

**立法會**  
**Legislative Council**

LC Paper No. CB(2)117/08-09  
(These minutes have been seen  
by the Administration and cleared  
with the Chairman)

Ref : CB2/BC/2/06

**Bills Committee on  
Race Discrimination Bill**

**Minutes of meeting  
held on Monday, 26 May 2008, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon LUI Ming-wah, SBS, JP  
Hon CHEUNG Man-kwong  
Hon CHAN Yuen-han, SBS, JP  
Hon Bernard CHAN, GBS, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon CHOY So-yuk, JP  
Hon LI Fung-ying, BBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon Mrs Anson CHAN, GBM, JP
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Dr Hon YEUNG Sum, JP  
Hon Albert CHAN Wai-yip  
Hon Daniel LAM Wai-keung, SBS, JP  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon TAM Heung-man

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**Public Officers attending** : Constitutional and Mainland Affairs Bureau

Mr Arthur HO  
Deputy Secretary for Constitutional and Mainland Affairs (1)

Mr Victor NG  
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)

Mr Stanley NG  
Assistant Secretary for Constitutional and Mainland Affairs (5)A

Department of Justice

Miss Betty CHEUNG  
Senior Government Counsel

Miss Shandy LIU  
Senior Government Counsel

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)2

**Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Joanne MAK  
Senior Council Secretary (2)2

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**I. Meeting with the Administration**

LC Paper No. CB(2)2046/07-08(01) No. -- Administration's response to questions raised at the meeting held on 25 April 2008

LC Paper No. CB(3)176/06-07 -- The Bill

LC Paper No. CB(2)1030/07-08(01) No. -- Summary of views received from deputations/individuals on specific clauses of the Bill (as at 6

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February 2008) prepared by the  
Legislative Council Secretariat

The Bills Committee deliberated the Administration's paper entitled "Administration's response to questions raised at the meeting held on 25 April 2008" [LC Paper No. CB(2)2046/07-08(01)] and completed scrutiny of Clauses 59 to 85 of and Schedule 5 to the Bill (index of proceedings at **Annex**).

Admin

2. The Administration was requested to provide response on the following issues -

Clause 45

- (a) to consider whether Clause 45(2)(b) should be amended to cover an activity in public that (i) was a communication or the distribution or dissemination of any matters; and (ii) consisted of a publication which was subject to a defence of absolute privilege in proceedings for defamation;
- (b) to explain from policy point of view activities to be regulated under the provision and elaborate (with some other examples) on the liability to be borne by persons concerned in a situation where a person communicated to his friends only, through the internet, messages which incited hatred against persons of a particular race but his friend subsequently disseminated the messages through the internet to the public;

Clause 46

- (c) to amend Clause 46(1) which referred to "activity in public ... which includes threatening ... or inciting others to threaten ..." in order to make it clear that the threat or the incitement of threat was a necessary element of the activity in public which would constitute serious vilification;
- (d) to clarify its policy whether an objective or subjective test would apply for the mens rea of the offence and whether inchoate offences would be included if the provision targeted the act of incitement; and

Clause 65

- (e) to consider the suggestion of re-drafting the clause as "Without limiting section 60, the Commission may, if it thinks fit, and shall, if required by the Chief Secretary for Administration, conduct a formal investigation...".

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Admin

3. Members noted that the Administration would move Committee Stage amendments (CSAs) to Clauses 64(3) and 84 to replace the "Secretary for Home Affairs" with the "Secretary for Constitutional and Mainland Affairs".

Clerk

4. To facilitate scrutiny of provisions relating to the Equal Opportunities Commission (EOC) and consideration of whether the Commission was conferred with adequate power for the performance of its role and functions, members agreed that EOC should be requested to provide the following information -

- (a) advice as to whether the Bill had provided for adequate safeguard against any undue influence over investigations conducted by EOC and any specific provisions suggested to be added for this purpose, if necessary;
- (b) EOC's observation of whether the requirement of passing the means test imposed on complainants who applied for legal aid in making claims in respect of discrimination, harassment and vilification under the three existing anti-discrimination ordinances had created undue difficulties to these complainants;
- (c) comment on whether the time limit of allowing five years, under Clause 72(4), for furnishing information to EOC was unduly long, and whether any problems had arisen, as observed by EOC, from the absence of a time limit imposed on a person in making changes as might be required by an enforcement notice served on that person;
- (d) the number of occasions on which EOC had applied to the District Court for an injunction under relevant provision of the three existing anti-discrimination ordinances; and
- (e) EOC's observations, based on its experience of implementing the relevant provisions of the existing anti-discrimination ordinances, on Clause 80 relating to assistance given by Commission other than by way of conciliation.

Clerk

5. The Clerk was requested to approach the Legal Aid Department for information on applications for legal aid under the three existing anti-discrimination ordinances, including the numbers of unsuccessful applications and those which were due to the failure to pass the means test.

*(Post-meeting note: letter dated 5 June 2008 from the Director of Legal Aid was circulated to members vide LC Paper No. CB(2)2187/07-08.)*

Admin

6. In response to the Chairman's enquiry, the Administration advised that it aimed at providing the draft CSAs to be proposed by the Administration for

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members' consideration by 3 June 2008.

Date of next meeting

7. Members noted that the next meeting would be held on Tuesday, 3 June 2008, at 4:30 pm.
8. There being no other business, the meeting ended at 11:00 am.

Council Business Division 2  
Legislative Council Secretariat  
22 October 2008

**Proceedings of the meeting of Bills Committee on  
Race Discrimination Bill  
on Monday, 26 May 2008, at 8:30 am  
in Conference Room A of the Legislative Council Building**

| Time marker     | Speaker                                                                                              | Subject                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Action required                                                                                                                     |
|-----------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 000000 - 004301 | Chairman<br>Admin<br>ALA6<br>Mr CHEUNG Man-kwong<br>Mr Martin LEE                                    | <p>Briefing by Deputy Secretary for Constitutional and Mainland Affairs (1) on the paper entitled "Administration's response to questions raised at the meeting held on 25 April 2008"<br/>[LC Paper No. CB(2)2046/07-08(01)]</p> <p>Concern about whether Clause 45(2)(b) should be amended to cover an activity in public that (i) was a communication or the distribution or dissemination of any matters; and (ii) consisted of a publication which was subject to a defence of absolute privilege in proceedings for defamation.</p> <p>Queries about the specific activities intended to be regulated under Clause 45.</p> <p>Queries about the scope of coverage of the expression "activity in public" in Clause 46(1).</p> <p>Concern about whether an objective or subjective test would apply for the mens rea of the offence under Clause 46 and whether inchoate offences would be caught by the provision.</p> | <p><b>Admin to provide a further paper to address members' concerns about Clauses 45 and 46</b><br/>(para. 2(a)-(d) of minutes)</p> |
| 004302 - 004924 | Chairman<br>Admin                                                                                    | <p><b>Clause-by-clause examination of the Bill</b></p> <p><u>Clause 59 and Schedule 5</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                     |
| 004925 - 012245 | Chairman<br>Admin<br>Dr Fernando CHEUNG<br>Mrs Anson CHAN<br>ALA6<br>Ms Jasper TSANG<br>Ms Emily LAU | <p><u>Part 7 (Clauses 60-69)</u></p> <p>Member's suggestion of re-drafting Clause 65 as "Without limiting section 60, the Commission may, if it thinks fit, and shall, if required by the Chief Secretary for Administration, conduct a formal investigation...".</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p><b>Admin to consider the suggestion of revising Clause 65</b><br/>(para. 2(e) of minutes)</p>                                    |

| Time marker     | Speaker                                                                                    | Subject                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Action required                                                                                                                                                                                                         |
|-----------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                            | <p>The Administration's advice that "Secretary for Home Affairs" would be replaced with "Secretary for Constitutional and Mainland Affairs" in Clauses 64(3).</p> <p>Concern about whether the Equal Opportunities Commission (EOC) was conferred with adequate power for the performance of its functions under relevant provisions of existing anti-discrimination ordinances on which Parts 7-9 of the Bill were modeled and whether there was a need to strengthen relevant provisions.</p> | <p><b>Adm to move a CSA to Clauses 64(3)</b><br/>(para. 3 of minutes)</p> <p><b>EOC was requested to provide information to facilitate members' scrutiny of provisions relating to EOC</b><br/>(para. 4 of minutes)</p> |
| 012446 - 014808 | Admin<br>Chairman<br>Miss CHOY So-yuk<br>Ms Emily LAU<br>Mrs Anson CHAN<br>Ms LI Fung-ying | <p><u>Part 8 (Clauses 70-75)</u></p> <p>Concern about whether the requirement of passing the means test imposed on complainants who applied for legal aid in making claims in respect of discrimination, harassment and vilification under the three existing anti-discrimination ordinances had created undue difficulties to them.</p> <p>Concern about whether the time limit of allowing five years, under Clause 72(4), for furnishing information to EOC was unduly long.</p>             | <p><b>The Clerk to obtain information on applications for legal aid under the three existing anti-discrimination ordinances</b><br/>(para. 5 of minutes)</p>                                                            |
| 014809 - 020407 | Chairman<br>Admin<br>Ms Emily LAU<br>Clerk                                                 | <p><u>Work plan of the Bills Committee</u></p> <ul style="list-style-type: none"> <li>- target date of the Administration to make available the Committee Stage amendments (CSAs) to be proposed by the Administration; and</li> <li>- legislative timetable.</li> </ul>                                                                                                                                                                                                                        |                                                                                                                                                                                                                         |
| 020408 - 020514 | Chairman<br>Admin<br>Miss CHAN Yuen-han                                                    | <p><b>Resumption of clause-by-clause examination of the Bill</b></p> <p><u>Part 8 (Clauses 76-81)</u></p> <p>Query about the number of occasions on which EOC had applied to the District Court for an injunction under relevant provision of the three existing anti-discrimination ordinances.</p>                                                                                                                                                                                            |                                                                                                                                                                                                                         |

| <b>Time marker</b> | <b>Speaker</b>               | <b>Subject</b>                                                                                                                                | <b>Action required</b>                                          |
|--------------------|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
|                    |                              | EOC's view on Clause 80 based on its experience of implementing the relevant provisions in the three existing anti-discrimination ordinances. |                                                                 |
| 020515 - 022301    | Chairman<br>Admin            | <u>Part 9 (Clauses 82-85)</u>                                                                                                                 | <b>Admin to move a CSA to Clause 84</b><br>(para. 3 of minutes) |
| 022302 - 022920    | Chairman<br>Admin<br>members | Date of next meeting                                                                                                                          |                                                                 |

Council Business Division 2  
Legislative Council Secretariat  
22 October 2008