

**立法會**  
**Legislative Council**

LC Paper No. LS64/07-08

**Paper for the Bills Committee on  
Race Discrimination Bill**

**Legal effect of the Administration's proposed amendment  
to Clause 3 of the Race Discrimination Bill**

At the Bills Committee meeting held on 12 March 2008, a Member requested that the advice then orally given by the legal adviser to the Bills Committee in respect of the legal effect of the Administration's proposed amendment to clause 3 of the Race Discrimination Bill (the Bill) be reduced to writing. This paper sets out in writing the advice given with the necessary elaboration.

2. The Administration's proposed amendment to clause 3 of the Bill (the amendment) is to delete the existing provision and substitute the following:-

“This Ordinance binds the Government.”

The legal effect of the amendment may be better understood when compared with the legal effect of the existing clause 3.

3. The existing clause 3 is as follows:-

“This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.”

Its effect is that before it may be decided whether the provisions of the Bill would apply to an act done by or for the purposes of the Government, it must first be decided whether that act is similar in kind to an act of a private person. If there is no act of a similar kind of a private person, the Bill would not be applicable to the act of the Government. This operates as a hurdle that must

be surmounted before the other provisions of the Bill would be applicable to an act of the Government. From a legal point of view, the amendment would remove this hurdle.

4. An example of the practical effect of the amendment may be the extension of the application of the Bill to the services provided by the Business Registration Office which would not otherwise be caught since those services may not be similar to any act done by a private person. However, the amendment does not change the fact that the Bill would not be binding on the Government in so far as the performance of its functions or the exercise of its powers does not constitute any act prohibited under the provisions of Part 3 and Part 4 of the Bill. Hence, the example of a police officer's selective ticketing on the ground of race would remain outside the application of the Bill.

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