

Legislative Council
Panel on Home Affairs

Consultation on Proposed Legislation
against Racial Discrimination

Introduction

This paper provides a summary and analysis of the comments received in response to our consultation paper on proposed legislation against racial discrimination.

Consultation Exercise

2. In June 2004, the Government announced its decision to legislate against racial discrimination. A consultation paper entitled “Legislating Against Racial Discrimination” was issued in September 2004 inviting public views on the legislative proposals. During the consultation period, 19,300 copies of the Chinese version and 9,700 copies of the English version of the consultation paper were distributed. The document was also available on the website of the Home Affairs Bureau (<http://www.hab.gov.hk>).

3. In addition, summaries of the consultation paper were also available in eight other languages including:

- (a) Tagalog;
- (b) Bahasa Indonesia;
- (c) Thai;
- (d) Hindi;
- (e) Urdu;
- (f) Nepali;
- (g) Bengali; and
- (h) Sinhalese.

These languages are spoken by the major ethnic minority groups in Hong Kong.

4. Members of the public were originally asked to send their comments in before the end of last year. In response to popular request, the deadline for submissions was extended to 8 February 2005.

5. By the end of the consultation exercise, the Home Affairs Bureau received 240 written submissions. A compendium of the submissions is available at the Home Affairs Bureau (31/F, Southorn Centre, 130 Hennessy Road, Wan Chai, Hong Kong) for public inspection during office hours.

6. Of the 240 submissions, 12 were from advisory and statutory bodies, 50 from non-governmental organizations, 23 from business groups/organizations, 11 from professional bodies, 5 from political parties/groups, 13 from other organizations, and 126 from individuals.

7. During the consultation period, we attended 67 meetings, seminars, forums and briefings for organizations and groups. A breakdown is as follows:

<u>Organization/group</u>	<u>Number of meetings/ briefings</u>
Legislative Council	2
District Councils	13
Advisory and statutory bodies	9
The media	15
Ethnic minority groups	12
New arrivals from the Mainland	3
Labour sector	2
Welfare sector	2
Business sector	1
Others	8
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	67

8. An interpreter was provided (when requested) at our meetings with ethnic minority groups.

Analysis of Comments

9. An analysis of the written submissions and views expressed during the consultation exercise is set out below.

Need for a Race Discrimination Bill

10. Different people may have different views on the need for a Race Discrimination Bill. In our consultation paper, we asked the public to comment on this matter. Most of our respondents are of the view that there is a need for legislation against racial discrimination. Some are of the view that non-legislative measures are not effective in dealing with racial discrimination as there are no legal remedies. Some have reminded us that Hong Kong has an obligation under international law to legislate. Some have argued that as Asia's world city, Hong Kong should introduce anti-racial discrimination legislation to provide a level playing field. Members of ethnic minorities say that they face prejudice and discrimination in their everyday life and that anti-discrimination legislation would provide legal remedies to blatant discrimination cases.

11. A minority of respondents are of the view that there is little racial discrimination in Hong Kong and that we do not need to legislate at this stage. Some have suggested that we should pursue non-legislative means and conduct public education to deal with racial prejudice and discrimination. A few are of the view that anti-racial discrimination legislation would lead to vexatious litigation and conflicts between the Chinese majority and ethnic minorities.

Impact of Anti-discrimination Legislation

12. In our consultation paper, we asked members of the public to let us have their views on the likely impact of an anti-racial discrimination law. Some of our respondents are concerned that such legislation would give rise to frequent litigation and would adversely impact on the economy. Most are of the view that the proposed legislation would not have a significant impact on the economy and on the way of doing business in Hong Kong.

New Arrivals from the Mainland

13. The question of whether the discrimination suffered by new arrivals from the Mainland is racial or social in nature has proven to be the most controversial issue in the consultation exercise. Most of the respondents agreed with the position in the consultation paper that it is not racial discrimination. However, some groups are of the view that the discrimination problem faced by new arrivals is serious and that the problem should be dealt with by inclusion in the Race Discrimination Bill.

The Bill

14. It was proposed in the consultation paper that the Race Discrimination Bill should be modeled on the structure and format of the three existing anti-discrimination ordinances, namely the Sex Discrimination Ordinance (Cap 480), the Disability Discrimination Ordinance (Cap 487) and the Family Status Discrimination Ordinance (Cap 527). Most respondents have no objection to this approach. Some respondents have asked us to take reference from the anti-discrimination legislation of the United Kingdom, Australia, Canada and the European Union.

Types of racial discrimination

15. Most respondents support the idea of direct and indirect discrimination. However, some respondents have suggested that the Race Discrimination Bill should clearly spell out what is a “justifiable requirement or condition” in the case of indirect discrimination.

Racial Harassment

16. Some respondents have suggested that the concept of harassment under the Race Discrimination Bill should cover conduct or behaviour of persons motivated by racial prejudice or hatred which renders the environment in which another person (member of an ethnic minority) works or studies hostile or intimidating.

Implementation body

17. Most respondents agree that the Equal Opportunities Commission should be the body responsible for implementing the provisions of the Race Discrimination Ordinance (if enacted). The Commission should be empowered to receive complaints, provide

mediation service and legal advice, conduct public education, and do research on the problem of racial discrimination. It should also have investigatory powers to deal with complaints and the power to initiate investigations. Some respondents have urged the Government to provide adequate resources to the Commission so that it could effectively assume the new responsibilities.

Definition

18. Most of the respondents have no objection to defining racial discrimination as discrimination based on “race, colour, descent, or national or ethnic origin” in accordance with Article 1 of the International Convention on the Elimination of All forms of Racial Discrimination. Some respondents have suggested that migrant status, nationality, religion and language should also be included.

19. A few respondents are concerned that “descent” has been included in the definition. They are of the view that discrimination based on descent is not really racial discrimination. Others support the inclusion of descent in accordance with the international norm.

Protected areas of activity

20. Respondents generally agree with the proposed protected areas of activity which include employment, education, provision of and access to goods, facilities, services and premises, advisory bodies, pupilage and tenancy in barristers’ chambers, clubs and Government. A few respondents have asked why barristers are specifically included.

Exception for Small Employers

21. Some respondents are of the view that the exception (the 3-year “sunset” clause) for small employers should not apply to employers of foreign domestic helpers. Others have argued that due to language, cultural or religious reasons, an employer should be allowed to choose a foreign domestic helper without being caught by the anti-discrimination provision of the Bill.

22. Some respondents have proposed that the exemption period for small employers should be one year instead of three. A few have suggested that the exception should not be included at all since employers already have ample time to adjust to the existing anti-discrimination regime and the Bill would not impose any real hardship on employers.

Exception for trade unions and employers' organizations

23. Some respondents have proposed that existing trade unions and organizations of employers should be “grandfathered” and given exemption in relation to their membership criteria. They have pointed out that a few traditional trade unions restrict their membership to Chinese workers and it would be unfair and inappropriate that this practice be rendered unlawful after the Bill is enacted into law.

Discriminatory Advertisements

24. Some respondents are concerned that employers might be forced to publish a recruitment advertisement in two or more languages, instead of just one. They have suggested that it should be made clear in the Bill that the use of a particular language (say, Chinese or English) in an advertisement should not, per se, constitute a discriminatory act for the purposes of the Bill. However, some respondents from ethnic minority groups have urged that job vacancies should be advertised in both Chinese and English, if competency in reading and writing Chinese is not a job requirement.

Proposed Functions and Powers for the Equal Opportunities Commission

25. Respondents generally agree with the proposed functions and powers for the Equal Opportunities Commission if its jurisdiction is extended to cover racial discrimination.

Way Forward

26. We are now in the final stages of the drafting of the Race Discrimination Bill. We intend to introduce the Bill into the Legislative Council before the end of the year.

**Home Affairs Bureau
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