

Legislative Council Panel on Home Affairs

Proposed Race Discrimination Legislation

Introduction

This paper outlines the main provisions of the proposed race discrimination legislation, i.e., the Race Discrimination Bill.

Background

2. In September 2004, the Home Affairs Bureau issued a consultation paper entitled “Legislating Against Race Discrimination” for public comments. By the end of the consultation exercise, we received 240 written submissions. We also attended 67 meetings, seminars, forums and briefings during the consultation period.

3. The Race Discrimination Bill is now at an advanced stage of drafting. We intend to introduce it into the Legislative Council shortly.

The Bill

4. The Bill is modelled on the existing anti-discrimination legislation, namely:

- (a) the Sex Discrimination Ordinance (Cap 480);
- (b) the Disability Discrimination Ordinance (Cap 487); and
- (c) the Family Status Discrimination Ordinance (Cap 527).

5. The main aims of the Bill are:

- (a) to render discrimination, harassment and vilification on the ground of race unlawful;
- (b) to prohibit serious vilification of persons on the ground of race;
- (c) to extend the jurisdiction of the Equal Opportunities Commission to include racial discrimination;

- (d) to confer on the Equal Opportunities Commission the function of eliminating racial discrimination and promoting equality and harmony between people of different races; and
- (e) to make consequential and related amendments to other enactments.

The meaning of race

6. In accordance with Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination, the concepts of “race”, “racial group” and “on the ground of race” are defined by reference to race, colour, descent or national or ethnic origin.

7. At present, our discrimination law specifically includes sex, disability and family status as prohibited grounds of discrimination. The Bill will include race, colour, descent and national or ethnic origin as prohibited grounds.

Types of racial discrimination

8. The proposed legislation would cover seven main types of racial discrimination:

- (a) direct discrimination;
- (b) indirect discrimination;
- (c) transferred discrimination;
- (d) victimization;
- (e) harassment;
- (f) vilification; and
- (g) serious vilification.

9. Under the concept of direct discrimination, a person (“the discriminator”) discriminates against another person if on the ground of the race of that other person, the discriminator treats that other person less favourably than he or she treats or would treat other persons.

10. Under the concept of indirect discrimination, a person (“the discriminator”) discriminates against another person if the discriminator applies to that other person a requirement or condition which he or she applies or would apply equally to persons not of the same racial group as that other person but –

- (a) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it;
- (b) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
- (c) which is to the detriment of the other person because that person cannot comply with it.

Indirect discrimination may be justifiable under certain circumstances. The criteria for determining “justifiability” and some of the circumstances that may be taken into account will be set out in the Bill.

11. Under the concept of transferred discrimination, a person (“the discriminator”) discriminates against another person if, on the ground of the race of a near relative of that person, the discriminator treats that person less favourably than he or she treats or would treat another person not having a near relative of the same racial group as the near relative of that person.

12. Under the concept of victimization, a person (“the discriminator”) discriminates against another person (“the persons victimized”) if he or she treats the person victimized less favourably than he or she treats or would treat other persons because the person victimized asserts his or her rights under the relevant discrimination law or because the person victimized has given evidence or information in

connection with a claim against the discriminator.

13. Under the concept of racial harassment, a person (“the harasser”) harasses another person (“the person harassed”) if, on the ground of the race of the person harassed or a near relative of the person harassed, the harasser:

- (a) engages in unwelcome conduct (which may include an oral or a written statement), in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the harassed person would be offended, humiliated or intimidated by that conduct; or
- (b) engages in conduct (which may include an oral or a written statement) that renders hostile or intimidating the environment in which the harassed person works, studies or undergoes training.

14. Under the Bill, an act of vilification will be made unlawful. It will be unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the race of the person.

15. Under the Bill, a person who, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the race of that person which include:

- (a) threatening physical harm towards, or towards any premises or property of, that person; or
- (b) inciting others to threaten physical harm towards, or towards any premises or property of, that person.

commits an offence of serious vilification.

Proposed areas of activity

16. The Bill will cover the following fields (i.e., protected areas of activity) –

- (a) employment field;
- (b) other fields, including -
 - (i) education;
 - (ii) goods, facilities, services and premises;
 - (iii) public bodies;
 - (iv) barristers; and
 - (v) clubs.

17. As regards employment, the Bill will make it unlawful for an employer to discriminate on the ground of race between applicants for jobs or between employees in respect of the treatment the employer accords to them, in particular, in relation to promotion, transfer or training.

18. As regards education, the Bill will make it unlawful for the responsible body for an educational establishment (e.g. a school, institute or university) to discriminate on the ground of race in respect of admissions or treatment of students.

19. The Bill will deal with racial discrimination in the provision of goods, services and facilities to the public or in the disposal of premises (including premises comprised in a tenancy) or the treatment of occupiers of premises. Under the Bill, it will be unlawful to discriminate on the ground of race in these matters either directly or indirectly in respect of the terms offered or, in the case of goods, services and facilities, in respect of their quality or the manner in which they are provided.

20. As regards public bodies, the Bill will make it unlawful to discriminate on the ground of race in respect of eligibility to vote for and to be elected or appointed to a public body, a public authority, a statutory advisory body or a prescribed body.

21. As regards barristers, the Bill will make it unlawful for a barrister or barrister's clerk to discriminate on the ground of race against

a person seeking pupilage or tenancy, or who is a pupil or tenant, in a barristers' chambers.

22. As regards clubs, the Bill will make it unlawful for a club, the management committee of a club or a member of such a committee (a) to discriminate on the ground of race against a person by refusing to accept the person's application for membership or in the terms offered for admission or (b) to discriminate on the ground of race against a member in the terms and conditions of membership or with reference to benefits, services or facilities provided to the member.

Application to Government

23. It is proposed that the Bill, if enacted into law, will bind the Government.

Exceptions

24. Under the proposed legislation, exceptions are provided to certain provisions. The main exceptions are set out below:

(a) Small employers

The Bill will provide that within the first 3 years of enactment of the new law, the general provisions concerning employment will not apply to an employer with not more than 5 employees.

(b) Genuine occupational qualification

Under the Bill, an exception will be provided where being of a particular racial group is a genuine occupational qualification for a job for reasons of:

(i) authenticity in dramatic performances or other entertainment or production of art or visual images;

(ii) authenticity working in a place providing food or drink for consumption in a particular setting;

(iii) providing most effectively personal services promoting

- the welfare of a racial group; and
- (iv) providing personal services of a nature or in circumstances requiring familiarity with the language, culture and customs or sensitivity to the needs of a racial group.
- (c) Small dwellings
- An exception from the relevant provisions of the Bill dealing with the disposal of premises will be provided in the case of premises forming part of small dwellings which are shared by the landlord and the lodger or tenant.
- (d) Employment on local and overseas terms of employment
- An exception will be made under the Bill for differential treatment between existing employees on local terms of employment on the one hand and existing employees on the overseas terms of employment on the other hand.
- (e) Voluntary bodies
- An exception from the relevant provisions of the proposed legislation will be made in case of voluntary bodies which restrict membership to persons of a particular racial group.
- (f) Special measures
- Provisions will be made under the Bill so that any special measures taken in respect of persons of a particular racial group to give equal opportunities with other persons will not be rendered unlawful under the proposed legislation.
- (g) Charities
- Certain charities which provide benefits to certain groups of people defined by reference to national or ethnic origins will be protected against provisions of the Bill which might otherwise make the provision of such benefits unlawful.

(h) Special training

The Bill will make clear that, in relation to training, it is not unlawful to afford only persons of a particular racial group access to facilities for training which would help to fit them for that work, or to encourage only persons of a particular racial group to take advantage of opportunities for doing that work under certain conditions.

(i) Religion

An exception will be provided in the Bill for an organized religion to limit employment to a person from a certain racial group for a job related to that religion, if the purpose of such restriction is to comply with the doctrines of that religion or to avoid offending the religious susceptibilities common to its followers.

(j) Immigration legislation

As regards persons not having the right to enter and remain in Hong Kong, the Bill will not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.

(k) Other exceptions

For the avoidance of doubt, the Bill will specify that an act done on the ground of a person's indigenous inhabitant status, permanent resident status, length of residence or nationality will not have the effect of rendering that act as an act done on the ground of the race, colour, descent or national or ethnic origin of a person.

Equal Opportunities Commission

25. It is proposed that relevant functions and powers be accorded to the Equal Opportunities Commission to enable it to take on the duties of implementing the relevant provisions of the proposed legislation.

Way forward

26. We intend to introduce the Race Discrimination Bill into the Legislative Council shortly.

**Home Affairs Bureau
February 2006**