

## **Consultations on legislation against racial discrimination**

### **Analysis of the consultation findings**

#### **Purpose**

This paper analyses responses to a consultation exercise on legislation against racial discrimination in the private sector.

#### **The consultations**

2. We conducted the consultations in two phases: the first covered the business sector, the second covered non-governmental organisations (NGOs), and others with an interest in the issues. In the first phase (13 June 2001 to 30 September 2001), we asked business sector respondents for their views as to -

- (a) whether they agreed in principle to Government introducing legislation against racial discrimination in the private sector;
- (b) the concerns that they might have should such legislation be introduced; and
- (c) issues to which we should pay particular attention in drafting such legislation.

3. In the second phase, we asked non-governmental respondents the same questions as we asked the business community. Additionally, we sought their views on the comments made by the business community.

#### **Analysis**

##### *Business sector response*

4. We received a total of 25 responses from the 34 business organisations from which we invited comments. Those respondents are listed at **Annex A**. Of these, 16 were broadly in favour of legislation. These included nine overseas chambers of commerce and six local trade associations. The 16 also included one local association that, while

supportive in principle, did not consider it appropriate to legislate at this stage. Of the remaining nine respondents, six were opposed to legislation and three had no views. Key comments were as follows -

- six respondents considered that racial discrimination was not serious in Hong Kong and that there was no urgent requirement to legislate;
- the local chamber of commerce that gave qualified support observed that the small and medium enterprises (SMEs) among its membership had reservations;
- all respondents considered that the Government should strengthen public education and publicity to educate the community about racial harmony. Of these, five considered that education/publicity on its own was sufficient and four considered that education/publicity was a necessary adjunct to legislation;
- two respondents considered that legislation would adversely affect business in the current economic climate, would entail needless litigation, and increase business costs. They also considered that excessive regulation was contrary to free-market principles. One of the foreign chambers disputed this view; and
- one respondent proposed that SMEs should be exempted from any future law as the administrative and financial burden of compliance could be detrimental to their ability to operate competitively.

5. More detailed views were as follows -

*Views on general issues*

- legislation will have a positive effect on business and on the continued prosperity of Hong Kong. It will help to attract talent worldwide and ensure Hong Kong remains a world-class city;
- tourism and other business areas will benefit by the introduction of legislation as it will demonstrate to the world that all visitors are welcome here;
- legislation will provide those aggrieved by racial discrimination a proper redress channel;
- Hong Kong provides a fair and level play field for all to conduct business and it is one of the strengths of the Hong Kong business environment. Legislation will be a valuable addition to this business

environment;

- the Government should supplement legislation with education on human rights and the respect of the fundamental rights for all, without distinction as to race, sex, religion or national origin;
- racial discrimination is not so serious in Hong Kong as to warrant legislation and there is no urgency to enact such a law;
- there should be no affirmative action (this was a view widely shared by both opponents and supporters of legislation);
- any law should be on the same lines as existing legislation;
- care should be taken to prevent abuse;
- legislation would be 'anti-business', particularly in the current economic climate when businesses are already facing serious difficulties;
- legislation would entail additional costs for companies;
- legislation could reduce job opportunities for the ethnic minorities, as employers might be reluctant to employ them for fear of encountering litigation at a later stage;
- legislation would create unnecessary disputes between private parties and give rise to vexatious litigation;
- legislation could engender resentment within the community;
- excessive regulation of businesses is contrary to free market principles; and
- existing legislation provides sufficient protection for employees of all races.

#### *Views on specific matters*

- any legislation in this area should contain safeguards against abuse;
- the onus of proof must be on the alleged victims;
- there should be penalties for persons shown to have brought vexatious claims. Special attention must be paid to factors significant to the banking and insurance industries. For example, nationality is a factor used in determining risk in loan decisions. Any law must therefore

include exception similar to those in the existing discrimination ordinances;

- specific attention must be given to small and medium enterprises: possibly an exemption for companies employing fewer than a prescribed number of persons; and
- specific exemptions should be provided for legitimate practices that are based on nationalities.

#### *Non-governmental sector response*

6. We invited comments from 55 non-governmental respondents and received a total of 44 responses, almost all being in favour of legislation. Those respondents are listed at **Annex B**. The pattern of their responses to our questions was essentially as follows -

- most regarded legislation both as a form of public education in its own right and as complementary to other forms of education. It would provide a channel of redress for the victims of discrimination, many of whom currently did not come forward because of the absence of such redress;
- legislation would enhance Hong Kong's international image and help to substantiate its claim to world-class status;
- legislation would be in accordance with our international obligations, particularly under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- one organisation said that the Government should conduct extensive public education in the period leading up to the enactment of legislation to allay any fears that the public might have; and
- there were few comments on issues for consideration at the drafting stage. But one organisation said that the Bill should provide for its commencement date to be determined by the Chief Executive in Council.

7. Only five organisations responded to the business sector's comments (paragraph 5 refers). None attempted to respond to every point. The pattern of responses is described in paragraphs 8 to 11 below.

### *Responses to general comments*

8. Almost all respondents shared the following views -
  - legislation will have a positive effect; tourism and other business areas will benefit;
  - legislation will provide a channel of redress and would be a valuable addition to this business environment;
  - the Government should supplement legislation with public education.
  
9. Almost all respondents rejected the view that racial discrimination was not serious in Hong Kong. Some said that legislation would have a deterrent effect, ensuring that any incipient problems did not become more significant. If even one person suffered discrimination, that was already sufficient to justify the creation of channels of redress.
  
10. Views on other general comments were as follows -
  - affirmative action: only one respondent disputed the view that there should be no affirmative action and it was clear from the submission that they did not understand the meaning of the term (they thought that legislation itself amounted to affirmative action);
  - form of legislation: the view that any law should be on the same lines as existing legislation received unanimous support from all who responded to it;
  - prevention of abuse: most of those who responded to the concerns about abuse considered that abuse could readily be prevented through careful drafting and through the existing safeguards provided by the Equal Opportunities Commission (EOC) and the Legal Aid screening system;
  - legislation would be 'anti-business'/contrary to free market principles: none of those who commented on these views agreed with them. The most common response was that legislation would be good for business because it would help to ensure that recruitment, promotion, and so forth was on the basis of merit, so ensuring the quality of personnel and operation of the free market;

- legislation would entail additional costs for companies: those who commented on this statement said that legislation on race would entail no significant new costs beyond those already incurred by the need to conform with the existing equal opportunities laws, which themselves had incurred far smaller costs than had been feared before their enactment;
- legislation could reduce job opportunities for the ethnic minorities: respondents pointed out that, with legislation in place, refusal to employ minority applicants on grounds other than rational ones would be discriminatory and could lead to prosecution. Employers could easily avoid prosecution at a later stage by simply not discriminating. The EOC and the Legal Aid system would screen out any unreasonable (vexatious) litigation on the part of employees;
- unnecessary disputes and vexatious litigation: those who responded to this comment cited the safeguards provided by the EOC and Legal Aid screening;
- legislation could engender resentment: those who responded to the argument said that there was no evidence to support the concern and that there was already resentment on the part of the victims of discrimination who currently had no means of seeking redress; and
- existing legislation provides sufficient protection: those who responded to this comment said that existing legislation provided victims of discrimination in the private sector with no channels of redress.

#### *Responses to specific comments*

11. Essentially, these were as follows -
- legislation to contain safeguards against abuse: the EOC and the Legal Aid system would provide adequate safeguards;
  - onus of proof to be on alleged victims and penalties for persons bringing vexatious claims: only one respondent addressed these comments, taking the view that this would create additional difficulties for persons who were or who claimed to be victims of discrimination; and
  - exemptions: one respondent considered that exemptions were undesirable but could be considered on a case-by-case basis on their

individual merits. Three organisations considered that SMEs should not receive any exemptions, though one said that the Government should help them to adapt.

## **Conclusion**

### *The business sector*

12. Out of 25 responses from this sector, 16 were broadly in favour of legislation, with six opposed. But it may be significant that the majority of those in favour of legislation were foreign chambers, whereas most of those opposed were the major local chambers.

### *NGOs and the ethnic minorities*

As expected, all of the 44 organisations that submitted comments were in favour of legislation. It may be noteworthy that only five of the 44 respondents commented on the detailed views of the business sector and that none attempted to respond to all of them.

**Home Affairs Bureau**  
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## **Annex A**

### **First phase consultation –business groups**

1. Association of German Chamber of Industry and Commerce  
德國工商總會
2. Council of Hong Kong Indian Association
3. Employers' Federation of Hong Kong  
香港僱主聯合會
4. Federation of Hong Kong Hotel Owners Ltd  
香港酒店業主聯會
5. Federation of Hong Kong Industries  
香港工業總會
6. Hong Kong Association of Banks  
香港銀行公會
7. Hong Kong Construction Association  
香港建造商會
8. Hong Kong Employers of Overseas Domestic Helpers Association  
香港海外女傭僱主協會
9. Hong Kong Federation of Insurers  
香港保險業聯會
10. Hong Kong Hotels Association  
香港酒店業協會
11. Hong Kong Institute of Human Resource Management  
香港人力資源管理學會
12. Hong Kong Institute of Marketing  
香港市務學會
13. Professional Insurance Brokers Association Limited



香港專業保險經紀協會

14. Swedish Chamber of Commerce in Hong Kong  
香港瑞典商會
15. The American Chamber of Commerce  
美國商會
16. The Australian Chamber of Commerce  
香港澳洲商會
17. The British Chamber of Commerce  
香港英商會
18. The Canadian Chamber of Commerce  
香港加拿大商會
19. The Chinese General Chamber of Commerce  
香港中華總商會
20. The Chinese Manufacturers' Association of Hong Kong  
香港中華廠商聯合會
21. The DTC Association  
存款公司公會
22. The Hong Kong General Chamber of Commerce  
香港總商會
23. The Hong Kong Japanese Chamber of Commerce and Industry  
香港日本人商工會議所
24. The Hong Kong Management Association  
香港管理專業協會
25. The Indian Chamber of Commerce of Hong Kong  
香港印度商會

## Annex B

### Second phase consultation - Non-governmental organisations

1. Amal Indonesian Direct
2. Amnesty International Hong Kong Section  
國際特赦組織香港分會有限公司
3. Asia Pacific Mission for Migrant Filipinos
4. Asian Domestic Workers Union
5. Asian Migrants Coordinating Bodies
6. Asian Students Association  
亞洲學生聯會
7. Association of Indonesian Migrant Workers in Hong Kong
8. Association of Sri Lankans
9. British Gurkha Ex-Servicemen Association
10. Christian Action - Domestic Helpers and Migrant Workers Program
11. Citizen Party  
民權黨
12. Civic-Exchange  
思匯
13. Coalition for Migrants' Rights
14. Coalition for Racial Equality (CORE) 種族平等聯盟 &  
Hong Kong Against Racial Discrimination (HARD)
15. Dharan Hong Kong Forum
16. Far East Overseas Nepalese Association
17. Filipino Migrant Workers' Union
18. Forum of Filipino Reintegration and Saving Group

19. Gurkha International (Hong Kong) Ltd.
20. Helpers for Domestic Helpers
21. Hong Kong Catholic Commission for Labor Affairs  
香港天主教勞工事務委員會
22. Hong Kong Christian Institute  
香港基督徒學會
23. Hong Kong Construction Workers Union  
香港建築工人協會
24. Hong Kong Gurkhas Forum
25. Hong Kong Nepalese Federation
26. Hongkong Nepalese Women Association
27. Human Rights Council of Hong Kong  
香港人權協會
28. Indian Businessmen's Association
29. Indian Domestic Workers Association
30. Indonesian Migrant Workers Union
31. Jesus is Lord School of Ministry (HK) Ltd
32. Justice
33. Justice & Social Concern Committee of Hong Kong Christian Council  
香港基督教協進會
34. Movement Against Discrimination  
反歧視大聯盟
35. Salvation Army Migrant Workers' Counselling and Referral Centre
36. Society for Community Organisation  
社區組織協會
37. Tamu Association of Hong Kong

38. Thai Women Association
39. The Bethune House Migrant Women's Refuge
40. The Indian Resources Group
41. The Voice of Indonesian Migrant Workers
42. Unison  
香港融樂會
43. United Filipinos in Hong Kong
44. United Migrant Workers Interim Trust