much concern, but as a matter of fact, clauses on age discrimination in areas other than employment will also bring adverse effects to our daily life.

Just now, the Honourable NGAN Kam-chuen has cited the provision of loans by banks and the small house policy as examples to illustrate the adverse effects that may be brought about. I would also like to give you some more examples to show that the Bill will lead to undesirable consequences should it be passed and to prove that many loopholes are found in the Bill. Personally, I am very much concerned about clause 62 of the Bill. Under this clause, it may be unlawful for public sector primary and secondary schools to refuse the application for admission by people over the school age. This will not only bring practical difficulties to schools in planning school places and in its day-to-day operation, but will also compromise the quality of education.

Many international sports governing bodies prohibit people above a certain age from acting as referees or umpires. Clause 68 of the Bill, however, renders such acts unlawful in Hong Kong and hence puts local sports organizations in a difficult position when organizing international sports events in Hong Kong. Under the existing immigration policy, the age of the applicants is one of the factors for consideration in vetting applications made by dependants of local residents who apply to come to Hong Kong for the purpose of family reunion. Approval is generally not given to parents under 50 years old and children aged 21 and above to come to Hong Kong to join their children and parents respectively. The legal advice we got is that, when taken together, clauses 54 and 71 will render this policy unlawful. On the other hand, the exemption provided under clause 74 which aims at protecting the welfare of minors fails to serve its intended purpose.

Moreover, section 11 of the Hong Kong Bill of Rights Ordinance provides for exemption cases under immigration legislation. Any similar clause is, however, not included in this Bill. As such, if the Bill is passed, the Government will have to remove the age restrictions in law. In other words, any person, irrespective of his or her age, can apply for entry into Hong Kong as a dependant to join his or her parents and children, which will bring serious repercussions to the local immigration control policy. Age restrictions are also found in many existing housing policies and measures, including those in favour of senior citizens, Elderly Priority Scheme under which elderly people or families with elderly members are accorded priority in the allocation of public rental housing flats, and the requirement for applicants for public rental housing and Home Ownership Scheme flats to be at least 18 years old. Moreover, under the clearance policy, eligible singletons who are 50 years old or above will be rehoused in public rental housing and those who are under the age of 50 will be offered interim housing. Dependent children under 18 years old normally have a higher chance of success when applying for addition to a tenancy as household members. These policies and measures aim to offer protection to those in need of assistance and to set priorities in allocating limited housing resources. However, under this Bill, these policies and measures may be regarded as discriminatory in nature. Clause 89 of the Bill gives an exemption to establishment providing accommodation for aged persons, but it is uncertain that all the policies and measures mentioned above can be covered by such an exemption.

On medical and health services, in order to offer special care medical services to different age groups in an appropriate and cost-effective manner, sometimes it is necessary to impose age restrictions. For instance, priority chips are given to aged patients at general out-patient clinics, appointment services are provided to aged patients suffering from chronic diseases, vaccination is provided for children (but not adults), and the Student Health Service and the School Dental Care Service are provided to students. If the Bill is passed, we will have to terminate these services to comply with clause 71 of the Bill.

Lastly, Mr President, I would like to raise two points. Firstly, age is a factor for consideration in many public policies and measures. Only with justifiable reasons will the Government impose age restrictions. Equating all the age considerations with discrimination and removing all age restrictions found in public policies and administrative directives are a bit too childish.

Secondly, while the Bill has incorporated provisions which spell out exceptional cases which may receive exemption, and has reduced the negative impacts brought to particular areas, there is no guarantee that many existing policies and measures are immune from the implications of the Bill.

Mr President, there are a lot of loopholes in the Bill and its drafting is far from satisfactory. It will be of little benefit to the community if this Bill is passed. On the contrary, serious problems and confusion will arise as a result. In this connection, I call on all Members to vote against Mr LAU's Bill.

Thank you, Mr President.

4.00 pm

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

MR FREDERICK FUNG (in Cantonese): Thank you, Mr Deputy. I wish to respond to the questions that some Members put to me a moment ago, and express my own views on the Bill. Basically, as a matter of fact, the Hong Kong Association for Democracy and People's Livelihood (ADPL) is in principle fully supportive of the equal opportunities legislation. We are of the opinion that the direction is right and we should proceed towards it. So, in the last legislative session, we voted for the legislation to deal with six types of discrimination. We believe that the issue can best be addressed finally by legal means, but eventually it still has to depend on the efforts and response of the Government. This is the first point.

The second point is whether the mechanism for handling discrimination complaints itself can provide the most simple and quickest way to handle the problems encountered by the discriminated. In the year when the issue was discussed, the Equal Opportunities Commission (EOC) had not yet been set up. After the hurried enactment of the Ordinance, the Government handled the issue in a very positive manner. As a result, the EOC was set up approximately half a year ago and has been handling some problems relating to equal opportunities involving both sexes. After discussions, the ADPL is of the view that the establishment of such an organization as the EOC can best provide the general public with a convenient place to lodge their complaints arising from

discrimination and these complaints will be handled by the staff of the EOC. The two Bills under discussion today propose that such complaints be handled by the courts. If so, it will not be easy for the general public to lodge complaints because, as the Honourable Bruce LIU has just said, if such a mechanism is adopted, people benefited most are the lawyers, such as Mr LIU, instead of the discriminated. I just take him as an example. Under these circumstances where only lawyers can benefit and the general public may not necessarily be granted legal aid, people who are discriminated against have to take into consideration the litigation costs and the time to be spent in court proceedings.

Therefore, we opine that as the Bill under discussion today is a private Member's bill, the mechanism cannot be referred to the EOC on the ground that this may have a charging effect. Now that the EOC has been established, we think that we should urge the Government to set up another similar mechanism as the EOC to handle other discrimination or unfair problems. But this time we have a very large restriction, because private bills cannot achieve this objective. This is the first main point.

The second main point is that in the process of legislation, consideration must be given to the then situation of the community. When more people appreciate the seriousness of the situation of discrimination in our society and find the situation unacceptable, it will be easier to legislate to make the whole community act in accordance with the enacted legislation. Mr Deputy, if people still fail to see the seriousness of the discrimination problem, or the general public still do not accept legislation against it, then it is probable that such legislation may not be complied with or acted upon. It is also probable that some people may even show their opposition in the form of defiance. Under all circumstances, I think it is necessary to legislate in terms of the long-term development. But as the Bill under discussion is a private Member's bill, the simple and convenient mechanism that I have just mentioned cannot be set up and we have to rely on the courts. I have great reservations about this. We have no doubt seen very clearly over the past few years that age discrimination in particular exists in the community and gives rise to the situation that some people between the age of 30 and 40, be they male or female, have difficulties in finding jobs. For these underlying reasons, we hope that legislation will be enacted so that it can at least serve as an immediate deterrence to some employers. The Honourable WONG Wai-yin has raised the following questions: Does the ADPL oppose the Bill for fear that it can be passed? Did the ADPL support the Bill in the past because it thought it would not be passed? As a matter of fact, of the

six areas relating to discrimination or equal opportunities which have all along been under discussion, four areas have the support of the ADPL. So, if the ADPL really does not want the Bill to be passed, there is no reason why it supports four of them.

In fact, legislation on three of the four areas has been passed. Today, the fourth one is concerned with age discrimination. I would like to point out that if we have no intention to support it, we should have voted against it or abstained from voting in the past. Why did the ADPL agree to it in the past? If all of you say that the ADPL has recently been very influential, it is probably because we have four votes. We dare not say that our four votes can affect the result of a poll, but these votes can at least provide the basic number of support. Thus, I cannot readily accept such remarks that ADPL voices its opposition or support according to the expected result of a poll.

As to why the ADPL agreed to the Bill in the past, but somewhat disagrees to it now, the mechanism that I mentioned a while ago has changed over the past two years, and the Government has also given its undertakings and made some efforts in this regard. The situation is just the same as the debate on the issue of veterinary surgeons where the Democratic Party, after conducting negotiations with the Government and obtaining its undertakings, no longer insists on some points. I think the situation is very similar with respect to the discrimination problem. Another similar situation is Mr WONG Wai-yin's refusal to support the direct election of all the 60 seats in the past, but he has recently agreed to it. Hence, Mr WONG may probably make different decisions in response to changes in the situation. The ADPL has made it quite clear that the main reason is that it is a Private Bill. I understand that the Honourable LAU Chin-shek could not incorporate the mechanism that I have mentioned into the Bill when it was drafted. In fact, I have already discussed the issue with Mr LAU Chin-shek, colleagues of the Home Affairs Branch and the Chairperson of the EOC. I hope that the Government can really give an undertaking in this regard openly later.

To our understanding, the Government has responded actively to all the three issues relating to potential discrimination and unfairness raised today. But to the ADPL, we really very much hope that the Government can also incorporate those issues relating to unfairness into the EOC or a similar mechanism in future, so that Hong Kong people, in particular the general public, can have their discrimination problems handled as soon as possible, even if they cannot afford

to hire a lawyer, or institute a litigation, or have no ways to defer the solution of the problems to several years later. For these reasons, we can only support the relevant provisions of the various parts relating to age discrimination, but not the rest.

SECRETARY FOR HOME AFFAIRS: I would like to take this opportunity to pay tribute to you as Chairman of the Bills Committee, Honourable LAU Chin-shek, and members of the Bills Committee for the work on the numerous Equal Opportunities Bills.

Mr LAU Chin-shek's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill is largely similar to the one introduced by Ms Anna WU in the 1994 and 1995 Legislative Sessions. The Administration did not support Ms WU's Bill because it would be prudent to take a step-by-step approach in adopting equal opportunities legislation which was a new concept in Hong Kong. We were of the view that it would not be appropriate to go down the legislative route without consulting the public. We undertook then to conduct public consultation which we did last year.

On family responsibility, a majority of the submissions received indicated support for addressing the problem by the legislative approach. Based on such support we introduced the Family Status Discrimination Bill which was passed by this Council only a few days ago. The passage of the Administration's Bill signifies this Council's agreement that it is a practical step to meet the community's needs and aspirations. I am fully aware of Mr LAU Chin-shek's conviction that our Bills should have covered a wider scope. Despite the conviction, Mr LAU has accepted this Council's decision as evidenced by his proposal to delete from his Bill the part on family responsibility.

Mr LAU and Members of this Council can rest assured that the Administration will liaise closely with the Equal Opportunities Commission to ensure early and smooth implementation of the Family Status Discrimination Ordinance. In addition to enforcing the provisions in the Ordinance these are, of course, adopt public education and other administrative measures to promote equal opportunities for all, regardless of family status.

On sexuality a great deal of concern was expressed by the public as we received over 10 000 submissions, an overwhelming majority of them opposed to

legislation. They were concerned about the possible impact on young people and on the traditional institutions of family and marriage if non-sexual behaviour was recognized formally through anti-discrimination legislation. Many felt that administrative measures would be more appropriate to address the problem.

We have, therefore, enhanced our efforts in this area. During the last six months we have distributed over 35 000 copies of a pamphlet in promoting equal opportunities regardless of sexual orientation. We have just printed 30 000 copies of another booklet for the same purpose. We have assisted three groups to obtain donations to help finance counselling service, run seminars and organize other public educational activities. Also, through the draft revised guidelines on sex education in schools issued by the Education Department in April this year, we seek to provide our schoolchildren with a better understanding on sexuality so that they will respect the right of persons with different sexual orientation. We will continue to monitor the situation and we will consider additional measures where necessary.

As we have said many times before, we believe that our step-by-step approach best suits the circumstances in Hong Kong where anti-discrimination legislation is still relatively new. During the last two years this Council has passed three pieces of such legislation, the last one only a few days ago. So, the public needs time to familiarize themselves with the new legislation so that they know what obligations they are required to fulfil and what rights they are entitled to. While the public is still getting used to the requirement of the Sex and Disability Discrimination Ordinances and will need to find its way through the newly-passed Family Status Discrimination Bill, the adoption of further anti-discrimination legislation as in the present Bill could be troublesome for them. This is particularly the case where the community has made clear in our consultation exercises their disapproval of legislation on sexuality discrimination and their apathy for legislation on age discrimination.

We object to this Member's Bill in principle. Nevertheless we examined it and raised our concern at the Bills Committee's meetings. I am glad that Mr LAU will move a Committee stage amendment to delete the part of the Bill on family responsibility. Be that as it may the Bill, including various Committee stage amendments, is still unacceptable in many specific areas.

The Bill does not empower the Equal Opportunities Commission to implement the provisions if enacted. In the absence of a mechanism for

mediation, aggrieved persons have nowhere to lodge their complaints except to go to the court. This means that the complainant will need to go through lengthy and costly legal procedures. To avoid the trouble of going through the procedures, some aggrieved persons may choose to put up with the situation. It is doubtful whether such a Bill will in practice offer the protection it is supposed to offer.

The lack of a designated agency to implement the Bill would also mean that persons who need guidance and advice will have to consult their own advisors. In the absence of precedence, the advice and guidance that is obtained will probably be less than definitive. Therefore, persons who have every intention to comply with the law may still experience difficulty in doing so.

As the Secretary for Education and Manpower has already set out the Administration's objection pertaining to the part on age discrimination, I shall confine my comments on the part on sexuality.

Clause 3 of the Bill defines, among others, the term "near relative". The definition includes a person who is living with another person on a genuine domestic basis although not married to each other. Thus, two co-habitants living together on an extra-marital relationship will be regarded as near relative under the Bill. They would be so regarded under the Bill even if they are of the same sex. I am afraid this is a wide deviation from existing law and custom. The results of our public consultation last year showed there was strong disapproval in the community of any legal recognition of such *de facto* spouse relationship.

Clause 9 of the Bill on employment does not provide for any exemption for small employers or in respect of domestic helpers. Therefore, it would be unlawful for a person when employing a domestic helper to refuse an applicant on grounds of the latter's sexual orientation. Such domestic helpers work and usually stay in the homes of their employers. The restriction imposed by the Bill will be an intrusion into the employer's privacy in addition to being a restriction of their freedom to choose whom to provide care and attention to their families.

Without wishing to pass any judgement on whether it is morally right or wrong, I have to reflect the concern expressed by parents about their children being taught by teachers who are homosexuals. There will be similar concerns if persons who are sports instructors, scout leaders, and so on, who are known to

be homosexuals. One may say that such concern is not justified because a person should be judged by what she or he teaches and does and not be judged by his or her sexual orientation, yet the concern is so deep and widespread that we cannot simply brush it aside.

This is the reason why even in Australia, which has much more experience of anti-discrimination legislation than we do, it would not be unlawful to refuse to employ homosexuals as domestic helpers or in work involving the care and instruction of minors. However, similar exemptions are not provided for in the Bill or in any of the Committee stage amendment's though we expressed such concern at the Bills Committee's meetings. I am afraid without such exemptions, the Bill would cause anxiety to many parents and difficulties to many schools and organizations providing services to youngsters.

Mr Deputy, given the reasons from our public consultations and as there are so many deficiencies in the Bill, there is only one right decision for this Council to take, and that is, to vote against the Bill as a whole. The Administration strongly objects to the Bill and I earnestly request Members to do so.

4.15 pm

THE PRESIDENT resumed the chair.

MR LAU CHIN-SHEK (in Cantonese) : Thank you, Mr President. Since 1995, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance introduced by the Government and the anti-discrimination legislation, that is the Trade Unions (Amendment) Ordinance proposed by the Honourable LEE Cheuk-yan, have all been passed. Ms Anna WU, a former Honourable Member of the Legislative Council, also proposed her Equal Opportunities Bill covering ten major areas in 1995. I still remember that when Ms Anna WU introduced the Bill in the Chamber at a sitting of this Council in 1995, I was sitting in the Public Gallery upstairs. I have heard that she would sit in the Public Gallery today. Anna, if you are here, please listen: I will go on working hard. Thus, any move to legislate against discrimination is nothing new for the public.

Mr President, I would like to thank the Honourable Members who support me for expressing their views on some of the questions raised a while ago. But I think that I still have to give my response in several areas.

It is said that as far as sexuality and age discrimination are concerned, all we need now is education, not hastily legislation. My stance is: if a person discriminates against another person, causing the latter to have difficulties in such areas as employment, education, use of places and vehicles, shopping, access to services and facilities, and renting of premises, he has directly affected the person's livelihood, daily life (in terms of clothes, food, living and travel) and dignity, which is absolutely intolerable in a civilized society. So, as long as there is discrimination, legislation must be enacted to protect the aggrieved persons.

In order to prevent the unscrupulous spread of discrimination, we agree that education is very important. However, if education is not complemented by legislation, how can there be deterrent effect? Can those who oppose legislation guarantee that with the promotion of education, discrimination will no longer exist? Of course not. Even when legislation is enacted, there will still be people who dare to violate it. However, with the enactment of laws, these people can at least be punished and victims can be awarded compensation. This is the purpose of laws.

Perhaps some people will ask: How serious should the discrimination problem become in terms of the number of victims to justify legislation? I find this attitude incorrect, not to mention that everyone knows that age discrimination is very common in the community nowadays. In other words, it exists almost everywhere. Last Tuesday, a garage technician in his 40s died of suicide. It was reported in the newspaper that he had been unable to find a job for a long time because of his old age. He, just over 40, was regarded as elderly and became depressed because of unemployment. Even a 40-year-old male can be victimized by age discrimination and faced with difficulty in finding a job. The situation is even worse with females. Women of over 30 will find it difficult to get a job and change field. According to a survey conducted by the Lingnan College at the invitation of the Government and another survey conducted by the Government on recruitment advertisements, age discrimination

is in existence, which the Government cannot but admit. I do not understand the purpose of the Government when it indicates on the one hand that it will consider introducing legislation in future, but on the other hand it persuades the Honourable colleagues of this Council not to vote in support of my Bill. If all of you also admit that age discrimination does exist, why should you wait for a cheque bearing no due date that will not be honoured by the Government, instead of passing at an early stage the Bill I introduce today to deter age discrimination? The Government says that even with the passage of my Member's Bill, the Equal Opportunities Commission (EOC) will not be in a position to enforce and promote it. I cannot really understand why the Government is so selfish. The paper issued by the EOC on 1 March states that if the current two Bills relating to Equal Opportunities are passed, they hope that the relevant work can be unified. I very much appreciate the sincerity of the EOC towards the enforcement of all the equal opportunities legislation. In comparison, the Government seems uninterested. Given that the Government does not rule out the possibility of legislation and is prepared to let the EOC take up the work relating to age discrimination, the Government can propose that any work relating to this area be assigned to the EOC upon the passage of my Age Discrimination Bill. Our objective is to legislate to protect the public, irrespective of whether the Bill is proposed by me, the Government or other Honourable Members. I hope that the Government can get rid of this kind of selfishness in future.

There is a strange phenomenon. In the past three months, the Bills Committee held a number of meetings in which the Government and some Members pointed out repeatedly that there were problems with my original Bill and its wording was inconsistent with that of the previous legislation. In fact, I have already made some amendments in response to their remarks. I also answered all the questions raised by the Government and the Honourable Members at such meetings. The question that they often ask is: Will some existing policies and measures become unlawful? My explanation is contained in the minutes of the meetings. I really do not understand why questions which were solved earlier are raised again today. For example, Mr WONG Wing-ping has asked me how the School Medical Scheme, the School Dental Care Service and the Preferential Scheme for the Elderly can be handled. In fact, clause 79 has provided explanation because item (b) of the clause clearly states that nothing in this Part renders it unlawful to do an act a purpose of which is to afford persons who are of a particular age access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare, or any ancillary benefits.

It is unlawful for employers not to provide employees with training or promotion opportunities when they are going to depart or retire from their posts. I believe that the purpose of the Government to ask questions is, to a great extent, to divert people's attention by explaining the conditions and criteria for training and promotion. The Government says that whether training and promotion opportunities are provided or not depends mainly on the talent of a person, instead of his age. On the other hand, if an employee is going to depart or retire from his post and will no longer serve the company, the company will not let him receive training. This has nothing to do with his age; it is only because he is going to leave the company. Moreover, it is likely that young people will "job-hop" and leave the company, so if the company does not promote them, it has nothing to do with age.

Apart from these, there are also many other questions in respect of which I previously gave my explanation. My Bill includes various exemptions, which, in respect of age, include health and safety reasons, retirement, acts for the protection of minors' welfare, laws relating to minors' welfare or their legal status, laws relating to measures intended to achieve equality and acts done in accordance with the statutory power. As a matter of fact, clauses 72 and 76, which also deal with issues relating to small houses, can answer the questions just raised by my colleagues belonging to the DAB.

I know that nothing is perfect, so clause 77 of my Bill clearly points out that the existing legislation can enjoy an exemption period of two to four years. During this period, some ordinances which may give rise to discrimination will be reviewed. If modifications are needed, these ordinances will have to be amended; if no modifications should be made or the ordinances are considered to be still applicable, they can be added to the schedule. As regards policies and measures, transitional rules can be provided and reviews conducted to decide whether they should be abolished or retained.

Mr President, any ordinance after being implemented for a period of time is subject to amendment in the light of social changes and its scope of application. So I believe that unless my Bill is not flexible at all and allows no room for amendment, it can, within the current scope of cognition, not only provide protection against age discrimination, but also address the various queries that are presently in existence. In addition, we can conduct reviews from time to time within the four year period.

Mr President, I also know that the issue of sexuality has aroused much controversy, but here I have to point out the need of such legislation. The consultation paper of the Government also recognizes that there are problems encountered by homosexuals in Hong Kong, including self-denial and self-underestimation, the need to conceal one's sexuality, the embarrassment in facing the public, people's misunderstanding of homosexuals and the existence of discrimination in certain parts of life. We absolutely have reasons to believe that those people do not have equal opportunities to develop themselves and choose their own way of life.

Mr President, it is undeniable that the local media, including television, movies, popular songs, books and so on have done much damage to homosexuals in forms of peeping, distorted description and vilification. How can homosexuals enjoy a respectable life under such social climate? Some people say that the introduction of legislation against discrimination of homosexuals will foster the trend of homosexuality only. I find this remark very ridiculous. The social climate can now be described as "homosexual-phobia" and homosexuals are kept at a distance. The Government has a duty to educate the public to remove any misunderstanding about homosexuals. Can you say that this will foster the trend of homosexuality? On the contrary, the purpose of legislation is to prohibit discrimination against homosexuals so that persons with different sexuality can be treated equally. The legislation offers protection only and it does not have the effect of fostering the trend of homosexuality. Just like the case of the legislation to protect procreation, will women try to give birth to as many babies as possible because of such protection? If one is a homosexual, it is a reflection of his sexuality and there is nothing unnatural. One's sexuality will not be changed by the provision of legislative protection. Homosexuality is part of the natural disposition of human sentiments. If homosexuals are treated in an ordinary way, they will not be faced with such difficult situation. Regrettably, the Government and some Honourable Members of this Council greatly support the promotion of publicity work only and consider legislation undesirable.

Mr President, I am very disappointed at the publicity and education work carried out by the Government on sexuality. Fundamentally, the Government also holds a discriminatory attitude towards homosexuals. There is a very obvious example found in one of the questions in a questionnaire which reads: Will you shake hands with homosexuals? This can reflect the view of the

Government that homosexuals are detestable. How can the Government educate the general public when it holds such an attitude? The Government has donated several hundred thousand dollars to several "homosexual" bodies through the Chinese Permanent Cemetery Fund to promote education work. Does the Government think that it can change the long-existing discrimination concept with the donations? It is too irresponsible indeed. The pamphlet on sexuality education published by the Government is very ridiculous. The pamphlet contains a story which is about an employer who respects the spirit of equal opportunities. In the story, after a new recruit has disclosed his homosexuality, he is understood and accepted by the employer and works happily in the company. This is really an incredible story. The pamphlet says nothing about the wrong concepts of the community about homosexuals and the ways to rectify public's discriminatory attitude towards them and so on.

Mr President, the Government has shown no sincerity in the promotion of education in respect of sexuality. If no protection through legislation is provided, homosexuals will go on suffering from discrimination.

Mr President, this is the second time that the Equal Opportunities Bill is presented to this Council and I am afraid that there will not be another opportunity to do so. I hope that Honourable Members will treasure this opportunity and cast a conscientious vote for the group of people suffering from discrimination.

Thank you, Mr President.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL

CHAIRMAN (in Cantonese): Committee shall first handle the various parts of the Bill in respect of discrimination relating to family responsibility or family status.

Clause 3 (the definitions of "family responsibility or family status") and Part II (clauses 8 to 26)

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move the deletion of the definition of "family responsibility or family status" in clause 3 and of Part II, consisting of clauses 8 to 26, as set out in the paper circularized to Members. Since the Government has provided a bill on family status discrimination and its Second Reading has been resumed in this Council before the proceedings of my Member's Bill, I believe, with the likely passage of the Government Bill, that only very few and incomplete provisions in the parts of my Equal Opportunities Bill relating to family responsibility will be left behind. Therefore, I now withdraw clause 3 of my Bill relating to the definition of family responsibility and Part II, consisting of clauses 8 to 26, relating to all the provisions on family responsibility.

Thank you, Mr Chairman.

Proposed amendments

Clause 3 (the definitions of "family responsibility or family status") (see Annex XXV)

Part II (clauses 8 to 26) (see Annex XXV)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Administration supports the proposed deletion.

Question on the amendments put and agreed to.

CHAIRMAN (in Cantonese): As Mr LAU's proposed deletions of the definition in Clause 3 and Part II from the Bill have been agreed to, they will be so deleted.

CHAIRMAN (in Cantonese): Committee will now deal with the parts of the Bill that apply generally to Part III (Discrimination on the ground of sexuality) and Part IV (Discrimination on the ground of age).

Clause 3 (the definitions of "charitable benefits", "educational authority", "educational institution" "employment" and "voluntary body" only), clauses 5, 6, 7, 83, 87, 88 and 100

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that the definitions of "charitable benefits", "educational authority", "educational institution", "employment" and "voluntary body" in clause 3 and clauses 5, 6, 7, 83, 87, 88 and 100 be amended as set out in the paper circularized to Members.

Such amendments are made on the basis of the following reasons:

First, consistence in wording can be achieved with the previous anti-discrimination legislation, that is, the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

Second, since I have deleted the whole part relating to family responsibility, the term "family responsibility" should also be deleted from the provisions in other parts.

Thank you, Mr Chairman.

Proposed amendments

Clause 3 (the definitions of "charitable benefits", "educational authority", "educational institution" "employment" and "voluntary body" only) (see Annex XXV)

Clause 5 (see Annex XXV)

Clause 6 (see Annex XXV)

Clause 7 (see Annex XXV)

Clause 83 (see Annex XXV)

Clause 87 (see Annex XXV)

Clause 88 (see Annex XXV)

Clause 100 (see Annex XXV)

Question on the amendments put and agreed to.

CHAIRMAN (in Cantonese): As the amendments to clauses 6 and 88, which deals with deletions, have been agreed, clauses 6 and 88 will be deleted from the Bill.

Question on clauses 5, 7, 83, 87 and 100, as amended, proposed.

CHAIRMAN (in Cantonese): The question means all clauses stand part of the Bill.

Question on clauses 5, 7, 83, 87 and 100 put and agreed to.

Clause 3 (the rest of the definitions with the exception of "age", "reproductive technology procedure", "relative" and "sexuality"), clauses 82, 86, 89, 90, 93, 95 to 99, 101 and 102 were agreed to.

CHAIRMAN (in Cantonese): We will now deal with the parts of the Bill relating to discrimination on the ground of sexuality.

Clause 27, 35, 38, 42 and 44

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members. Clause 42 should be amended by deleting the words "皇室" from the term "皇室特權" and the others are amended in wording to achieve consistence with the previous anti-discrimination legislation.

Thank you, Mr Chairman.

Proposed amendments

Clause 27 (see Annex XXV)

Clause 35 (see Annex XXV)

Clause 38 (see Annex XXV)

Clause 42 (see Annex XXV)

Clause 44 (see Annex XXV)

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I have explained at the Second Reading debate the Administration objects to the Bill and all the clauses, whether or not they are amended.

Question on the amendments put.

Voice vote taken.

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

Mr LEE Cheuk-yan claimed a division.

CHAIRMAN (in Cantonese): Committee now proceeds to a division.

CHAIRMAN: We are now dealing with the parts of the Bill relating to discrimination on the ground of sexuality.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amended clauses 27, 35, 38, 42 and 44 stand part of the Bill.

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

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong,

Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the amendment.

Miss CHAN Yuen-han abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendments and 20 against it. He therefore declared that the amendments were carried.

DR LEONG CHE-HUNG: Mr Chairman, I move under Standing Order 37(4) that in the event of further divisions being claimed in respect of the remaining motions at the Committee stage of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, at this sitting, the Committee do proceed to each of such divisions immediately after the division bell has been rung for one minute.

Question on the motion proposed, put and agreed to.

CHAIRMAN: It means that in subsequent divisions at the Committee stage, the division bell will be reduced from three minutes to one.

Question on the clauses 27, 35, 28, 42 and 44, as amended, put.

Voice vote taken.

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

Mr Bruce LIU claimed a division.

CHAIRMAN (in Cantonese): Committee now proceeds to a division.

CHAIRMAN (in Cantonese): Please reminding one minute, do not go out.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amended clauses 27, 35, 38, 42 and 44 stand part of the Bill.

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

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, 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 LAU Wong-fat, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE

Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

Miss CHAN Yuen-han abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the motion and 20 against it. He therefore declared that the motion was carried.

Clauses 28 to 34, 36, 37, 39, 40, 41, 43 and 45 to 53

Question on the motion put.

Voice vote taken.

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

Mr IP Kwok-him claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that clauses 28 to 34, 36, 37, 39, 40, 41, 43 and 45 to 53 stand part of the Bill.

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

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, Dr Anthony CHEUNG, Mr

Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, 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 LAU Wong-fat, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

Miss CHAN Yuen-han abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the motion and 20 against it. He therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): We will now deal with the parts of the Bill relating to discrimination on the ground of age.

Clause 54

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clause 54 be amended as set out in the paper circularized to Members

The amendments to sub-clauses (3) and (4) of clause 54 seek to bring the wording of this Clause in line with that of the previous anti-discrimination legislation.

Thank you, Mr Chairman.

Proposed amendment

Clause 54 (see Annex XXV)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, this is the first clause in Part IV of the Bill, that is, the part on discrimination on the ground of age. I would like to take this opportunity to reiterate that in principle, the Government objects to all the clauses relating to age discrimination, whether or not there are amendments. Thank you.

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I presented my views on each of the arguments during the Second Reading debate and I hope that the Honourable Members will support the part relating to age discrimination. Thank you, Mr Chairman.

Question on the amendment put and agreed to.

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

Clauses 62 and 65

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clauses 62 and 65 be amended as set out in the paper circularized to Members. The purpose of the amendments is to bring the wording of these clauses in line with that of the previous anti-discrimination legislation. Thank you, Mr Chairman.

Proposed amendments

Clause 62 (see Annex XXV)

Clause 65 (see Annex XXV)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, during the resumption of the Second Reading debate, I pointed out that should the Bill be passed, it will bring serious repercussions and many existing ordinances and measures cannot be implemented as a result. The presence of potential adverse effects shows that there are a lot of loopholes in the Bill and its drafting is also far from satisfactory. The Bill will only create serious problems and confusion, and is of little benefit to the community. Mr

Chairman, the Government is opposed to Clauses 62 and 65 and the related proposed amendments.

Question on the amendments put and agreed to.

Question on clauses 62 and 65, as amended, put.

Voice vote taken.

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

Mr Frederick FUNG claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that clauses 62 and 65 as amended stand part of the Bill.

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

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Still two short of the head count. The result will now be displayed.

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 Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce

LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mr LAU Wong-fat, Mr Eric LI, Mr CHOY Kan-pui, Mr David CHU, Mr Ambrose LAU, Mr LO Suk-ching, Mr NGAN Kam-chuen, voted against the motion.

Mr CHAN Kam-lam, Mr CHEUNG Hon-chung, Mr IP Kwok-him and Mr LEE Kai-ming abstained.

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

Clause 71

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clause 71 be amended as set out in the paper circularized to Members.

I propose to delete the words "皇室" from the term "皇室特權".

Thank you, Mr Chairman.

Proposed amendment

Clause 71 (see Annex XXV)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Sorry, I have to take this opportunity to explain to Members and remind them once again that this clause, as I explained during the Second Reading debate, will bring serious repercussions and many ordinances and measures cannot be implemented as a result. As such, the Government is opposed to this clause and the proposed amendment.

Question on the amendment put and agreed to.

Question on clause 71, as amended, put and agreed to.

Clauses 55 to 61

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I have already explained clearly during the Second Reading debate the Government's policy and plan in respect of discrimination on the ground of age. I now call upon Members to support the Government's position and vote against this Bill and all clauses therein. Thank you.

Proposed amendments

Clause 55 (see Annex XXV)

Clause 56 (see Annex XXV)

Clause 57 (see Annex XXV)

Clause 58 (see Annex XXV)

Clause 59 (see Annex XXV)

Clause 60 (see Annex XXV)

Clause 61 (see Annex XXV)

Question on the amendments put.

Voice vote taken.

Miss CHAN Yuen-han and Mrs Miriam LAU claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Clauses 55 to 61 stand part of the Bill.

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

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

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

Mr Allen LEE, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr CHOY Kan-pui, Mr Ambrose LAU, Mr LEE Kai-ming and Mr LO Suk-ching voted against the amendment.

Mr Paul CHENG, Mr CHEUNG Hon-chung, Mr IP Kwok-him and Mr NGAN Kam-chuen abstained.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and 12 against it. He therefore declared that the motion was carried.

Clauses 63, 64, 67 to 70 and 72 to 81

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Government objects to these clauses. Among them, clauses 72 to 81 aim to provide for the grounds on and circumstances under which exceptions are given, but these exceptions are in fact not sufficient. The legal advice we obtained is that in many cases, it is uncertain that these clauses can provide the necessary exceptions.

Proposed amendments

Clause 63 (see Annex XXV)

Clause 64 (see Annex XXV)

Clause 67 (see Annex XXV)

Clause 68 (see Annex XXV)

Clause 69 (see Annex XXV)

Clause 70 (see Annex XXV)

Clause 72 (see Annex XXV)

Clause 73 (see Annex XXV)

Clause 74 (see Annex XXV)

Clause 75 (see Annex XXV)

Clause 76 (see Annex XXV)

Clause 77 (see Annex XXV)

Clause 78 (see Annex XXV)

Clause 79 (see Annex XXV)

Clause 80 (see Annex XXV)

Clause 81 (see Annex XXV)

Question on the amendments put.

Voice vote taken.

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

Mrs Miriam LAU claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): One minute, Mr Frederick FUNG has to hurry up and come back.

I would like to remind Members that they are now called upon to vote on the question that clauses 63, 64, 67 to 70 and 72 to 81 stand part of the Bill.

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

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

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 Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Mr Howard YOUNG, Mr Ambrose LAU and Mr LO Suk-ching voted against the amendment.

Mr CHAN Kam-lam, Mr CHEUNG Hon-chung, Mr IP Kwok-him and Mr NGAN Kam-chuen abstained.

THE CHAIRMAN announced that there were 36 votes in favour of the amendment and nine against it. He therefore declared that the amendment was carried.

Clause 66

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, under the Small House Policy, male indigenous villagers at the age of 18 and above can apply for the construction of small houses. As most of the people above the age of 18 live with their families and there is no need for them to find accommodation elsewhere, the age restriction under this policy is reasonable. However, clause 66 of the Bill will render this policy unlawful. As such, I urge Members to object to this clause as well as the whole Bill. Thank you, Mr Chairman.

Proposed amendment

Clause 66 (see Annex XXV)

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I have just answered that clause 76 can solve the problem. I do not know whether they have studied this clause. I would like to repeat that it is paragraph (b) of clause 76. Thank you, Mr Chairman.

Question on the amendment put and agreed to.

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, since the Standing Orders stipulate that any proposed new clause and new schedule shall be considered after the clauses and schedules of a bill have been disposed of, may I seek your consent to move under Standing Order No. 68 that Standing Order No. 46(5) and (7) be suspended in order that my proposed new clauses 42A, 53A, 71A, 77A and the new schedule may be considered ahead of the remaining clauses of the Bill as one single question.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek, as only the President may give consent for a motion to be moved, without notice, to suspend Standing Orders, your request cannot be dealt with in Committee. I therefore order that Council shall now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr LAU Chin-shek, you have my consent.

MR LAU CHIN-SHEK (in Cantonese): Mr President, I move that Standing Order No. 46(5) and (7) be suspended to enable the Committee of the whole Council to consider my proposed new clauses 42A, 53A, 71A, 77A and the proposed new schedule ahead of the remaining clauses of the Bill as one single question.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Standing Order No. 46(5) and (7) be suspended to enable the Committee of the whole Council to consider new clauses 42A, 53A, 71A, 77A and the new schedule proposed by Mr LAU Chin-shek, ahead of the remaining clauses of the Bill as one single question.

Question on the motion proposed, put and agreed to.

Council went into Committee.

New clause 42A	Barristers
New clause 53A	Insurance
New clause 71A	Barristers
New clause 77A	Further exceptions for statutory authority
New schedule	Provision Specified for Purposes of Section 77A

Clauses and schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Orders 46(6) and 46(7).

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that new clauses 42A, 53A, 71A, 77A and the new schedule as set out in the paper circularized to Members be read the Second time.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, I would like to point out in particular that clause 71A was only proposed shortly before the deadline for giving notice of amendments to motions and has never been studied by the Bills Committee. To include it in the Bill without considering its potential implications is not appropriate.

Mr Chairman, I reiterate that I object to these clauses.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I join the Secretary for Education and Manpower in objecting to this Bill in principle and all the new existing clauses therein.

Question on the Second Reading of the clauses and schedule put.

Voice vote taken.

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

Mrs Miriam LAU claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the new clauses 42A, 53A, 71A and 77A as well as the new Schedule be read the Second time.

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

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Miss CHAN Yuen-han, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui and Mr LEE Kai-ming abstained.

THE CHAIRMAN announced that there were 31 votes in favour of the motion and 11 against it. He therefore declared that the motion was carried.

Clauses and schedule read the Second time.

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that new clauses 42A, 53A, 71A and 77A and the new schedule be added to the Bill.

Proposed additions

New clause 42A (see Annex XXV)

New clause 53A (see Annex XXV)

New clause 71A (see Annex XXV)

New clause 77A (see Annex XXV)

New schedule (see Annex XXV)

Question on the addition of the new clauses 42A, 53A, 71A, 77A and the new schedule proposed, put and agreed to.

CHAIRMAN (in Cantonese): Mr LAU Chin-shek, as new clause 42A and new clause 71A have been agreed, you may move your related amendments to clause 3.

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clause 3 be further amended by the addition of the definitions of "pupil", "pupillage", "tenancy" and "tenant" as set out in the paper circularized to Members.

Proposed amendment

Clause 3 (see Annex XXV)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the Administration objects to this clause in principle.

Question on the amendment put and agreed to.

Clauses 1, 2, 4, 84, 85, 91, 92 and 94

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that clauses 1, 2, 4, 84, 85, 91, 92 and 94 be amended as set out in the paper circularized to Members.

Proposed amendments

Clause 1 (see Annex XXV)

Clause 2 (see Annex XXV)

Clause 4 (see Annex XXV)

Clause 84 (see Annex XXV)

Clause 85 (see Annex XXV)

Clause 91 (see Annex XXV)

Clause 92 (see Annex XXV)

Clause 94 (see Annex XXV)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Chairman, the two amendments proposed to clause 91 do not bring any advantage to the Bill at all. On the contrary, they make the Bill more unacceptable. The first amendment aims at, *inter alia*, empowering the District Court to order without the need for the mutual consent between the employer and the employee that the respondent shall employ or re-employ the claimant. This is contradictory to our policy of maintaining harmonious labour relations. The

second proposed amendment deletes the maximum compensation that can be awarded for actions brought under this Bill. This proposed amendment will only be counter-productive. It will add to the burden of employers but will not help persuade them into accepting this kind of legislation. Mr Chairman, the Administration objects to clauses 1, 2, 4, 84, 85, 91, 92 and 94 as well as the related amendments proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, for the reasons as set out by the Secretary for Education and Manpower, we object firmly to these clauses.

Question on the amendments put and agreed to.

Question on clauses 1, 2, 4, 84, 85, 91, 92 and 94, as amended, put and agreed to.

CHAIRMAN (in Cantonese): Committee shall now deal with the remaining definitions under clause 3.

Clause 3 (the definitions of "age", "relative", "reproductive technology procedure" and "sexuality" only)

Question on the motion put.

Voice vote taken.

Mrs Miriam LAU claimed a division.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the definitions of "age", "relatives", "reproductive technology procedure" and "sexuality" stand part of this Bill.

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

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? Still a few short of the head count. The result will now be displayed.

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

Mr Allen LEE, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Howard YOUNG, Mr CHAN Wing-chan, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

Miss CHAN Yuen-han and Mr CHOY Kan-pui abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the motion and 17 against it. He therefore declared that the motion was carried.

Question on clause 3, as amended, put and agreed to.

Long title

MR LAU CHIN-SHEK (in Cantonese): Mr Chairman, I move that the long title be amended as set out in the paper circularized to Members.

Proposed amendment

Long title (see Annex XXV)

Question on the amendment put and agreed to.

Council then resumed.

Third Reading of Bill

MR LAU CHIN-SHEK reported that the

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL

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

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

Voice vote taken.

Mrs Miriam LAU claimed a division.

PRESIDENT (in Cantonese): Council now proceeds to a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Members, during the resumption of the Second Reading, I ruled that clause 103 breaches section XXV(3) of the Royal Instructions. As the Clerk has not been instructed to call clause 103 at the Committee stage and it will be deleted from the Bill, the amended Bill as it is now put to pass the Third Reading does not include clause 103.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill be read the Third time and be passed.

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

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, 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 Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 27 votes in favour of the motion and 29 against it. He therefore declared that the motion was negatived.

Resumption of Second Reading Debate on Bill

EQUAL OPPORTUNITIES (RACE) BILL

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

DR LEONG CHE-HUNG: Mr President, I rise hopefully for the last time to speak on the Equal Opportunities Bills in the capacity as Chairman of the Bills Committee to study the four equal opportunity Bills, including this one which is the Equal Opportunity (Race) Bill now under debate.

This Bill is a Member's Bill introduced by the Honourable Mrs Elizabeth WONG and is to render discrimination on the ground of race unlawful in various areas and to make provisions for remedies for such discriminations.

To address the question of racial discrimination the Administration has conducted a study to establish whether such discrimination exists in Hong Kong, and if so, the nature, extent and possible options for addressing such problems as may be found to exist.

The Administration considers that it should await the outcome of the consultation exercise before proceeding further with the legislative proposal. After the Bills Committee had completed its scrutiny of the Bill, the Administration issued on 18 June 1997 a paper to Members on the outcome of the consultation exercise and its proposals. In summary, the Administration proposed not to introduce or support at this present stage any draft legislation to address racial discrimination. However, it will revisit the subject in a year's time.

With regard to the Bill, the Administration's principle concern is the impact on immigration law and policy. The Bill includes no exemptions corresponding with those in section 11 and 12 of the Hong Kong Bill of Rights Ordinance for matters pertaining to immigration legislation on deportation and on entry into, stay in and departure from Hong Kong. These exceptions are essential for effective immigration control. Several of the Bill's provisions, for example clause 9 and clause 11, on employment, clause 23 on the administrative laws, impinges directly on immigration matters. Exemptions on these and other provisions in Part IIIA of the Immigration Ordinance in respect of Vietnamese migrants are necessary.

The Administration is also concerned about the impact of the Bill on job applicants and employees from overseas and the Labour Importation Scheme. Another concern is about the education of overseas children in Hong Kong.

As in the case of other equal opportunity Bills under study by the Bills Committee, it has divided views on the Bill. Mrs Wong has been responsive to concerns raised by the Administration and some Members of the Bills Committee. She will therefore propose a number of amendments to her Bill at the Committee stage, including parallel amendments to the Sex and Disability Discrimination (Miscellaneous Provision) Bill 1996. The significant amendment is to redefine "race" in the Bill by deleting "nationality" and "national origin". The definition as amended now includes "colour, descent or ethnic origin". The consequential amendments provisions in clause 55 of the Bill will be similarly dealt with, as for clause 103 of the Equal Opportunity (Family Responsibility, Sexuality and Age) Bill which we have just repealed. I shall not repeat the details here as I have covered them in my speech on the last Bill.

Mr President, the Bills Committee recommends the Second Reading of the Bill.

Turning to my own thoughts of the Bill, Mr President, whilst I am aware that discrimination of race does exist and should be rapidly abolished, yet the Bill as presented to us, in spite of amendments to be made, still leaves a lot of loopholes and problems. I would personally vote against this Bill on such grounds but would recommend the Administration to take up the issues involved as quickly as possible.

Thank you, Mr President.

5.25 pm

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

MRS ELIZABETH WONG: Mr Deputy, the Equal Opportunities (Race) Bill was read the Second time on 10 July 1996. I am grateful that some 11 months later the Bill is before this Council for resumption of debate on the Second Reading.

As Dr the Honourable LEONG Che-hung has said the purpose of this Bill is to render discrimination on the ground of race unlawful and to make provision for relevant remedies. The objective is to eliminate as far as it is possible all forms of racial discrimination in Hong Kong. In so doing, the Bill also intends to give effect to a variety of international obligations applicable to Hong Kong on the same subject.

Now, I would like to describe in detail the Government's stand. On 18 June the Government put out a press release, a press release which indicates something like this: that it was not the Government's intention to legislate against racial discrimination at this stage; that it preferred a step-by-step approach — I think all these are familiar phrases — and that there was not much demand for legislative approach; and that after a four-month consultation of some 10 000 people in this city of 6 million people, only a minuscule proportion of the population considered that racial prejudice was a problem, and even so, the problem was episodic.

It further stated that the Home Affairs Branch received 238 submissions, of which 197 said legislation against racial discrimination was unnecessary and undesirable — very much like our provisional legislature. And some said racial discrimination was a problem but not a significant one. Introducing legislation against racial discrimination might mislead people into believing it was a serious problem.

Thus a Government spokesman said that it would not be opportune to introduce legislation to outlaw racial discrimination because discriminatory acts based on race are not prevalent. The benefits from such legislation would be limited. The Government further stated that the introduction of such legislation at this juncture against the view of the majority of respondents might call into question the Government's sincerity in consulting the public. The Government promised to revisit the problem in a year's time.

Now, I have never heard such rubbish and I shall explain why. I am not at all surprised by the Government's decision because it is not the first time we have heard the Government's explanation and it is not the first time that the Government has revisited the subject. Indeed, if you check against the Hansard, the very words have been used in 1994, 1995 and in a lot of other forums. Indeed, ever since 1994 when a former Legislative Councillor, the Honourable Ms Anna WU, who must have left in disgust, introduced a similar Bill in this

Council which was voted down by the Council in 1995, the Government has since then annually revisited again and again the subject, and after each revisit the Government's stand was exactly the same.

So, while we should pride ourselves on the fact that racial harmony exists in Hong Kong, it is generally held that the Government's stand might be construed, and in fact, it was described very much vehemently in the press, as its abrogation of its international responsibility, and that is not at this stage. It is simple abrogation of the Government's responsibility.

It casts doubt over the Government's leadership in ensuring that everyone in Hong Kong, irrespective of race, is treated equally and enjoys the protection of the law. And I think it was said by my Honourable friends in this Council, the Honourable Albert HO and also Dr the Honourable John TSE, that it is the Government's moral responsibility to ensure that the weak and the vulnerable are protected as well, as much as the mighty and the powerful in Hong Kong.

A human being is an individual of whatever race. Human rights is bestowed upon human beings by God and not by government. A moral issue such as racial equality or equal opportunities for people with different races, to talk about what the majority wants, ignores the interests of the minority and overturns the true meaning that every individual counts in our society. Equal opportunity in race is not a question of majority over minority. It is in everybody's interests to treat everyone the same by providing each individual with the same opportunity. We cannot all be equal, but we can at least ensure everyone has equal opportunities.

I am absolutely appalled at the lack of understanding by government officials, even today in 1997 and by Members of this Council. I am much older than most of you and yet my thoughts are with a lot of the 20th century people and some of you have lagged behind in the 18th century, and I think education has failed, to be honest. The Secretary for Education ought to reconsider the education problem.

Let us remind this Council and government officials that Hong Kong has signed up to the International Convention on the Elimination of All Forms of Discrimination. It is clear that to defer consideration of this issue to a later

stage, step by step, is like doing the cha-cha. One step forward, two steps back. What are we doing? We are a respectable government here. So, it is really very disheartening to find even today as we embark on the change of sovereignty that we see the Hong Kong Government passing the buck to the Hong Kong SAR. They are the same people, but they are passing the buck between weeks and days and years.

The Government says that education is important. I agree. But to have education without legislation is like washing one's feet with socks on. the Government's stand reveals that it has as much likelihood of winning hearts and minds as of Mickey Mouse winning the "Three T".

So, this Council is charged with the sacred task of monitoring the actions of the Government. I appeal to this Council to reject the Government's stand and to support the Bill.

I thank the Bills Committee for their earnest in addressing, Mr Deputy, the details of the Bill over two lunches and for painstakingly missing lunches to discuss the details, and since this is not a new subject I should imagine all Members ought to know the details of the Bill and the proposed Committee stage amendments very well.

But I would like to say that in response to Members' legitimate concerns, I have proposed a number of major, significant amendments in order to redefine "race" in the Bill by deleting all references to "nationality" and "national origin", to expand on provisions for exemptions so as to exempt all educational policies, all immigration policies and from the application of the legislation, although I cannot exempt behaviour to individuals. And I shall move these Committee stage amendments to this effect in detail later on.

I think the Honourable LEE Cheuk-yan did say that the leader of China, DENG Xiao-ping, said no matter white cat or black cat, it is a good cat that catches rats. I think to those of us who pay lip service to anti-discrimination law, we can equally say, no matter white rat or black rat, it is a good rat that escapes the cat.

So, let us be cats, not rats, and I would like to appeal to Members by saying "vote with your conscience. Vote with not only your hand but with your heart", and I support the Bill and all the effort that has been given to the Bill by my colleagues. And I would like to say a special "thank you" to a lot of the

friends who have helped me with redrafting the Bill, and redrafting the Committee stage amendments. The passage of this Bill will show the world that Hong Kong is a good place to live in and everyone here, irrespective of race, is given equal opportunity. This is a good challenge and we must pick up the challenge.

Thank you.

DEPUTY PRESIDENT (in Cantonese): Mr NGAN Kam-chuen, since the Member responsible for the Bill has made a reply, you cannot speak at this stage.

MR ALBERT HO (in Cantonese): Mr Deputy, a point of order. In fact, each Member should have an opportunity to speak before the Second Reading. Why did you not give other Members an opportunity to speak after the Honourable Mrs Elizabeth WONG delivered her speech just now?

DEPUTY PRESIDENT (in Cantonese): Mrs Elizabeth WONG is the sponsor of the Bill and that is her reply.

MR ALBERT HO (in Cantonese): In fact, there were other Members who wished to speak. It was only that she raised her hand faster.

DEPUTY PRESIDENT (in Cantonese): I did ask whether there were any other Member who wished to speak at that time.

MR ALBERT HO (in Cantonese): I do not know whether it is stipulated as a point of order that we cannot speak after the colleague or official responsible for the bill has delivered his or her speech.

DEPUTY PRESIDENT (in Cantonese): In our Standing Orders, President has indicated his wish to explain himself.

5.34 pm

THE PRESIDENT resumed the chair.

PRESIDENT (in Cantonese): The matter came to an end when nobody raised his hand except Mrs Elizabeth WONG just now. Since some Members wish to speak, I will permit her to speak twice. She spoke once when she introduced the Bill for the Second Reading earlier and now it is the second time that she speaks. She can also make a second reply later.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, Hong Kong is an international metropolis where East meets West. Although over 95% of the population are Chinese, people of different race, colour and ethnic origin can get along peacefully and there is no racial discrimination at all. Thus, the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that it is unnecessary at the present stage to legislate against racial discrimination. It is a more proper and effective means of eliminating discrimination to advocate civic education and organize open activities for the promotion of equal opportunities.

Mr President, given that racial discrimination does not exist in Hong Kong, if legislation is enacted rashly now, it may cause undesirable results, giving rise to vexatious litigation and disputes and accentuating the racial differences in the community. Moreover, the fact that acute racial problems exist in some countries with legislation against racial discrimination indicates clearly that legislation is not a good way to address the issue.

The DAB believes that the most effective way to eliminate discrimination is to encourage the public to support and develop the concept of equal opportunities through a step-by-step approach. This concept can, for example, be infused in young people through education from an early age. The DAB suggests that the Education Department increase students' knowledge in this regard through the design of curriculum and publicity in the media.

Please do not forget that the Honourable Mrs Elizabeth WONG's Bill is modelled on the legislation of an overseas country and jurisdiction whose social

and political background is quite different from that of Hong Kong. Such a totally mechanical transfer of the legislation to Hong Kong is a total disregard of the local customs and practices. As a matter of fact, to people familiar with the local situation, racial discrimination does not exist in Hong Kong at all.

According to the findings of a public consultation exercise conducted by the Home Affairs Branch during the period from February to April this year, the public generally think that racial discrimination is not an issue of concern in Hong Kong, so they object to legislation against racial discrimination at the present stage. In the light of the findings, the Government has decided not to legislate at the present stage, but it has promised to revisit the issue in a year's time. Meanwhile, the Government will enhance public education efforts to promote equal opportunities with increased emphasis on racial equality. Moreover, in response to the consultative paper of the Government, many consuls of foreign consulates also indicate that they have not received any complaints from their nationals that they are discriminated against in Hong Kong. The United Nations, in considering the report submitted by the United Kingdom under the International Convention on the Elimination of All Forms of Racial Discrimination, has not mentioned that Hong Kong should further enact legislation against racial discrimination. All these can prove that racial discrimination certainly does not exist in Hong Kong.

In addition, due to time constraint, the Bill was not fully discussed by members of the Bills Committee at its meetings. If the Honourable Members of this Council rashly passed some motions which have not been discussed in depth, it would bring about adverse impact on the public. Furthermore, although the Council will be dissolved at the end of this session, 1 July is not the last date for legislation. Now that the Government has promised to revisit the issue in a year's time, the DAB opines that the Government should be given an opportunity to prove whether its efforts can satisfy those people who insist on legislation in this regard. If there is a strong demand for legislation in the community at that time, it is believed that the Honourable Members of the Provisional Legislative Council will certainly urge the Hong Kong Special Administrative Region Government to introduce legislation in this area.

Mr President, with these remarks, I object to the Second Reading of the Equal Opportunities (Race) Bill.

DR JOHN TSE (in Cantonese): Mr President, I speak to support the Equal Opportunities (Race) Bill introduced by the Honourable Mrs Elizabeth WONG.

First of all, I would like to speak in response to some points of view put forward by the Democratic Alliance for the Betterment of Hong Kong (DAB). First, they say, "If there is no discrimination, there is no need to legislate; if there is no problem, there is nothing to solve." These remarks sound quite right, but problems are now found after careful analysis. With such logic, why does the DAB not ask the Government to exempt the public from paying taxes when the Government has a "huge" reserve of several hundred billion dollars? There should not be any problem at all. To legislate only when there are problems or when the problems have become very serious is usually one of the views against discrimination. How do you know that there is no problem? Is there any research which can tell us that there is no problem? As a matter of fact, problems do exist. Members may probably know that it was reported in the South China Morning Post last week that a foreigner was spat at by a citizen of Hong Kong on an MTR train. This foreigner was unlucky, but ordinary people may probably say regrettably that he is not protected in this respect under the laws of Hong Kong. How can we, as Members of this Council, turn a blind eye to such situation? There are obviously loopholes in the law, but we say that we do not see any problem at all. Is it the spirit that a responsible legislator should have?

When discussing the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill which has just been negated, a friend belonging to the DAB said: "We shall vote against it, but you cannot say that I support discrimination." What sort of attitude is it? This in fact supports the situation that basic human rights should not be protected by legislation and certain people of Hong Kong — most probably the general public and those wealthy or powerful people — are allowed to trespass the human rights of others. How can we, legislators, say that we can tolerate it because we cannot see it?

Another point of view is that the public find it unacceptable for "Ah Cha" (Indian) and Filipino domestic helpers to stay in Hong Kong, thinking that most public places in Central are occupied by one hundred thousand or more domestic helpers and that these foreigners enjoy many benefits. Someone suggests that foreign domestic helpers should be taxed when they go to the airport, but Hong Kong people should be exempted. These

PRESIDENT (in Cantonese): A point of order?

MR BRUCE LIU (in Cantonese): Yes, a point of order.

PRESIDENT (in Cantonese): Dr John TSE, please sit down. Mr LIU, please put forward your point of order.

MR BRUCE LIU (in Cantonese): Is it discriminatory language to call some people "Ah Cha"?

PRESIDENT (in Cantonese): He has just quoted what some people will call others. I find the term "Filipino domestic helper", as he has just called, acceptable, but I will find it unacceptable if he used the term "a Filipino gal". I also find it unacceptable if it refers to other people.

DR JOHN TSE (in Cantonese): I wish it was a sincere response. People say, "We should not support what the public reject". However, I am not asking you to invite these foreigners to a meal or birthday party, or to make friends with them. I am only asking you not to discriminate against them and let them have the same rights as we do. Why is it impossible?

What is more ridiculous is that the Hong Kong Association for Democracy and People's Livelihood (ADPL) claims itself to be an association for the promotion of "democracy and people's livelihood", when it can subject human rights to transaction. As everyone can see, they support age discrimination, but once the interests of homosexuals are mentioned, they will say no

PRESIDENT (in Cantonese): Dr John TSE, please speak on the question.

DR JOHN TSE (in Cantonese): Their main point is that horses should be used to pull carts. But this time they insist that there must be a mechanism, that is, the Equal Opportunities Commission (EOC), available to support, monitor and apply the legislation before they will give their support. This is a very absurd remark indeed. They are just putting a cart before a horse

PRESIDENT (in Cantonese): Dr John TSE, has any Honourable Member belonging to the ADPL who spoke before you made such remarks? As the question now is concerned with the Equal Opportunities (Race) Bill, please speak on the question.

DR JOHN TSE (in Cantonese): Mr President, I am speaking on the question. I am trying to deduce what they will say.

PRESIDENT (in Cantonese): They have not said so yet.

DR JOHN TSE (in Cantonese): Mr President, I have reasons to believe that they will use the same arguments. As they do not speak first, I do not have anything to retort, so I can only point them out first.

PRESIDENT (in Cantonese): you cannot deduce this way. How can you say that people will speak like that before they do?

DR JOHN TSE (in Cantonese): Mr President, can you allow me to speak again after the Honourable Members belonging to the ADPL have delivered their speeches? Otherwise, I will not have an opportunity to speak again during the Second Reading.

PRESIDENT (in Cantonese): You can speak once only. Please speak on the question.

DR JOHN TSE (in Cantonese): Mr President, I still wish to refer to some absurd remarks. In short, no private Members' bill may have charging effect. The jurisdiction of the EOC is confined to two Ordinances, namely the Disability Discrimination Ordinance and the Sex Discrimination Ordinance, so we cannot

PRESIDENT (in Cantonese): Mr MOK Ying-fan, a point of order?

MR MOK YING-FAN (in Cantonese): It is for elucidation.

PRESIDENT (in Cantonese): Dr TSE, you do not have to give way unless you are willing to. Do you let him seek elucidation? Are you willing to sit down to let him ask you to clarify some point? If you let him say something, you will have an opportunity to answer him. Mr MOK Ying-fan.

MR MOK YING-FAN (in Cantonese): Mr President, I would like to ask him whether he will withdraw the remarks that he has just made, that is, the remarks that we have not actually made, but he guesses so.

PRESIDENT (in Cantonese): This is not a clarification, but a request.

DR JOHN TSE (in Cantonese): Mr President, there are of course differences between this Council and the Government, but, as I have deduced from the speeches delivered by the friends belonging to the ADPL on the Bill which has been negatived, they will say that it will be the most desirable arrangement to have a mechanism. Of course, it is desirable to have a mechanism but, in respect of a private Members' bill, that is unachievable and impracticable.

PRESIDENT (in Cantonese): Dr John TSE, I have to reiterate that you should not deduce what other Members may say before they speak. Please speak on the question and that is about racial discrimination and equal opportunities.

DR JOHN TSE (in Cantonese): Mr President, I believe that some people will ask certain Members to trust the Government, but it is up to individuals to decide whether they will do so. We are now discussing the promotion of human rights and anti-discrimination and it is believed that people who have made an effort in this respect are all aware that the Government has not taken the initiative to do anything. If the Bill cannot be passed today, it will be naive indeed to think that similar bills on human rights and anti-discrimination can be passed in the future because it will be even more difficult to introduce a private Members' bill on these subjects later on. I hope that Members will think about it more seriously.

Perhaps some people or even government officials will say, "Everyone has the freedom of choice." If, however, discrimination does not exist, there will be more choices and they can at least select people of different races. If there is discrimination, fewer choices will be available.

Some people are worried that if foreign domestic helpers are homosexuals, harassment, maltreatment or sexual activities will occur very easily. Such worries are, in fact, totally unjustifiable as sexual harassment, sexual abuse and the like are offences. Why should they have such fears in employing foreign domestic helpers?

Mr President, I am very displeased with some political parties. There is no need to name them as their acts have "betrayed" them. They have actually done the opposite of what they claim to defend. They encourage the exchange of the most basic human rights among political parties, rather than the protection of each individual. A person, be he a homosexual or of a different race, should have the same rights and human rights cannot be compromised. One cannot have more rights than others as everyone is born equal irrespective of race. Thus, we cannot say we support some people's human rights, but not others'. What are our criteria if we do so? It is basically a discriminatory act to make such a transaction because it is based on some people's certain characteristics and aims to deprive some people of any chances and restrict the opportunities of others. However, the Government still keeps saying that Hong Kong is a fair and just community with everyone enjoying equal rights. How can it be a fair

community when even Members of this Council do not support such a bill. We are not shouting slogans, but doing something very important. We making decisions concerning some people.

A moment ago I mentioned that a foreigner was spat at on an MTR train. Some people say that foreign domestic helpers, with the exception of Hong Kong people, should be charged for entering some public places. These are examples of grossly unfair treatment. Why should we tolerate such practices? I cannot even think of a single reason for it. Can we accept such things or deem that they have never occurred? Members may probably notice that there are many people lodging complaints with the local English newspapers. All of these complaints are real and vivid examples that some people suffer from disdain, deprivation and, in respect of human rights, infringement, but the legislators say that there is no problem.

Mr President, the standard that we are going to vote on tonight can really act as a "mirror" to reflect the evils. I hope that Members can cast a conscientious vote to let us know that human rights are not subjected to transaction.

Thank you, Mr President.

MR ALBERT HO (in Cantonese): Mr President, I would like to respond on the several reasons stated in a public announcement by the Government earlier against the passage of the Equal Opportunities (Race) Bill.

First, the Government says that racial discrimination is not a significant problem in Hong Kong and that, from the feedback in the form of submissions or otherwise to the consultative document issued on 19 February this year, 83% of the respondents, including individuals and groups, consider legislation unnecessary or undesirable. This prompts the Government to deem that they are against legislation. Mr President, in fact I said this morning that such view of the respondents may not necessarily be tantamount to an unequivocal support for anti-legislation. They may think that legislation may not be the best solution, but it is not certain that they object to it.

Second, as I said earlier, we should not weigh the findings of such consultation in terms of figures so light-heartedly. One of the reasons is that the

affected persons are the aggrieved ones belonging to a vulnerable group and subject to many restrictions, even in speaking.

More importantly, whether the human rights of certain people should be protected cannot be decided merely by figures, number of votes or figures concerning public opinion. On many occasions, as far as human rights are concerned, it is the rights and interests of the minority that should be protected and not ignored as viewed by the majority. It contravenes the spirit of human rights if we accept the view of the majority that discrimination is tolerable.

This morning, the Honourable Mrs Miriam LAU asked a question related to this debate. She queried why the Democratic Party seemed to have a different view on such consultation, survey and so on. I think that the Honourable John TSE has already made similar remarks, but with the presence of the Honourable Mrs Miriam LAU here, I would like to reiterate one or two reasons. First, a consultation exercise is different from an opinion survey. With the issue of the consultative document, the Government waits for responses, so it can be said to be a passive exercise. Second, respondents are usually more well informed, or are intended to or able to understand the matter concerned before submitting written submissions. Moreover, as it is not based on sample taking, respondents are prone to giving strong opinions. By contrast, an opinion survey refers to a method by which an initiative is taken to approach a lot of people on a random basis to collect their opinions. The two are totally different.

However, Mr President, I would like to emphasize that, regardless of the findings, as far as human rights are concerned, the minority cannot be subdued by the majority. Although the majority think that racial discrimination is tolerable and it is unnecessary to legislate to deal with the problem, we should not be misled by such argument into thinking that it is unnecessary to legislate to protect the rights of the aggrieved persons. This absolutely contravenes the principle of safeguarding human rights. Moreover, I must emphasize that many people probably find it unnecessary to legislate for a number of reasons, but it is highly probable that some of them may have misconceptions about the discrimination problem or show apathy. This point deserves more of our attention.

Second, the Government considers that the enactment of legislation may instead mislead the world into thinking that racial discrimination is a serious

problem in Hong Kong. I am very surprised at the logic of such remark indeed. First of all, I think that the Human Rights Committee (HRC) will certainly make a very strong response to it. Does that mean that all the countries in the world with legislation in this regard have serious discrimination problems? Will the enactment of legislation make the discrimination problem more serious? The HRC may probably think that the problem lies in the failure to enact legislation. Without legislation, education cannot be carried out thoroughly and the aggrieved persons cannot be provided with adequate protection. So can we allege that legislation gives rise to human right infringement in countries where laws are duly enacted to protect human rights? If the answer were yes, it would, I think, be the most absurd allegation.

Third, the Government has mentioned that legislation will result in many vexatious and even malicious litigation and disputes, or may accentuate or create contradiction among different races and gives rise to chasms in their feelings. In addition, it may even cause more people to bear strong malice towards the so-called aggrieved persons.

Mr President, if these remarks are justified, why must the Government legislate on other issues? If such logic is followed, why should legislation be enacted in the future? Why has the Government enacted legislation on certain issues, such as sex discrimination and disability discrimination? Does the Government not fear that legislation will give rise to contradiction between discriminators and the aggrieved persons? So I find it self-contradictory. Mr President, I would also like to emphasize that the experience of foreign countries has not proved that the enactment of legislation will certainly give rise to this phenomenon. If contradiction and racial conflicts exist in this community, there may be a lot of factors. But we very much believe that the synergy of education and legislation will certainly help address the discrimination problem.

Mr President, the Government often emphasizes that a gradual and step-by-step approach must be taken to enact such legislation and, most importantly, avoid being rash. The Government also emphasizes repeatedly that such legislation will have a lot of uncertain effects on the community and employers and the business sector and so on, being not yet ready enough, will even find it difficult to accept.

Mr President, I must emphasize that it has been twenty years since Hong Kong signed the International Convention on Civil and Political Rights (ICCPR).

During this period, however, the Government has neither fulfilled its due obligations properly, nor enacted legislation at a rapid pace. Twenty years later, it still says that it has not yet been ready for it. If the Government never fulfils its obligations, is it true to say that the community will never be ready for it? At the hearing on the ICCPR Report on the Elimination of Discrimination, the HRC emphasized repeatedly that it did not accept these remarks and considered that the discrimination problem had to be addressed in its entirety by means of legislation. If persons who are discriminated against in various forms cannot enjoy protection under the laws on equality, it is already discrimination. Thus, I hope that the Government must accept the recommendations and advice provided by the HRC on a number of occasions. Given that the Government is a signatory to the ICCPR, it should not ignore the advice given to us by the HRC.

The Government emphasizes repeatedly that the legislation will have serious impact and implications on the immigration policy and many public policies. First, the Honourable Mrs Elizabeth WONG said just now that she had introduced two very important amendments. The first amendment concerns the deletion of "nationality" from the definition of "race", leaving "colour, descent or ethnic origin" behind. Mr President, on what policy is it based to give different treatment to a person due to his different colour and ethnic origin? I find it difficult to accept this point. Mr President, I do not care how important public policies are, but, of course, there are many people who worry a lot. So the Honourable Mrs Elizabeth WONG has introduced, among others, clause 41A and points out that the clause is not applicable to illegal immigrants. However, I would like to emphasize that, in fact, all the existing policies, regardless of their nature and whether they are concerned with the importation of foreign workers or Vietnamese migrants, are determined based on the consideration of nationality. People of different nationality warrant different treatment. Such concept is, of course, understandable as various relationships and agreements have been made among countries to this effect. For example, while the nationals of certain countries enjoy visa-free entry, those of some countries with no diplomatic relationships with Hong Kong will have to apply for an entry visa. This is logical and reasonable. But there is something that I cannot accept. Surely, employers can, for example, reject the Filipino and Malaysian in importing foreign workers, but I will find it unacceptable if they specify workers of a particular colour, such as the acceptance of white people and the rejection of black ones. I will also find it disgusting if someone tells me that colour and ethnic origin are used to draw the line of demarcation.

I also want to emphasize that the Secretary for Security did make very good remarks during another debate today when he answered for the Government and mentioned that the Government was opposed to legislation on security guards. He said that it was not discriminatory and different treatment was not tantamount to discrimination. In fact, we have mentioned many times at the Bills Committee meetings that it is necessary to prove that different treatment is given on the basis of reasonable consideration and it should be not only justified but also in line with the principle of proportionality. The distinction must be reasonable, but whether it is reasonable or not also depends, at the same time, on another factor. Quite often, public interests should also be considered. Finally, whether different treatment is reasonable and whether it is considered discriminatory to give different treatment should also be considered. Thus, I emphasize that many people are worried that quite a number of policies and measures of the Government handle and treat people in different ways, but this is not tantamount to discrimination. I would like to emphasize that no matter how great the impact of the legislation is, I still find it unacceptable. It constitutes discrimination to give a person special treatment due to the difference in his colour and ethnic origin from others.

I find it very regrettable that the Government says that it needs time to conduct an assessment in this regard and that the Equal Opportunities Commission will not get involved and provide assistance.

I said just now that the Government should have conducted such an assessment earlier, that is, twenty years ago, or considered conducting it in 1994 when the Honourable Ms Anna WU introduced the Equal Opportunities Bill. But not until recently has the Government said that it is going to conduct a consultation exercise and then it has adopted measures to delay the legislation, which we find unacceptable. If the Government still sends representatives to attend hearings of the HRC in the future, do they, though I do not know who they are, have the honour and good arguments to handle the serious criticism made by the HRC? The Government says that a recent report points out that racial discrimination does not seem as serious as I have depicted because a consultation exercise is under way. In fact, I want to tell the Government that it can be seen from some other reports that the view of the HRC is very clear. It requests that the problem should be addressed and solved consistently in its entirety through immediate enactment of legislation. This is the responsibility that the Government must discharge.

Therefore, Mr President, I hope that all of us will support the passage of the Bill today. Thank you.

DR HUANG CHEN-YA (in Cantonese): Mr President, I just want to say a few words. When I was abroad, I spent almost over ten years in the struggle against anti-Chinese movements and racial discrimination in foreign countries, so I am especially sensitive to the issue of racial discrimination. In addition, I do not want to see, in particular, that racial discrimination, as suffered and struggled against by Chinese people in foreign countries, exists in Hong Kong. Who usually discriminatory on the ground of race? They are those people in power or the majority who tend to racially discriminate against or suppress the minority. When asked, these people usually do not admit their racial discrimination because they do not think so. But why did they, for example, not allow Chinese people to enjoy the same treatment as other white people did? They used to say, "Chinese people were barbarians and not Christian; they were very dirty and they spat everywhere, apart from answering the call of nature on the street. These were related to sanitation, not race. Chinese people spoke very loudly and were uncivilized. We did not suppress them on the ground of race, but they were inferior to others." Thus, they do not think that they are discriminatory. In the United States, Australia or all other countries where racial discrimination exists, if the majority are asked whether they are racially discriminatory, they will deny it and say they will not discriminate against others on the ground of race; they just think that some other people are especially inferior. Hence, if the Government tells me that, according to its survey, many people think that racial discrimination does not exist in Hong Kong, it is only because the Government asks the majority of Chinese people in Hong Kong whether they are racially discriminated against by others. But they will not tell the Government that they discriminate against others on the ground of race.

Actually, if racial discrimination exists in Hong Kong, why can there not be laws to prohibit and punish racial discriminators? If racial discrimination does not exist in Hong Kong, what is wrong with having laws to prohibit and punish such discrimination? Does racial discrimination really not exist in Hong Kong? I remember that the Government asked various district boards earlier whether some places should be designated for use by Filipino domestic helpers at weekends in response to complaints lodged by many people then that a large number of Filipino domestic helpers occupied the places outside the Legislative Council Building on Sundays, causing much inconvenience. At that time, I was

greatly surprised at the reasons put forward by District Board Members in their speeches at a district board meeting. They said that Filipino domestic helpers should not be allowed to use facilities of schools and other places at weekends. If the reasons they gave, which were recorded on the minutes of the meeting, were not racially discriminatory in nature, I really have no idea of what they should be. This is because their words were almost exactly the same as the remarks that I heard people make against Chinese people when I was abroad, except that "Filipino domestic helpers" stood the places of "Chinese people". There was nothing different in content, but they still said that there was no discrimination. Quite obviously, they were racially discriminatory. Do Chinese people, in particular, have a deeper feeling than other foreigners that white people are superior, so we have never had an idea to discriminate against them? The answer is, of course, not. How do Chinese people call the natives of the Pacific Ocean region? They call them "little people" instead of "people". If you go to the countries in that region, you will notice that Chinese people are more or less discriminatory against the "little people" in language or behaviour. In many places in Southeast Asia, Chinese people call the local people "gwai" (ghost), such as "Malay gwai" (Malaysian).

Apart from such language discrimination, is there actual discrimination on the ground of race? Yes, there is quite a lot indeed. Take a simple example, if the son or daughter of a Chinese wants to get "married" and if the would-be bride or bridegroom is of European pedigree, no one will raise objection. However, if the would-be bride is a Black or Filipino domestic helper, it would possibly give rise to stares in open-mouthed wonder from people who probably find it quite strange. This may cause them to think of the degradation of one's status or elicit discussions as to whether his parents will raise objection. Therefore, we note that the problem does exist.

In fact, many African black students who came to study in China long time ago complained that they had been discriminated against on the ground of race. Thus, people of China or Chinese people do not think that they are superior to the European, but they may discriminate against other races. I very much hope that there is no racial discrimination at present, nor in the future. We have to enact legislation in this regard as soon as possible. While Chinese people are persecuted and discriminated against in foreign countries, I hope that Chinese people will not discriminate against others in their own places.

Thank you, Mr President.

MR WONG WAI-YIN (in Cantonese): Mr President, I speak in support of the Equal Opportunities (Race) Bill. But I believe this Bill, like the previous Bill on age discrimination, will be negated. It will not even pass the Second Reading. I have been watching the Secretary for Home Affairs and the Secretary for Education and Manpower since the conclusion of the debate on the previous Bill. I notice they have been very happy and kept smiling tacitly till now. I have not seen them in such a good mood for a long time. But regrettably, their smiles have betrayed them because they are smiling quite cunningly.

Two years ago, we had a discussion on this Equal Opportunities Bill

PRESIDENT (in Cantonese): Mr WONG Wai-yin, I have ruled that both Members and officials are not allowed to say that somebody is "cunning". Please withdraw your remarks.

MR WONG WAI-YIN (in Cantonese): Mr President, if it is not allowed, I withdraw it. But

PRESIDENT (in Cantonese): No more words on that.

MR WONG WAI-YIN (in Cantonese): Mr President, I was a bit emotional when this Bill was debated two years ago. But now I only feel angry and depressed. I know that even if I further elaborate on the arguments in support of elimination of discrimination, such remarks will not be pleasing to this Council. Just like the situation of the previous Bill on age discrimination, we were about to win but finally defeated for no reasons. However, I wish to say a few words which I hope will be put on record, because I have intensively gone over the record of the debate on this Bill two years ago and found some remarks made by some colleagues. Although the Honourable Eric LI is not here now, I wish to refer to the remarks which he made two years ago.

In his speech two years ago, Mr Eric LI said that he very much appreciated the Equal Opportunities Bill introduced by Ms Anna WU and he should have supported it. However, he said it was not the appropriate time to support her then. The last sentence of his speech reads, "But I can promise Ms WU that if I am returned to this Council to serve another term, I shall first of all join the Bills Committee to scrutinize this Bill and shall be willing to devote myself to the work related to this Bill." Regrettably, Mr Eric LI did not honour his promise made to Ms Anna WU because he did not devote his effort by joining the Bills Committee when the Equal Opportunities (Race) Bill was reintroduced to the Council in this term.

Mr President, no politician should make irresponsible remarks. I believe every Member of this Council should as far as possible endeavour to honour his promises and materialize his remarks made to himself or the public or during elections. We should never make empty promises because history will not forget what we have said.

Similarly, during the debate of the Bill on race two years ago, just like the previous Bill on age discrimination, both Mr TAM Yiu-chung and the Honourable Frederick FUNG indicated that they would support the Bill. A moment ago, I mentioned that Mr TAM Yiu-chung had supported the Bill. In response, the Honourable Miss CHAN Yuen-han said that she would also support it on behalf of the Hong Kong Federation of Trade Unions (FTU). I hope the FTU will also support this Bill because Mr TAM Yiu-chung supported the same Bill last term. As regards Mr Frederick FUNG, I do not want to say any more because I do not have any expectation from him. Today, the Hong Kong Association for Democracy and People's Livelihood (ADPL) has become the "executioner of Equal Opportunities Bills." Many people say the ADPL has deviated from public opinion gradually. In fact, I have been defending the ADPL both inside and outside the Democratic Party all the time. I also argued with my fellow party members on whether the ADPL should still be considered as part of the democrats. From now onward, Mr President, I no longer regard the ADPL as part of the democrats.

Mr President, these are my remarks.

SECRETARY FOR HOME AFFAIRS: Mr President, I would like to express my gratitude to Dr the Honourable LEONG Che-hung and members of the Bills Committee for the work on this and other equal opportunities Bills. I am grateful also to the Honourable Mrs Elizabeth WONG for her unrelenting efforts

in advocating racial equality, efforts which are reflected in her sponsorship of the present Bill.

I am sure all of us here fully support the principle of equal opportunities. I am also sure we all agree that public education is imperative in achieving our target of equal opportunities for all. Where we differ is perhaps on whether legislation is the most effective tool and on the pace at which such legislation should be introduced. The Government is of the firm view that a step-by-step approach should be adopted in enacting anti-discrimination legislation.

Such legislation affects the legal rights and obligations of every member of our community. The imposition of new legal obligations amounts to a restriction of a person's freedom and requires him or her to conform to a certain norm or attitude. If he or she is an employer or runs an organization whose activities are regulated under the new legislation he or she will have to review, and if necessary to revise, the policies and practices of his or her company or organization. Members of our community may experience difficulties if a series of new obligations are imposed on them within a short interval.

Legislation works only if there is public support. This is especially true with anti-discrimination legislation. We seek ultimately to change a person's belief. Unless there is general support the conferral of legal rights on one group might be counter-productive as it might engender resentment by another group. It is, therefore, important that we allow the public to have a chance to express their views before deciding on whether or not to introduce legislation to regulate a particular type of discrimination.

In making such a decision, we should fully take into account and respect public opinions. In February to April this year, we conducted a public consultation exercise on racial discrimination. 83% of the submissions received considered legislation to be unnecessary or undesirable at this stage. Only 8% supported legislation. The consensus among these submissions was that, irrespective of whether legislation would be introduced, public education efforts should be stepped up to promote racial equality. In view of these findings, the Government has decided not to introduce or support legislation to regulate racial discrimination now. We take the point made in most submissions received that racial discrimination is not an issue of concern in our community and that the effects of existing equal opportunities legislation should be fully assessed before introducing any new one.

On the last point, Members will no doubt remember that in addition to the Sex Discrimination Ordinance and the Disability Discrimination Ordinance which came into operation about six months ago, this Council passed the Family Status Discrimination Bill a few days ago.

We agree with the consensus in the submissions about the use of non-legislative measures to address the problem. We shall enhance our public education efforts, with particular emphasis on racial equality. Our efforts will target in particular those discriminatory attitudes and acts against the new arrivals and foreign workers as concern was raised about the treatments received by these two groups of our community. We shall also encourage employers and other organizations to exercise self-regulation and equal opportunities for all races. We shall keep monitoring the situation to see if additional measures are required to enhance racial equality.

As this is not the time to adopt any legislation on racial discrimination, I am afraid the Government objects to Mrs WONG's Bill. It follows that even if the Bill were enacted, the Government would not support the provision of funds to enable the Equal Opportunities Commission to administer the Bill. Without the involvement of the Equal Opportunities Commission, a person who feels that he is a victim of racial discrimination can seek redress only through the court. Before that he needs professional advice that he has a case under the new law. In the absence of precedence in Hong Kong, such advice will probably be less than definitive. If the advice is that he appears to have a case he still has to go through court proceedings, which may be costly and time-consuming. The uncertainty of the outcome and the time and the resources involved may prevent a person from taking his case to the court. Hence the Bill, even if enacted, will be ineffective in protecting any aggrieved person.

It is a pity that owing to the pressure of time the Bill received only one and a half hour's consideration by the Bills Committee. The rush probably explains why some unacceptable aspects of the Bill raised by Members and the Administration have not been addressed by the numerous Committee stage amendments now proposed by Mrs WONG.

The term "near relative" as defined in clause 3(1) includes a person who is living with another person on a genuine domestic basis, although not married to that person. The definition is so wide that it includes co-inhabitants of the same

or opposite sex. The classification of such co-inhabitants as near relatives is clearly against the legal and social norms of our community.

The Bill does not provide for any exemption for employers of domestic helpers. Domestic helpers work and usually stay in their employers' homes. They provide care and attention to the employers' families. The intimacy is such that many employers regard their helpers as members of their families. It is natural, therefore, that the employers will wish to have the widest possible choice of whom to employ. However, if the Bill were enacted it would be unlawful for an employer to give preference to or alternatively to give a lower priority to applicants of a particular race. Many such employers would justifiably feel that their right to privacy has not been respected.

During the Bills Committee's discussion, the Administration said and Mrs WONG agreed that the definition of the term "race" should not include nationality, otherwise the Bill might render unlawful policies and practices which are based on nationality. Such policies and practices may exist in both the public and private sectors. I note that she has proposed a Committee stage amendment to delete references to nationality and national origins. However, the legal advice obtained indicates that the definition of the term "race" in the Bill is non-exhaustive. Therefore, despite the Committee stage amendment, it is still open to argument that the term includes nationality and national origin. If so, the Bill if enacted could lead to numerous litigation's and confusions.

Clause 2 of the Bill provides that an object of the Bill is to give effect to the standards of International Labour Recommendation 111. The instrument and hence the standards laid down therein are not legally binding on Hong Kong. Some of these standards may not be appropriate to the circumstances of Hong Kong. It is wrong in principle for any Bill to seek to give effect to any international instrument which has not been adopted by the Government for implementation in Hong Kong. The effect of the clause is that it would require the court to interpret the Bill as far as possible in a way which is consistent with the non-binding instrument. This is a departure from the common law principle of statutory interpretation. The anomaly remains despite the Committee stage amendment which seeks to delete the express provision in clause 7(3) which requires such an anomalous interpretation.

The Bill provides for the courts to order re-employment. In the interests of good labour relations and to ensure that neither the employer nor the employee can be required to accept re-employment as a remedy against his wish, a

re-employment order should be made only if both parties consent. Such requirement for mutual consent has been written into the new section 32(n) of the Employment Ordinance enacted by this Council on 17 June this year, yet a similar requirement has not been written into clause 46 of the Bill or the proposed clause 43 in the Committee stage amendment.

Under the Bill, all legal proceedings are to be taken in the District Court. In accordance with the District Court Ordinance the maximum damages to be awarded are \$120,000. As anti-discrimination legislation is new in Hong Kong and employers, especially the small employers, are worried about unintentional contravention of the new law, a maximum limit of the compensation to be awarded would to an extent alleviate their anxiety. However, Mrs WONG proposes a Committee stage amendment to remove the limit. The amendment will render the Bill even more unacceptable, particularly to small employers like that of a domestic helper.

During the Bills Committee meetings, one Member and the Administration raised the possible impact of the Bill on our Labour Importation Scheme. Mrs WONG took the point and will move a Committee stage amendment to provide exemption for immigration legislation. However, despite the Committee stage amendment, the legality of the Labour Importation Scheme and the administrative practices under the scheme would still be open to challenge if this Bill were enacted. The challenge if successful would adversely affect the local workers. The matter is so serious that my colleague, the Secretary for Education and Manpower, finds it necessary to be here and address Members on the Bill.

Mr President, the enactment of this Bill would go against the Government's policy to adopt a step-by-step approach and to take account of public opinions in taking each step. Therefore, we object to the Bill as a matter of principle. Furthermore, the Bill contains a number of unacceptable features which might cause anxiety to the public at large. They are not cured by the numerous Committee stage amendments. I would, therefore, strongly urge Members to vote against the Bill.

Thank you.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Secretary for Home Affairs has just explained why the Government

objected to the Equal Opportunities (Race) Bill introduced by the Honourable Mrs Elizabeth WONG .

I would like to explain from the perspectives of labour and employment the undesirable impact of the Bill. One of the most objectionable aspects of the Bill is that it will call into question the legality of the Government's entire policy on labour importation. The Bill will pose a direct legal challenge to existing labour importation schemes, including the Supplementary Labour Scheme, as well as the Special Labour Importation Scheme for the New Airport and Related Projects. These labour importation schemes will become unlawful under clauses 9 and 23 of the Bill immediately upon its passage because the various administrative measures under these schemes have a relatively unfavourable effect on workers of a particular race.

These administrative measures may go against these two provisions mainly because they subject the locals and the non-locals to obviously different treatments. In other words, local ethnic Chinese workers and workers of other ethnic origins including Mainland ethnic Chinese, Filipinos, Indians and This are obviously treated differently. Hence, these measures will have a comparatively unfavourable effect on workers of certain ethnic groups.

The Government's existing policy on labour importation operates on the basis of the following twin cardinal principles. Firstly, local workers must be given priority in employment. Secondly, employers who are genuinely unable to recruit local workers to fill their job vacancies should be allowed to bring in imported workers for such vacancies. The various rules and conditions under the two existing labour importation schemes mentioned above are primarily formulated on the basis of these 2 broad principles.

Clauses 9 and 23 of the Equal Opportunities (Race) Bill will subject the legality of labour importation policy and the various schemes thereunder to legal challenges mainly on the following grounds. Firstly, one of the principles of the labour importation policy and schemes is that consideration will only be given to those applications for imported workers where employers have accorded priority to local workers in filling any job vacancies available before making such applications. Under clause 8(2) of the Bill, this principle may be regarded as amounting to indirect discrimination as it will have a relatively unfavourable effect on non-ethnic Chinese workers. Moreover, such practice may also be in breach of clause 9 of the Bill which prohibits employers from discriminating

against job-seekers on the ground of their race in determining whether employment should be offered as well as the terms and conditions of employment.

Secondly, clause 23 of the Bill concerns discrimination in the administration of laws and government programmes. In view of the principle of ensuring that local workers have priority in employment, and given that the various labour importation schemes are administered by the Government, the Government may breach the law under this clause. Clause 23 stipulates that it is unlawful for a person who has the responsibility for the conduct of a government programme, to discriminate against another person, on the ground of the other person's race, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

As a matter of fact, the legality of the various administrative measures which seek to protect the interests of local workers in employment will be subject to challenge under this Bill. Firstly, to ensure priority in employment for local workers, employers who wish to apply for imported workers to fill any job vacancies under the Supplementary Labour Scheme or Special Labour Importation Scheme for the New Airport and Related Projects have to go through a mandatory local recruitment process for each of such vacancies before their applications will be considered by the Labour Department.

Secondly, to prevent displacement of local workers as a result of the importation of labour, we have imposed certain terms and conditions of employment which apply only to imported workers. Doing so represents a differential treatment between local ethnic Chinese workers and workers of other ethnic origins, which is forbidden under the Bill. We have devised the following four terms and conditions of employment solely for imported workers under the Supplementary Labour Scheme and the Special Labour Importation Scheme for the New Airport and Related Projects:

- (1) All imported workers are to be paid no less than the latest monthly median wage of local workers in comparable positions.
- (2) All imported workers are to be employed under a standard employment contract for a specified period of time during which

they can only work for the employers and take up the posts stipulated in their contracts.

- (3) Imported workers must not be deployed to undertake work other than that stipulated in the standard employment contracts under the relevant labour importation schemes. All imported workers are required to return to their places of origin upon completion of their contracts.
- (4) In the event of lay-offs, imported workers are to be dismissed first.

As regards foreign domestic helpers, the Government has imposed the following two special terms and conditions of employment:

- (1) All foreign domestic helpers have to be employed under a standard employment contract for a specified period of time during which they can only work for the employers stipulated in their contracts and undertake work as domestic workers.
- (2) All foreign domestic helpers have to be paid no less than the stipulated minimum allowable wage which is adjusted by the Government from time to time.

The two cardinal principles of the labour importation schemes as well as the above administrative arrangements not only can strike a balance between the interests of employers and employees, but also can maintain Hong Kong's competitive position as an open and flexible economic entity. In fact, the two labour importation schemes and the related arrangements are the result of a consensus reached after wide consultation and in-depth discussion among employers, employees and the Government. These two schemes operate smoothly and are acceptable to the general public. Should the Bill be passed, the legality of the labour importation policy and the relevant measures will be open to challenge. In other words, it will create on the community at large far-reaching repercussions which are by no means desirable.

Furthermore, it shows that we should not turn a blind eye to the possible legal consequences brought about by the Bill and rush it through this Council for passage.

For these reasons, the Government objects to the Bill and urges Members to vote against it. Thank you, Mr President.

MRS ELIZABETH WONG: I should like to thank Members for their comments and I would like to thank Members for their support. I think this debate is a very educational process. And I hope it is more educational for the Secretary for Education than for us because I am singularly surprised at the Government's singular lack of resolve to put the law in place and deplore the senior government officials' habit of repeating the speeches of the past and got the facts wrong. And I hope the Secretary for Education and the Secretary for Home affairs actually do their homework before they speak. I shall explain why.

Now, the Government's sabotaging the Bill today is very disappointing, of course. More disappointing, I think, is the threat that the Government will withhold funding of the Equal Opportunity Commission in order to make sure there is no law on racial discrimination, remove discrimination in race and many other discriminatory measures. I think this threat is deplorable.

Now, I hope the Government will learn how to cope with situations which it cannot handle. It does not help if you just repeat the things of the past. I think you have got the speech for the Bill introduced by the Honourable LAU Chin-shek rather than by me when you repeated your labour problems, which I understood and which I in fact put the Committee stage amendments to amend.

Now, I think, in response to Members' legitimate concerns at the Bills Committee I proposed major amendments by the deletion of "nationality" and "national origin". This is the origin of our labour importation policy. Our policy is racially prejudiced but it is disguised under the word "nationality". You know, we are very bad to our own people. Look at the illegal immigrants from China. Do you think they are well-treated? Look at the new immigrants from China. We are not talking about race here. We are talking about nationality, and because of Members' concern, I deleted the whole lot from the Bill.

And also I am perplexed that you are still harping on the exemptions not being wide enough. I mean, it appears to me that you consider the law as it was when I read it last year, not as it is when I am going to move the Committee stage amendment. It appears Government considers lawful exemption is not wide

enough. I have made sweeping, gaping exemptions in the Committee stage amendment which you have not read. I know you have not read because you have not referred to them. And I find that to make any wider exemptions will make a laughing stock of this Bill and this piece of legislation will not then be worth the paper it is written on, and I do not think I can accept that.

And I think the lessons we have learnt today are two things: principles are not negotiable; and you do not hide behind figures. Human rights is not a question of crunching numbers from artificial consultation. Human rights is given to us by God not by you, right? So, I should like, therefore, Honourable Members to disregard what the officials say and vote according to your conscience.

Now, Mr President, from the discussions earlier on, I know I am going to lose, and I have no hope of passing through even the Second Reading, but never mind, I am honourable. I shall not be like a senior government official. I shall not withdraw this Bill. I would like to have it voted down rather than withdraw it. The only point I would like to make is this, "革命尚未成功，我們還須努力". The revolution is not successful we should continue with our fight. I think, Honourable Members, we shall succeed, Mr President.

Question on the Second Reading of the Bill put.

Voice vote taken.

Mr Edward HO claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that are now called upon to vote on the question that the Equal Opportunities (Race) Bill under the name of Mrs Elizabeth WONG be read the Second time.

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

PRESIDENT (in Cantonese): Are there any queries? Members may wish to check their votes. The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, 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, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 26 votes in favour of the motion and 31 against it. He therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): As the motion on the Second Reading of the Equal Opportunities (Race) Bill was not agreed to, Council will not proceed further with the proceedings on the Bill. I now adjourn the Sitting for the purpose of taking the last supper (*laughter*). It is for the last supper. Unfortunately, it is Good Friday. Council will resume at nine o'clock sharp this evening, not nine o'clock tomorrow morning, but nine o'clock this evening.

6.45 pm

Sitting suspended.

9.00 pm

Council then resumed.

Resumption of Second Reading Debate on Bill

HONG KONG BILL OF RIGHTS (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 30 April 1997

MR ALBERT HO (in Cantonese): Mr President, as a Bills Committee has not been set up for the Bill, before the Honourable LAU Chin-shek, the mover of the motion speaks, I would first express the views of the Democratic Party on the Bill.

Under the Hong Kong Bill of Rights Ordinance (BORO) passed in 1992, section 3(2) stipulates that "All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.". At that time, this Council interpreted this provision as that all legislation existing before the passage of the BORO and inconsistent with it should be considered invalid. Therefore, the Ordinance should apply to all legislation. However, section 7 of the BORO provides otherwise that the Ordinance is only binding on the Government and all public authorities. I believe that the Government might have in mind at that time that it should apply only to the government policies for private persons or the legal proceedings between the Government and private persons. Proceedings between members of the public should not be affected by the BORO. In other words, it is binding only within the scope of public law.

However, as these two provisions simultaneously appear in the BORO, there are ambiguities which the Government might have overlooked when it was enacted. This situation lasted until a precedent was set by the Hong Kong Court of Appeal. Its final judgement was, if the proceedings between private persons involve some legislation which lack legality, the court will not make reference to the BORO as the proceedings are between private persons. Therefore, it seems that section 3(2) of the BORO has failed to apply.

Certainly, observing the principle of separation of powers, we have no cause to say that the court has made a mistake as the court is the most authoritative organ for interpretation of laws. Although this Council is responsible for making laws, the right of final interpretation still rests with the court. If we are not satisfied with the effect produced by the court's interpretation, or think that it fails to achieve the aim we originally hoped to achieve, we should amend the legislation or enact new legislation to achieve the effects we want.

Mr President, I believe many Honourable colleagues will share the view that we passed the BORO in the hope that it would be binding on all legislation. So any legislation that goes against the BORO should be repealed in accordance with section 3(2).

In order to achieve this aim, Mr LAU Chin-shek has proposed this Member's Bill. However, this Bill fails to extend the scope of application of the BORO to all proceedings between private persons.

In fact, when the United Nations Commission on Human Rights scrutinized the report submitted by the British Government on behalf of Hong Kong in respect of the International Covenant on Civil and Political Rights (ICCPR), it expressed concern about why the BORO was applicable only to the proceedings between the Government and private persons but not to those between private persons. In other words, why had the BORO totally failed to apply to the private proceedings between members of the public? This was the concern of the United Nations Commission on Human Rights. The Commission also found that the limited scope of application of the BORO could not fully meet the requirements of the ICCPR.

In any case, although the Bill today is not aimed at a comprehensive amendment, and neither is Mr LAU Chin-shek going to make a comprehensive amendment to make the BORO applicable to all private proceedings, at least it will be applicable to all laws, no matter who is going to take his case to the court and no matter whether a case is between private persons or between a private organization and its member. In short, as long as a law is involved and if that law is inconsistent with the BORO, that piece of legislation shall become invalid. This is the view held by some of my colleagues. I have no idea of how other colleagues think. They may tell us their views in their speeches later.

However, I must point out that the precedent set by the High Court has produced an unsatisfactory effect.

Mr President, I believe some colleagues will have this question: Why do we need to legislate when section 3 of the BORO will be repealed by the National People's Congress (NPC)? Is it not the case that the enactment will only last for a few days? Regarding these questions, I have the following opinions: Firstly, I hope that, by conducting a debate on this Bill today, this Council can reflect Members' aspiration for the binding effect of the BORO by way of legislation and I put the same on record. I hope that the ICCPR can be brought into full play in terms of effectiveness in future by means of the BORO, so that the Government can discharge its duties as a signatory.

Of course, we should not forget that Article 39 of the Basic Law has stipulated that the laws formulated by the legislature of the Hong Kong Special Administrative Region in future shall not contravene international covenants on human rights, in particular the ICCPR. Therefore, on the basis of our interpretation of Article 39 of the Basic Law and in the light of making Hong Kong laws in line with international covenants on human rights, that is the ICCPR, we consider that the precedent set by the High Court is really puzzling. We hope that the passage of this Bill — though it will be repealed — will enable the future legislature or judiciary to see the spirit of Article 39 of the Basic Law in its true light. Should the legislature make legislation on this subject again in the future, it will be able to adapt the abovesaid covenant into local law.

I hope that the work in this area can be continued, no matter what effect it will achieve in future. We also hope that the judiciary can appreciate that it is the wish of this Council, by passing the Bill this time, the future judiciary can understand Article 39 and fully embody the effect of the ICCPR.

Mr President, I have talked to some constitutional law experts earlier. They said that although the NPC had declared that it would repeal this piece of law, it was not a final decision yet. Some of the experts considered that the NPC would not necessarily do it because under the local legal system, there was still the possibility of a judicial review. The NPC is only exercising its authority. But is this authority in line with the Basic Law? Under our system, it is still possible to petition for a judicial review and there is still the possibility that the court may rule the legislation valid. This is because the repeal

pronounced by the NPC is invalid for it contravenes some principles of our public law and administrative law. One of these principles is that the repeal is totally unfounded and lacks any legal basis and sufficient and reasonable consideration. Of course, Members may question: Why can we challenge the NPC? In fact, under the system in Hong Kong, even the decision made by the Governor in Council could be similarly subject to judicial review. This is a question of constitution and Members may argue about it. Many people may even say this is not going to happen. Nevertheless, I feel that we should look into this. I believe such proceedings may be brought to the court in future. For instance, some people may put forward such a viewpoint in court proceedings.

In any case, this Council hopes that it can give the BORO an effect that we hope it can achieve and that is all laws that contravene the BORO after its passage should be repealed.

I hope that Members can support the Bill today after consideration.

MRS SELINA CHOW: Mr President, I rise on behalf of the Liberal Party to oppose the Honourable LAU Chin-shek's Bill, the Hong Kong Bill of Rights (Amendment) Bill 1997.

As many of my colleagues know, I was the convenor of the Bill of Rights Bills Committee and here I can probably help to clarify that in fact inter-citizen rights were deliberately excluded from the Bill after much representation from both the business community and the legal fraternity. It was as a result of the very hard lobbying plus representation put forward to the Bills Committee that the clause, that section 7, was actually added in to make it clear that inter-citizen rights would be excluded.

I believe the main reason at the time was that, the main reason being put forward in fact by very eminent members of the legal fraternity was that, it is uncharted territory, that we would be moving into an area where the water is, to say the least, a bit muddy, and that it would in fact create a lot of difficulties if cases should arise. And so I think that it was on their advice, and not on the advice of the business community, that this was eventually excluded. And this one can look up in the Hansard. It is very, very clear. The legislative intent

was extremely clear. There was no doubt whatsoever that the legislative intent was in fact to exclude inter-citizen rights.

Now, this is point one. The second point is that I think Members have to pay due regard to the presence of section 7. I think that if we are to vote in favour of Mr LAU Chin-shek's Bill, it would actually create an anomaly and uncertainty because on the one hand you are introducing a new element in section 3, but on the other hand, section 7 still applies, and in section 7, it states quite clearly that inter-citizen rights are excluded.

So, I do appeal to Members to join me in opposing this Bill.

MR BRUCE LIU (in Cantonese): Mr President, section 7 of the Bill of Rights Ordinance (BORO) defines the binding effect of the Ordinance and stipulates that the Ordinance is binding only on the Government and all public authorities and any person acting on behalf of the Government or a public authority.

In June 1991, in the case of *Tam Hing-yee v. Wu Tai-wai*, the District Court adjudicated that sections 3 and 7 of the Ordinance should be interpreted separately. The said judgement ruled that section 3 should be interpreted as the Ordinance may be tested against pre-existing legislation, that is, it might apply to all legislation of Hong Kong. However, in November 1991, the Court of Appeal repudiated the District Court judgement. It was of the opinion that although the BORO was obviously inconsistent with the intent of the international covenants on human rights, given that the provisions stated clearly that the Ordinance shall apply only to the legal proceedings between members of the public and the Government, the court could not interpret it otherwise. The judgement of the Court of Appeal set a legal precedent and the then Government did not lodge an appeal. Therefore, the Ordinance as it stands cannot apply to any legal proceedings between private persons.

I have studied the case thoroughly. In fact, the Court of Appeal opined that the existing provisions in section 7 of the Ordinance was not in accord with the Ordinance itself, especially the intent of the international covenants on human rights, in that the interpretation and application of the BORO should have regard to the fact that its purpose is to provide for and apply to the rights between the Government and members of the public as well as between private persons.

Under such circumstances, we think that the Ordinance should apply to all legislation.

Moreover, in November 1995, the United Nations Human Rights Commission, based on the fourth regular report on Hong Kong, pointed out that section 7 of the Ordinance should apply to relations between private persons. The Commission was also concerned about the situation that there was no legislation to provide for the legal proceedings between private persons in Hong Kong. Therefore, it is in line with the international covenants on human rights to extend the application of the Ordinance to relations between private persons.

Secondly, such extension is also in compliance with the Basic Law. In an article published in *Ming Pao Daily* on 1 November 1995, Mr WU Jian-fan pointed out that the binding effect of the Ordinance stated in section 7 created great restriction which did not agree to the original intent of the International Covenant on Civil and Political Rights. His opinion supports our argument. Mr WU is a legal expert and he supports our viewpoint.

According to its verbal opinion given to us, the Government very often opposes applying the Ordinance to legislation concerning relations between private persons. I would like to clarify that the Government's major reason for upholding such an opposition is that uncertainties may arise if the Ordinance applies to legislation concerning private persons, especially because many terms in the Ordinance involve major principles and obscurities may emerge. For example, specific legislation should be enacted in areas like rights in respect of private life, right and freedom of access to information and prohibition of discrimination and so on. I think it is appropriate to enact specific legislation because as in the cases of anti-discrimination legislation and protection of privacy legislation, both sets of legislation will not be mutually-exclusive or antagonistic.

Besides, the most important point of the Government is that it will increase the complexity of legal proceedings as well as the pressure on the courts. On this point, I think that worries are unnecessary because when members of the public initiate legal proceedings, they will also have to take account of the costs. If they have to invoke the BORO as defence, they will discuss with their lawyers and will thus take the time and expenses into account. Hence, we should not be too worried about this.

Thirdly, some people reckon that personal rights should be regulated by detailed legislation instead of general stipulations of the international covenants. In other words, they think that the wording of the covenants is not precise enough and this may give rise to uncertainties in enforcement. Nevertheless, when dealing with this kind of matters concerning private persons, the court should, in fact, leave the judgement to a so-called reasonable person. Most of the time, this person has to decide whether the case is reasonable, and we do not see any difficulties in his making such decisions. It is very often the case that the court has to give construction to many of the ambiguous common law concepts in passing judgement. As a matter of fact, the court is already well honed in the construction work. Even though there is detailed legislation against discrimination, the court will still, from time to time, have to give construction to the legislation. Therefore, we do not have to worry even if the BORO is applied to legislation affecting relations between private persons.

Finally, some people reckon that arguments on amendments to the law should not be allowed to affect the smooth transition of Hong Kong during the transitional period. However, I believe that we should push for an amendment with the best effort if it is deemed necessary. As far as this amendment is concerned, I think that it is in line with both the BORO and the Basic Law and, therefore, it is an appropriate one.

In regard to application, if this Bill is passed, how should it be applied? In fact, we need some precedents for reference and it seems that the court has already got some. One example is the case of *Steven CHEUNG Ng-sheong v. East Magazine* in 1994. It was a case between the magazine and Mr CHEUNG concerning freedom of speech and a case of libel. Mr CHEUNG won the case at that time and was compensated with a few million dollars. The judge saw that although the principle of the Bill of Rights clearly stated that it should be applied to legislation affecting the legal relations between the Government and private persons, he believed that the principle of the Bill of Rights should also be applicable to legal relations between private persons. Therefore, in the judgement, the court quoted Article 16 of the Bill of Rights concerning the principle of freedom of speech. The judge saw that an exorbitant amount of compensation would have an impact on freedom of speech. In the light of such adverse effects, the amount of compensation shall be open to question and should be put under deliberation again. This case indicates that although the Bill of

Rights states that it is not applicable to relations between private persons, it is quite often that the court takes the principle of the Bill of Rights as reference and basis of consideration. Today, if we state clearly that the legislative intent of the BORO is in concordance with the original intent of the international covenants on human rights, we are actually saying that it is applicable to all legislation, and this is in fact appropriate. The European application of the covenants on human rights is also under a similar situation and therefore, we have abundant precedents for reference. The Hong Kong Association for Democracy and People's Livelihood thinks that this is an appropriate amendment and we thus give our support to it.

I so submit.

SECRETARY FOR HOME AFFAIRS: Mr President, I would like, first of all, to express my appreciation to the Honourable LAU Chin-shek for his good intention in introducing this Bill. It seeks to reverse a court's decision which has attracted comments within the legal profession.

Section 3(2) of the Bill of Rights Ordinance provides that all pre-existing legislation that does not admit of a construction consistent with these Ordinances to the extent of the inconsistency repealed. Section 7 of the Ordinance provides that the Ordinance binds only the Government and public authorities.

In 1992 in the case, *Tam Hing-yee v. Wu Tai-wai*, the Court of Appeal held that by virtue of Section 7 the Ordinance had no application to a dispute between private individuals. This means that, notwithstanding section 3(2) of the Ordinance, pre-existing legislation which is inconsistent with the Ordinance will not be repealed to the extent of the inconsistency if the legislation deals with relations between private individuals only.

Within the legal profession there is doubt whether the ruling in this case represents a correct interpretation of the legislative intent behind the Ordinance. The Bill seeks to reverse the court's ruling in *Tam v. Wu* so as to make the Bill of Rights Ordinance applicable to all pre-existing legislation and not merely to legislation invoked by the Government or public authorities.

However, it is not clear whether the Bill as presently drafted will achieve its intended objective. The legal advice I have received is that even if section 3 were amended as proposed in the Bill the section will still have to be applied subject to section 7. This being so, it appears that the Bill, if enacted, will alter nothing except to cast doubt on the correctness of the judgement of the Court of Appeal in *Tam v. Wu*. It will take another court case in order to establish whether or not the Bill, if enacted, does reverse the ruling in *Tam v. Wu*.

Following the introduction of this Bill in April this year, Members agreed that a Bills Committee should be established to examine the important legal and other implications of the proposed amendment. It is unfortunate that the Second Reading debate of the Bill is now resumed without the benefit of the advice of any Bills Committee, otherwise at least the drafting of the Bill could have been improved. As it stands now, it is for consideration whether the Bill would clarify the law or merely render it less certain.

In the circumstances, Members may wish to consider carefully whether it is appropriate to enact the Bill now.

MR LAU CHIN-SHEK (in Cantonese): As pointed out by the Secretary for Home Affairs, it is indeed very unfortunate that no Bills Committee has been set up to examine this Bill. But I must say that it is even more regrettable that we have failed to secure a Bills Committee for this Bill despite the long wait for our turn.

Mr President, as I said in moving the Second Reading of this Bill on 30 April this year, strictly speaking, this Bill is not a new piece of legislation. Instead, it only seeks to state clearly the legislative intent behind section 3 of the existing Bill of rights Ordinance (BORO). Of course, in a way, one can still regard it as a new piece of legislation because under a common law jurisdiction, the interpretation of the court, not that of the legislature, should prevail. That said, let me still point out that this Bill only seeks to state clearly the legislative intent behind the relevant provision of the existing BORO.

Section 3(2) of the BORO provides that "all pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed."

The intent behind this provision is very clear: all pre-existing legislation inconsistent with the BORO shall have to be repealed on the very day when this Ordinance comes into operation, so as to ensure that no laws in Hong Kong will contravene this Ordinance. Of course, it will be for the court to decide which laws are in breach of this Ordinance when it deals with relevant cases in future. In general, for all lawsuits, the court should be empowered to rule on the legality of the relevant "pre-existing legislation" by invoking section 3 of the BORO whether the cases concerned involve legal relations between the Government and private persons, or those between private persons.

However, as the Honourable Albert HO and the Honourable Bruce LIU have pointed out, when the Court of Appeal dealt with a recent case, it applied a different interpretation to section 3 of the BORO. According to the ruling of the Court of Appeal, when a law case involves a dispute between private persons, section 3 of the BORO should not be invoked to repeal a piece of "pre-existing legislation" which is inconsistent with human rights. The reason given, as some Members have pointed out, is that section 7 of the BORO provides that this Ordinance shall be binding on the Government and public authorities only.

I have pointed out several times in the past that many law academics find the ruling of the Court of Appeal inconsistent with the legislative intent of the BORO; they also view that this ruling is inconsistent with the International Covenant on Civil and Political Rights either, and that it will lead to many irregularities. For instance, if the Government commits any acts of discrimination by virtue of a piece of previous legislation discriminatory in nature, the court can rule that the law is in breach of the BORO, and declare it invalid. But if a private person commits any acts of discrimination by invoking the same law, the court will have no power to declare it null and void. This is obviously very unreasonable.

For such reasons, I deem it necessary to put forward this Bill, so as to state clearly that section 3 of the BORO should apply to all legislation, not just those laws which affect the Government and public authorities.

Mr President, in February this year, the Standing Committee of the National People's Congress of China declared that a number of laws previously in force in Hong Kong, including section 3 of the BORO, would not be adopted as laws of the future Hong Kong Special Administrative Region. That being the case, the amendment proposed in this Bill to section 3 of the BORO may well be extremely short-lived, for one or two days only. The point, however, is that

those "pre-existing legislation" which must be repealed because of their inconsistency with section 3 of the BORO were in fact already repealed as early as 8 June 1991 when the BORO came into effect, though they have to be formally declared null and void by the court when it deals with relevant cases in the future. We must also bear in mind the legislative concept that for as long as Ordinance A has repealed Ordinance B, even if Ordinance A is subsequently repealed, it will still be impossible to reinstate Ordinance B. If we apply this concept to this Bill, we will be able to reach this conclusion: for as long as this Bill is passed by this Council and gazetted before 1 July, even if section 3 of the BORO ceases to exist after 1 July, it will still be impossible to reinstate all "pre-existing legislation" which has been repealed by the amended section 3 on grounds of its breaching human rights.

In conclusion, I wish to strengthen the safeguards for human rights as much as possible, and this Bill seeks to achieve precisely that goal.

With these remarks, Mr President, I call upon Honourable colleagues in this Council to support this Bill. Thank you.

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

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

HONG KONG BILL OF RIGHTS (AMENDMENT) BILL 1997

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bill

MR LAU CHIN-SHEK reported that the

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had passed through Committee without amendment. He moved the Third Reading of the Bill.

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

Voice vote taken.

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

Mr IP Kwok-him claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Hong Kong Bill of Rights (Amendment) Bill 1997 be read the Third time and do pass.

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

PRESIDENT (in Cantonese): Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG

Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, 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, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

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

Bill read the Third time and passed.

PRESIDENT (in Cantonese): I have to say a few words. I did not want to speak just now during the debate because I did not want to affect your decision. But the Bill involves a question on which a ruling has to be given by me, and the question is whether it has a charging effect. According to the views of some Members who are supportive of the Bill, it apparently involves public funds. But according to the legal advice that I have got, section 3 and section 7 should be read together. So I came to the conclusion that it does not have a charging effect and allowed Members to consider the Bill here. I just want to put the ruling made at that time on record for future reference. I did not wish my words to affect your way of thinking. I dare not say I am absolutely correct. I only made the ruling on the ground of the legal advice that I got.