

Legislative Council Bills Committee on Race Discrimination Bill

Discriminatory advertisements

Purpose

At the meeting held on 16 January 2007, Members asked the Administration –

“to confirm whether graphics or accents used would be regarded as part of the advertisement in determining whether the advertisement is of a discriminatory nature.”

This paper presents for Members’ information our clarification on the matter.

Discriminatory advertisements

2. Clause 42 of the Bill deals with discriminatory advertisements. Clause 42(1) and (2) reads –

“(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part 3 or 4.

(2) Subsection (1) does not apply to an advertisement if the intended act would not be unlawful.”

3. The term “advertisement” is defined in Clause 2 of the Bill, viz.-

“ ‘advertisement’ includes every form of advertisement, whether to the public or not, and whether –

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels, showcards or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material;
- (e) by exhibition of pictures, models or films; or
- (f) in any other way;”

This is a broad definition. It covers (in particular, in paragraphs (b), (e) and (f) of the definition) an advertisement by television or radio, by exhibition of

pictures or in any other way. Therefore, an advertisement that includes graphics or accents will be considered as a whole including the graphics or accents.

4. It may be further clarified that Clause 42 relates to advertisement indicating an intention to do an act that is or might be unlawful under Parts 3 and 4 of the Bill. Those Parts cover such matters as employment, education, provision of goods, facilities, services and premises. Therefore, Clause 42 will make it unlawful if, for example, an employer publishes a job advertisement indicating that an applicant for a particular vacancy must be Chinese, unless an exception (e.g., genuine occupational qualification under Clause 11) applies.

Presentation

5. This paper has been prepared in response to item (q) of the “List of issues raised by members”. It is presented for Members’ information and for consideration at the Bills Committee meeting to be held on 5 February 2007.

Home Affairs Bureau
January 2007