

Bills Committee on Race Discrimination Bill

**The Administration's response to the issues raised by deputations/individuals
at the Meeting held on 3 March 2007**

<p>Deputation/Individual [LC Paper no. of submission]</p>	<p>Issues raised and the Administration's response</p>
<p>Application to Government (Clause 3)</p>	
<p>Equal Opportunities Commission [CB(2)1168/06-07(05)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p>	<p>(a) The Bill, unlike other existing anti-discrimination ordinances, does not apply to the performance of functions and powers of the Government.</p> <p><u>Administration's response:</u></p> <p>The proposed legislation applies to Government in the same way as it applies to individual persons and organisations in the private sector. Clause 3 provides that the Ordinance, when enacted, "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". Clause 27(2)(h) further clarifies the ambit of the proposed legislation to include particularly "the services of any department of the Government or any undertaking by or of the Government.</p>

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	<p>It may be further noted that the Government and public authorities are already governed by The Hong Kong Bill of Rights Ordinance (HKBORO) which guarantees to all persons equal and effective protection against discrimination on any ground including, specifically, race. One of the main purposes of the present legislative exercise is also, following the recommendation of the United Nations Committee on Elimination of All Forms of Racial Discrimination (CERD), to extend the scope of protection so as to prohibit racial discrimination by persons and organisations in the private sector.</p>
<p>Discrimination and harassment to which the Bill applies (Clauses 4 to 9)</p>	
<p>I. <u>Application to new arrivals from the Mainland</u></p>	
<p>Society for Community Organisation (SOCo), New Immigrants Mutual Aid Association [CB(2)1168/06-07(01)] [CB(2)1226/06-07(02)]</p> <p>Professor G G WANG [CB(2)1168/06-07(04)]</p>	<p>(a) The scope of the Bill should be extended to cover discrimination against new arrivals from the Mainland by adding the following grounds of discrimination to be addressed by the Bill -</p> <ul style="list-style-type: none"> - language, - origin from any place outside HKSAR, - nationality,

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<p>Democratic Party [CB(2)1226/06-07(03)]</p> <p>Association of Mainland Overseas Returned Scholars in Hong Kong [CB(2)1226/06-07(07)]</p> <p>Hong Kong Human Rights Monitor</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<ul style="list-style-type: none"> - residency status, or - immigrant status or former immigrant status. <p><u>Administration's response:</u></p> <p>The definition of “race” in Clause 8(1)(a) of the Bill is identical to that in Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It is confined to a person’s “race, colour, descent, or national or ethnic origin”. Article 1(2) of ICERD specifically excludes from application of the Convention any distinctions, exclusions, restrictions or preferences made between citizens and non-citizens. Article 1(3) also excludes matters relating to nationality, citizenship and naturalisation. In short, language, origin from places outside the HKSAR, nationality, residence status, immigrant status or former immigrant status are not recognised as grounds of racial discrimination under the Convention.</p> <p>(b) "National origin" in the definition of "race" under the Bill should be interpreted to include "origin from any place outside HKSAR".</p> <p><u>Administration's response:</u></p> <p>The concept of “national origin” is based on the concepts of “nation” and “nationhood”.</p>

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	<p>Hong Kong is part of China and Hong Kong Chinese and new arrivals from China are of the same national origin. It would not be justified to interpret it to include "origin from any place outside HKSAR".</p> <p>(c) Definition of "race" should include new arrivals from the Mainland, following examples in Australian/New Zealand law.</p> <p><u>Administration's response:</u></p> <p>The two cannot be compared. Hong Kong is a part of China. New arrivals are mostly Chinese people who have relocated their place of residence to Hong Kong from other parts of China.</p> <p>(d) Policies such as imposition of the seven years' residency requirement for welfare benefits are discriminatory against new arrivals from the Mainland.</p> <p><u>Administration's response:</u></p> <p>The seven year residence requirement under the Comprehensive Social Security Assistance (CSSA) Scheme was recommended by the Task Force on Population Policy, approved by the Legislative Council, and has been implemented since 1 January 2004. Under the</p>

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	<p>requirement, one has to meet the seven-year residence rule in order to enjoy non-contributory social benefits financed by public funds. The rationale for the requirement is to ensure a rational basis on which the CSSA benefits, operated at an annual public expenditure of \$17.9 billion (2006-07 Revised Estimate), are allocated. Similar practice in the requirement for a period of prior residence as a condition for receipt of non-contributory welfare benefits are commonly found in other developed countries. Nevertheless, to uphold the rights of the child, all children under 18 are exempted from the residence requirement. Also, the Director of Social Welfare may exercise discretion to waive the residence requirement for provision of CSSA in cases of genuine hardship. It should be noted that the seven-year requirement applies to all applicants irrespective of race, colour or origin.</p>
<p>International Social Service - Hong Kong Branch</p> <p>Hong Kong General Chamber of Commerce (HKGCC) [CB(2)1147/06-07(01)]</p> <p>The Federation of Hong Kong & Kowloon Labour Unions [CB(2)1168/06-07(06)]</p>	<p>(e) New arrivals from the Mainland should not be included within the scope of protection of the Bill, as the existing level of resources/assistance available to them is already adequate and designating them as a protected category may marginalise and segregate them from society.</p> <p><u>Administration's response:</u></p> <p>We agree that the length of residence in Hong Kong should not be included as a ground of racial discrimination. The Bill affords protection to all persons in Hong Kong, irrespective of whether they are permanent residents, new arrivals or even visitors on</p>

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	<p>temporary stay. We remain committed to facilitate early integration of new arrivals through public education and providing assistance and support services where necessary.</p> <p>(f) Given the difficulties of identifying who will be qualified as "recent arrivals from Mainland China", it will be more appropriate to address discrimination against new arrivals through public education instead of including them within the scope of protection of the Bill.</p> <p><u>Administration's response:</u></p> <p>We agree. As pointed out in our response to item (e) above, new arrivals will enjoy the same protection against racial discrimination as other persons in Hong Kong under the Bill.</p> <p>(g) The meaning of "race" and "racial group" should be clearly defined to avoid misunderstanding and claims.</p> <p><u>Administration's response:</u></p> <p>The meaning of "race", "on the ground of race" and "racial group" is clearly defined in Clause 8 of the Bill. Ultimately, whether a particular group of persons can be considered a distinct ethnic/racial group is a question of fact and evidence.</p>

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II. <u>Criteria for determining "justifiability"</u>	
<p>Equal Opportunities Commission (EOC) [CB(2)1168/06-07(05)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p> <p>Hong Kong Against Racial Discrimination</p> <p>Hong Kong Integrated Nepalese Society (HKINS) [CB(2)1168/06-07(02)]</p>	<p>(a) The Bill contains provisions regarding what is a justifiable requirement or condition which are not found in other anti-discrimination ordinances.</p> <p><u>Administration's response:</u></p> <p>These provisions are included for clarity of the law. They also provide guidance to the public on the circumstances to be taken into account when considering whether a certain condition or requirement may be legitimate under the Bill. These provisions are consistent with the internationally accepted principles of rationality and proportionality.</p> <p>(b) Reference should be made to relevant legislation in the European Union (EU) in defining the scope of "indirect discrimination" under the Bill.</p> <p>We had indeed considered the relevant references during the drafting of the Bill. The present proposal in the Bill, which sets out the factual circumstances for the rationality and proportionality tests, provides for greater clarity and objectivity which better suit the Hong Kong circumstances. The test of "a particular disadvantage" introduced in the EU is a broader and less statistical test, as opposed to the fact-based proportionality test adopted in</p>

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	<p>our Bill, and could be open to interpretations and arguments.</p> <p>(c) The test for indirect discrimination is too onerous and not found in the legislation of other common law jurisdictions. Clause 4 (Racial discrimination) and clause 58 (Exception for languages) will render the Bill ineffective in offering protection against indirect discrimination.</p> <p><u>Administration's response:</u></p> <p>The provisions concerned are included for the sake of clarity and certainty which are essential for effective compliance and implementation of the law. They would not undermine the effectiveness of the proposed legislation. The provisions are justified and are consistent with internationally accepted principles.</p> <p>(d) The policy of imposing the entry requirement of a pass in the Hong Kong Certificate of Education Examination in "Chinese Language" for a number of civil service posts without justifications is discriminatory against ethnic minorities.</p> <p><u>Administration's response:</u></p> <p>The Government has a public duty to ensure and to maintain an effective civil service</p>

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	<p>which is proficient in both official languages, at the level required by the job. At the initiative of the Secretary for the Civil Service, all government bureaux and departments have been asked to review their recruitment criteria to ensure that the language proficiency requirements are commensurate with the actual operational requirements. In addition, Heads of Departments/Grades were also recently given additional flexibility to determine the language proficiency requirement for appointment to non-degree posts, which may as appropriate be below a pass in Chinese language in the Hong Kong Certificate of Education Examination.</p>
<p>III. <u>Discrimination on the ground of language or religion and other forms of discrimination</u></p>	
<p>Society for Community Organisation [CB(2)1168/06-07(01)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p> <p>Far East Overseas Nepalese Association</p>	<p>(a) The Bill should make provisions to explicitly provide that discrimination on the ground of language is not allowed so as to protect ethnic minorities from being denied access to government services due to language barrier.</p> <p><u>Administration's response:</u></p> <p>While language is not a ground of race under the Race Discrimination Bill, the Bill does outlaw language discrimination. For example, it would be unlawful for an employer to</p>

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<p>[CB(2)1226/06-07(05)]</p> <p>Civic Party</p> <p>[CB(2)1243/06-07(02)]</p> <p>Hong Kong Against Racial Discrimination</p>	<p>impose a language requirement that has a disproportionate negative impact on a racial group if the requirement cannot be shown to be justifiable irrespective of race. Government and public authorities are already bound by the HKBORO not to discriminate on the ground of language. We recognise, however, that it would not be practicable for service providers, either in the public or private sectors, to conduct their activities and businesses in all languages or in the language of the clients/customers' choice.</p> <p>As far as Government is specifically concerned, it is established policy and practice for all written materials meant for the public, such as Government reports, consultative documents, forms, pamphlets, booklets, posters, banners, notices, signs, etc., to be in both Chinese and English. Verbal and written Government announcements intended for the general public are also bilingual. Correspondence with members of the public are conducted in the language of the incoming correspondence as far as practicable. Frontline staff are required to answer enquiries and offer assistance in either English or Chinese, depending on the spoken language of the client concerned. In areas of essential services such as hospitals and courts, the relevant authorities also offer translation service for non-English/non-Chinese speaking clients, subject to availability of interpreters for the relevant language and prior arrangements being made on request. We also publish various guidebooks in the languages of the ethnic minorities to promote awareness and facilitate their access to government services.</p>

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<p>Hong Kong Coalition of Indonesian Migrants Workers Organisation [CB(2)1226/06-07(05)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(b) The Government is obliged under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to legislate against discrimination on the ground of religion, and a holistic approach for prohibiting various forms of discrimination should be adopted, including discrimination on the ground of language, religion, political opinion, birth or other status.</p> <p><u>Administration's response:</u></p> <p>The provisions of the ICCPR as applied to Hong Kong, including Article 26, have been given effect in local law through the HKBORO.</p> <p>On the other hand, Article 2 of the ICESCR requires State Parties to “take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” It is clear that legislation is not the only means.</p> <p>In Hong Kong, we continue to combat discrimination through administrative measures, public education, support services and legislative means as appropriate. We already have</p>

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	<p>the Sex Discrimination Ordinance (Cap 480), the Disability Discrimination Ordinance (Cap 487) and the Family Status Discrimination Ordinance (Cap 527) which tackle the specific forms of discrimination. The present Race Discrimination Bill is a progressive step forward in the same direction.</p>
<p>IV. <u>Discrimination on the ground of race of near relative</u></p>	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Equal Opportunities Commission [CB(2)1168/06-07(05)]</p>	<p>(a) The Bill covers only near relatives whereas a similar concept of transferred discrimination in the Disability Discrimination Ordinance covers a wider range of people (i.e., associates).</p> <p><u>Administration's response:</u></p> <p>The provision in the Disability Discrimination Ordinance regarding indirect discrimination is stricter than that in the Race Discrimination Bill given that the former seeks to protect persons who face severe or insurmountable physical or mental constraints. The definition of "Associate" in the Disability Discrimination Ordinance is too wide for adoption in the present Bill.</p>

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Discrimination and harassment in employment field (Clauses 10 to 25)	
I. <u>Exception for small employers with not more than five employees during the first three years of the enactment of the Bill</u>	
<p>Democratic Party [CB(2)1226/06-07(03)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p> <p>International Social Service - Hong Kong Branch</p> <p>Christian Action</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>(a) To reduce the three-year transitional period for small employers to one year or less.</p> <p><u>Administration's response:</u></p> <p>There are clearly divergent views within the community. We believe a three-year transitional period to be reasonable to smoothen implementation and to minimise hardship for small employers with not more than five employees, who do not have the same resources as larger corporations, in adapting to the new law.</p> <p>Similar provisions were also made in all the existing anti-discrimination ordinances.</p>

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Hong Kong General Chamber of Commerce [CB(2)1147/06-07(01)]	<p>(b) The transitional period of one year is too short, and the Administration should deploy sufficient resources to necessary publicity work to explain in detail the requirements contained in the Bill to small to medium enterprises (SMEs).</p> <p><u>Administration's response:</u></p> <p>Please see our response to (a) above. EOC will consult relevant parties in preparing the Code of Practice and will arrange publicity and public education to familiarize the stakeholders and public with the statutory provisions.</p>
New Territories General Chamber of Commerce	<p>(c) The exemption for small employers should be granted on a permanent basis.</p> <p><u>Administration's response:</u></p> <p>Please see our response to (a) above. Having regard to the experience in implementing the other three existing anti-discrimination ordinances, we consider that small employers should be able to adapt to the Bill at the end of the three-year grace period. We do not see the justifications to exempt small employers on a permanent basis.</p>

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II. <u>Exception for existing employment on local and overseas terms of employment</u>	
<p>Employers' Federation of Hong Kong [CB(2)1202/06-07(01)]</p> <p>Hong Kong General Chamber of Commerce [CB(2)1147/06-07(01)]</p> <p>The British Chamber of Commerce in Hong Kong</p> <p>Equal Opportunity Officer, The University of Hong Kong (EOO/HKU) [CB(2)1168/06-07(10)]</p>	<p>(a) The exception should be allowed in order to attract and retain talent, both local and overseas.</p> <p><u>Administration's response:</u></p> <p>We note the extensive support for the proposed provision. We recognise that practice involved is based on human resource policy considerations that do not relate to race.</p> <p>(b) EOO/HKU supports the exception as it will allow the University to offer competitive remuneration package to attract competent appointees.</p> <p><u>Administration's response:</u></p> <p>Please see our response to (a) above.</p>
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>(c) The exception may violate Article 26 of ICCPR and the International Labour Organisation conventions applicable to Hong Kong.</p>

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	<p><u>Administration's response:</u></p> <p>The provision does not violate Article 26 of the ICCPR. The provision, when enacted, will apply equally to all, irrespective of race.</p> <p>Concern was raised specifically on possible conflict of clause 14 with Article 6 under the Migration for Employment Convention (Revised), 1949 (International Labour Conventions (ILC) No. 97). It should be noted that under Article 6(1)(a), each Member of the International Labour Organization for which ILC No. 97 is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of certain terms of employment e.g. remuneration, holidays with pay etc in so far as such matters are <u>regulated by law or regulations, or are subject to the control of administrative authorities</u>. As clause 14 of the Bill only concerns the terms of employment agreed between employers and employees themselves, ILC No. 97 should have no application here.</p>

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III. <u>Exception for genuine occupational qualification</u>	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(a) The exception may be abused by employers in recruitment and its application should be restricted by applying an objective test.</p> <p><u>Administration's response:</u></p> <p>The criteria set out in clause 11(2) are already clear and objective, confining the exceptions in specified areas so as to allow freedom of creativity in dramatic performances or other entertainment/art/visual image work; the creation of authentic atmosphere in restaurants; the offering of personal services promoting the welfare of a racial group or which require cultural sensitivity and familiarity.</p> <p>Similar provision exists in anti-discrimination laws in other common law jurisdictions, e.g., section 5(2) of the Race Relations Act 1976 (UK) and, to our knowledge, has not found to present difficulties or have been abused.</p>

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IV. <u>Meaning of employment at establishment in Hong Kong</u>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>(a) The meaning of “an establishment in Hong Kong” should be defined in such a way that Hong Kong residents working outside Hong Kong for companies registered in Hong Kong will also be protected.</p> <p><u>Administration's response:</u></p> <p>The definition is identical to those in all the three existing anti-discrimination ordinances. We consider the proposed scope appropriate.</p>
V. <u>Qualifying bodies</u>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>(a) It is an over-legislation to allow imposition of requirement for language proficiency by qualifying bodies under clause 19(2).</p>

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	<p><u>Administration's response:</u></p> <p>This clause is incorporated to provide for clarity and certainty, particularly also to allay the qualifying bodies' concerns over the risk of unnecessary litigation and challenges. These language proficiency requirements are also justified having regard to the operation and circumstances of the professions concerned.</p>
<p>VI. <u>Vocational training</u></p>	
<p>Vocational Training Council [CB(2)1202/06-07(03)]</p>	<p>(a) The exception for medium of instruction and arrangements regarding holidays in education and training bodies under clause 20(2) is supported.</p> <p><u>Administration's response:</u></p> <p>The Government firmly upholds the right of children to education, irrespective of their race or ethnic origin. Following the calendar of vocational training institutions or educational establishments and learning through the medium of instruction that has been adopted by the institutions/educational establishments (in the Hong Kong context, the medium of instruction for these establishments is normally one or both of the official languages in</p>

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	<p>Hong Kong, i.e. English and/or Chinese) are necessary. This is to ensure that the ethnic minority students could genuinely integrate into the wider community and be able to maximize their learning alongside other students attending the institution/educational establishments concerned..</p> <p>In parallel, the Government has taken steps to enhance the proficiency of ethnic minority students in the two official languages to help them cope with the medium of instruction and will continue to do so.</p>
<p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(b) Clause 20(2) will allow vocational training institutes to continue to ignore the demands of ethnic minorities for special arrangement to be made to cater for their special language needs.</p> <p><u>Administration's response:</u></p> <p>Please see our response to (a) above. Moreover, the vocational training institutions have endeavoured to provide English programmes for the non-Chinese speaking community, as well as other support measures to cater for the specific language needs of individuals who have difficulties with both Chinese and English. The details of these are set out in LC Paper No. CB(2)1019/06-07(01) and LC Paper No. CB(2)1351/06-07(02) earlier presented to the Bills Committee.</p>

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Education (Clauses 26, 49 and 58)	
I. <u>No mandatory requirement for modification of arrangement for medium of instruction in educational establishments</u>	
<p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>Democratic Party [CB(2)1226/06-07(03)]</p> <p>Pakistan Islamic Welfare Union [CB(2)1168/06-07(03)]</p> <p>Society for Community Organisation [CB(2)1168/06-07(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>(a) The Bill fails to bring about any improvement to the problem of language barrier suffered by ethnic minority students whose educational opportunities will continue to be undermined.</p> <p><u>Administration's response:</u></p> <p>Please see our response under (a) of "Vocational Training".</p> <p>It should also be noted that using Chinese/English as the medium of instruction and teaching Chinese as a subject are two separate matters. Medium of instruction is the language that institutions/educational establishments use to teach a subject, say, Mathematics. As set out in LC Paper No. CB(2)1019/06-07(01), irrespective of the medium of instruction used in educational establishments, the Education and Manpower Bureau has strengthened support for the teaching and learning of Chinese as a subject in respect of non-Chinese speaking students and will continue to devote efforts in that regard.</p>

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	<p>(b) The exception for language will allow schools to refuse providing English translation or translation in any other languages to cater for the special needs of students.</p> <p><u>Administration's response:</u></p> <p>Please see our response to item (a) under “Discrimination on the ground of language or religion and other forms of discrimination”.</p> <p>(c) While ethnic minority children may study in Chinese schools under the new school allocation system, no support measures (e.g. special training for teachers) are provided to these schools to cater for the needs of these students.</p> <p><u>Administration's response:</u></p> <p>Government does provide special support measures for non-Chinese speaking students and teachers of designated schools. Details are set out in LC Paper No. CB(2)1019/06-07(01) and LC Paper No. CB(2)1351/06-07(02).</p> <p>(d) Ethnic minority students are in need of the provision of a tailor-made Chinese curriculum for them, school circulars in English, and Chinese tutorials to assist them learn Chinese and integrate into mainstream education.</p>

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	<p><u>Administration's response:</u></p> <p>The special educational support measures provided for non-Chinese speaking students on the learning of Chinese are set out in LC Paper No. CB(2)1019/06-07(01) and LC Paper No. CB(2)1351/06-07(02). In particular, a supplementary curriculum guide on the teaching of Chinese to non-Chinese speaking students will be developed under the umbrella of the central Chinese Language curriculum framework. This supplementary guide will advise on the selection of key learning targets and objectives related to different strands (e.g. reading, writing, speaking, listening, culture and literature, etc.), and principles of selecting relevant materials and contexts for the different needs of students. It will also be supported by examples based on the experiences of learning and teaching of Chinese Language to non-Chinese speaking students in local schools. Separately, EMB will commission tertiary institution(s) to run a Chinese Learning Support Centre, which will support non-Chinese speaking students who are less proficient in Chinese (in particular the late starters) by offering remedial programmes after school hours or during holidays.</p> <p>As for school circulars, EMB has provided a set of templates in both Chinese and English on its homepage for the reference of schools, in particular those admitting non-Chinese speaking students.</p>

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	<p>(e) The 15 designated schools should recruit ethnic minority teachers who know Chinese.</p> <p><u>Administration's response:</u></p> <p>Most designated schools have already been implementing various support measures for non-Chinese speaking students by flexibly deploying existing resources such as the resources for Remedial Teaching, Intensive Learning Support Grant under the New Funding Mode, Capacity Enhancement Grant, etc. The measures include, among other things, employing ethnic minority teaching assistants to assist non-Chinese speaking students in learning, and to assist schools in communicating with non-Chinese speaking parents.</p>
<p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(f) Not imposing a mandatory requirement for modification of medium of instruction in educational establishments (clause 26(2)) is supported as English is the medium of instruction mainly used by the University.</p> <p><u>Administration's response:</u></p> <p>Noted. Please also see our response under (a) of "Vocational Training".</p>

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Association of Hong Kong Chinese Middle Schools (the Association) [CB(2)1168/06-07(11)]	<p>(g) The Association is concerned that in the event that clause 26 is deleted from the Bill, the resource implications (e.g. arising from the need to provide services such as translation to ethnic minority students) will be serious.</p> <p><u>Administration's response:</u></p> <p>Noted. We understand the concern. Please also see our response to (a) under "Vocational Training" and (b) above.</p> <p>(h) The Association is concerned that the Bill does not address problems, such as whether ethnic minority students/teachers can demand for special arrangements regarding school uniform/students' hair style or school catering service be made to meet their special needs.</p> <p><u>Administration's response:</u></p> <p>We encourage schools to accommodate the needs of ethnic minority students in respect of uniform, hair style and food served in school canteens as far as it is reasonably practicable, bearing in mind their educational objectives and their school policies. Under Clause 4(1)(b) of the Bill, it would be unlawful for a person (which includes an educational institute) to apply a requirement or condition that has a disparate adverse impact on a particular racial</p>

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	<p>group unless it can be shown to be justifiable irrespective of race.</p>
<p>Provision of goods, facilities, services and premises (Clauses 27 to 33 and 58)</p>	
<p>I. <u>Exception for use, or failure to use, particular language in regard to provision of goods, services and facilities, etc.</u></p>	
<p>Pakistan Islamic Welfare Union [CB(2)1168/06-07(03)]</p> <p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)]</p>	<p>(a) Clause 58 will legitimise existing discriminatory practices, such as the Labour Department advertising job vacancies in Chinese only, and public hospitals refusing to provide translation service for ethnic minorities, and the exception will reinforce the language barrier of ethnic minorities and deprive them of equal opportunities in gaining access to social services.</p> <p><u>Administration's response:</u></p> <p>Government is committed to promote equal opportunities and to eliminate racial discrimination. As explained in our response to item (a) under the heading "III. Discrimination on the ground of language or religion and other forms of discrimination" above, extensive measures have been taken to ensure effective communication and access to government services particularly by members of the ethnic minorities.</p>

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	<p>At the same time, we recognize that it would not be practicable for all service providers, either in the public or private sectors, to conduct their activities and businesses in all languages or in the language of the client/customer's choice. Hence, we do not propose to make it mandatory for particular languages to be used for the purpose of communication. We have no doubt that those service providers who target their service at specific minority groups will conduct their business in the appropriate language as is reasonably practicable in the circumstances. This is a pragmatic approach which we believe to be in the interest of the community as a whole. It should not be misconstrued as condoning discrimination.</p> <p>Up-to-date vacancy information displayed on Labour Department (LD)'s Interactive Employment Service website and the user-friendly vacancy search terminals at Job Centres is provided in English, Traditional Chinese and Simplified Chinese. With only few exceptions where some of the job vacancy particulars cannot be readily translated into English, the essential items (e.g. occupation, working hours, salary, location of workplace) as well as common qualification requirements and job descriptions are shown in both English and Chinese. Vacancy particulars which cannot be readily translated are displayed in the original language as provided by the employers to ensure that the relevant information is accurately reflected. LD also encourages ethnic minorities to approach the staff at Job Centres or to make use of the Telephone Employment Service Centre when needed.</p>

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	<p>Special facilities for ethnic minorities are available at all LD's Job Centres. There is a resource corner at each of these 12 Job Centres to provide information in English on labour market and on job-hunting skills. Reference materials, including a special publicity leaflet "Easy-to-use Employment Services of the Labour Department", are available and distributed in Tagalog, Indonesian, Thai, Hindi, Urdu and Nepali. In addition, LD conducts regular employment briefings in English for ethnic minorities, which are specially tailored to their needs. It also disseminates to ethnic minority groups, on a monthly basis, relevant employment information including information on events such as job fairs organised by LD.</p> <p>As regard hospital services, the Hospital Authority (HA) is committed to providing quality medical care to all patients, irrespective of their race, colour or ethnic origin. To facilitate access to service, interpretation can be arranged for members of the ethnic minorities who require such assistance. For this purpose, the HA maintains at public hospitals/clinics and front-line departments a register of part-time interpreters who may be called upon to provide interpretation for patients as necessary. Meanwhile, the HA continues to improve its service and is preparing an explanatory leaflet on the services and the triage system at Accident & Emergency Departments for public information. This, when ready, will be translated in different ethnic minority language for distribution. Following discussion with ethnic minority representatives at the Government's Ethnic Minority Forum, it is also considering further enhancements of service to address their identified needs, particularly</p>

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	<p>to improve communication at operational level and in adding English translation in some notices for non-Chinese speaking patients.</p> <p>(b) The exception for the government's or private sectors' failure to provide translation service in important fields, e.g. education, employment, medical service, police, legal aid, housing, etc., should be removed.</p> <p><u>Administration's response:</u></p> <p>Please see our response to item (a) above. We consider the proposed provision reasonable and justified. The Government would continue to implement various administrative measures to ensure effective communication with ethnic minorities and facilitate their access to public services.</p>
<p>Employers' Federation of Hong Kong [CB(2)1202/06-07(01)]</p> <p>Hong Kong New Territories Commercial and Industrial General Association Yuen Mun Branch [CB(2)1219/06-07(02)]</p>	<p>(c) The Federation welcomes the exception for languages for the provision of goods and services.</p> <p><u>Administration's response:</u></p> <p>We note the view expressed. It re-affirms our conviction for an appropriate balance to be struck between the legitimate rights and interests of all affected parties in the community.</p>

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<p>Hong Kong General Chamber of Commerce (HKGCC) [CB(2)1147/06-07(01)]</p> <p>Hong Kong Federation of Insurers [CB(2)1168/06-07(07)]</p> <p>Yau Tsim Mong Committee on Promotion of Hong Kong Economy (YTMCPHKE) [CB(2)1168/06-07(09)]</p>	<p>(d) It will not be appropriate to prescribe that both Chinese and English are required in all circumstances, since the Basic Law states that both Chinese and English are Hong Kong's official languages.</p> <p><u>Administration's response:</u></p> <p>We note the view expressed. Please also see our response to items (a) and (c) above.</p> <p>(e) YTMCPHKE considers that as Hong Kong is a metropolitan city and English is commonly used, business enterprises should not be required to use any particular language other than Chinese and English for communication with customers.</p> <p><u>Administration's response:</u></p> <p>We note the concerns. We recognize that it would not be practicable to require service providers in the private sector to conduct their activities and businesses in all languages or to provide translations into different languages in their communications with clients/customers. Please also see our response to items (a) and (c) above.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
II. <u>Exceptions for small dwellings</u>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>(a) The Administration should explain the rationale of providing for such exceptions.</p> <p><u>Administration's response:</u></p> <p>In general, the Bill makes unlawful the withholding of licence or consent for assignment or sub-letting on the ground of race. However, in recognition of people's freedom of choice to determine who may live with them in their homes, Clause 29(2) permits a landlord to choose his tenant by reference to race if the landlord or his near relative lives in the premises and will have to share facilities, such as the kitchen and washroom, with the tenant. This does not apply if neither the landlord nor his near relative lives in the premises concerned, or if the premises are normally rented to more than two households or to more than six persons in addition to the landlord's household or that of his near relative.</p> <p>Clause 30 is an application of Clause 29(2) in the context of letting and assignment of premises. It permits a landlord in similar circumstances to choose his tenant by reference to race.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
III. <u>Exceptions for voluntary bodies</u>	
Civic Party [CB(2)1243/06-07(02)]	<p>(a) It is worried that the exception will give rise to groups or voluntary bodies which promote racial hatred and discrimination.</p> <p><u>Administration's response:</u></p> <p>Clause 31 is incorporated in the Bill specifically to safeguard the right to freedom of association by people, including members of ethnic minorities themselves. Hence, we propose that voluntary bodies should be free to determine its membership even if it is done by reference to race. Such voluntary bodies may be established for the purpose of promoting the welfare and equal opportunity of its members and should not be assumed to be racist. Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
Matters not affected by Parts 3, 4 or 5 of the Bill (Clauses 49 to 59)	
I. <u>Special measures</u>	
<p>Dr James Joseph KEEZHANGATTE [CB(2)1243/06-07(01)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p> <p>Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)]</p> <p>Vocational Training Council (VTC) [CB(2)1202/06-07(03)]</p> <p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(a) Reference should be made to relevant legislation in the United States and make provisions to permit affirmative action to be taken under the Bill to meet the special needs of ethnic minorities.</p> <p><u>Administration's response:</u></p> <p>It should be clear that the primary objective of the Bill is to ensure that people in Hong Kong are protected against discrimination on the ground of race and that they are to be treated equally irrespective of the race, colour, descent, or national or ethnic origin.</p> <p>We are mindful of the need to advance the opportunities of the ethnic minorities while not undermining the rights of other individuals in the community to compete on equal terms. Hence, consistent with the provision in Article 1(4) of ICERD and in the interest of community harmony and integration, we encourage special measures which are designed to</p>

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	<p>promote equal opportunity for specific racial group. C.49 of the Bill therefore affords explicit statutory safeguards for special measures that are reasonably intended to ensure equal opportunity by meeting the special needs of persons of particular racial groups. We are cautious, however, that we do not impose a mandatory requirement for those forms of affirmative measures (such as the imposition of quotas) which, while seeking to promote the interest of some, would pose undue hardship on other members of the community or could result in discrimination against those who are not members of the targeted racial group. The standard and approach proposed in the Bill are also consistent with those enshrined in the existing Sex Discrimination Ordinance and Family Status Discrimination Ordinance.</p> <p>Issues relating to “affirmative action” and experience in the US are discussed in detail in LC Papers No CB(2)1152/06-07(01) and CB(2)1351/06-07(01), submitted to the Bills Committee on 28 February and 23 March 2007, respectively.</p> <p>(b) Service providers in the public sector and educational/training institutions should be imposed a mandatory requirement to adopt special measures (e.g. providing interpretation services) to ensure equal treatment of ethnic minorities.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	<p><u>Administration's response:</u></p> <p>Please see our response to (a) above. Our policy is for integration and equal opportunities. While we will continue to endeavour to provide assistance and support for the ethnic minorities to facilitate their integration into the community, we do not propose to impose a mandatory requirement for affirmative action to be taken, either in the private or in the public sector. We also do not subscribe to measures which may run counter to the objective of community integration.</p> <p>(c) VTC supports the exception for the special measures which are intended for bestowing benefits on ethnic minorities and promoting equal opportunities for them under clause 49.</p> <p><u>Administration's response:</u></p> <p>We note the support. In this connection, EMB has been implementing, and will continue to implement, special measures providing education support for non-Chinese speaking students, including particularly ethnic minority students.</p> <p>(d) EOO/HKU supports the exception as the University may need to make some special administrative arrangements (e.g. to guarantee hostel places to non-local students)</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	<p><u>Administration's response:</u></p> <p>Point noted. We also note, however, that the distinction between local and non-local students is one of resident status, not of race. Hence, the provision in clause 49 of the Bill is not relevant.</p>
<p>II. <u>Charities</u></p>	
<p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(a) The exception for charities would allow the University flexibility in administering scholarships/awards.</p> <p><u>Administration's response:</u></p> <p>Noted. It is our intent to preserve the freedom of charities in deciding on the choice of their beneficiaries.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
III. <u>Nationality law, etc. not affected</u>	
Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]	<p>(a) The exception is supported as it will allow the University to continue to administer benefits/assistance that are only available to local students such as the University Financial Assistance, most scholarships, grants and loans, etc.</p> <p><u>Administration's response:</u></p> <p>Noted, but again as we pointed out in item (d) under "I. Special Measures" above, the distinction between local and non-local students is one of resident status and not one of race.</p>
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>(b) The exception should be deleted as it is too broad and unnecessary.</p> <p><u>Administration's response:</u></p> <p>Clause 54 of the Bill is included particularly for avoidance of doubt. It is in line with section 11 of the HKBORO. Article 1(3) of ICERD also specifically excludes legal provisions of States Parties concerning nationality, citizenship or naturalisation from the</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	ambit of the Convention.
IV. <u>Exception for immigration legislation</u>	
<p>Hong Kong Integrated Nepalese Society [CB(2)1168/06-07(02)]</p> <p>Society for Community Organisation & Voices of the Rights of Asylum Seekers and Refugees [CB(2)1168/06-07(01)]</p> <p>Coalition for Migrants Rights [CB(2)1226/06-07(05)]</p> <p>Filipinos Domestic Helper General Union [CB(2)1226/06-07(05)]</p> <p>Indonesian Migrant Workers Union [CB(2)1226/06-07(05)]</p>	<p>(a) The Immigration Ordinance should not be excluded from coverage of the Bill.</p> <p><u>Administration's response:</u></p> <p>Clause 55 follows the principle in Article 1(2) of the ICERD which states that "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens".</p> <p>Existing anti-discrimination legislation in Hong Kong and the HKBORO contain similar provisions.</p> <p>It is a common practice internationally that each country or territory, for the purpose of effective immigration control, formulates its own immigration legislation and visa policy governing entry of persons not having the right to enter and remain in the country or territory. The immigration control mechanism and visa policy will serve as the basis for</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
<p>Hong Kong Coalition of Indonesian Migrants Workers Organisation [CB(2)1226/06-07(05)]</p> <p>Association of Indonesian Migrant Workers [CB(2)1226/06-07(08)]</p>	<p>law enforcement and an effective tool to protect the interests, security, and well being of its people.</p> <p>(b) Asylum seekers, refugees and torture claimants should be included as protected groups under the Bill. The existing Immigration Ordinance, which renders no protection for these people, is indirectly discriminatory against people who mainly come from Africa and Southeast Asian regions.</p> <p><u>Administration's response:</u></p> <p>The Government does not discriminate against refugees, asylum seekers and torture claimants. Besides, the status of 'refugees, asylum seekers and torture claimants' does not by itself constitutes a racial group, nor to be regarded a ground of race.</p> <p>(c) It is unreasonable to require ethnic minorities who wish to obtain HKSAR passports to undergo interviews/tests in Chinese and to reject applicants who are not proficient in Chinese language.</p> <p><u>Administration's response:</u></p> <p>Please see our response to item (b) above. In addition, Article 1(3) of ICERD specifically</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	<p>excludes legal provisions of States Parties concerning nationality, citizenship or naturalisation from the ambit of the Convention.</p> <p>Knowledge of Chinese is not a pre-requisite for obtaining a HKSAR passport. HKSAR passports are issued only to designated categories of people specified under section 3 of the Hong Kong Special Administrative Region Passports Ordinance (Cap 539). A non-Chinese Hong Kong permanent resident has to be naturalized as a Chinese national under the Chinese Nationality (Miscellaneous Provisions) Ordinance (540) if he wishes to obtain a HKSAR passport. All these matters are governed by existing legislation in Hong Kong.</p> <p>(d) Existing immigration legislation/policies (e.g. "New Conditions of Stay", "Two-week Rule", the levy on foreign domestic workers' (FDWs') employers, and the Immigration Ordinance which splits ethnic minority families and new immigrant family apart) are discriminatory against FDWs and should be reviewed in the light of the Bill.</p> <p><u>Administration's response:</u></p> <p>Please see our response to item (a) above. In addition, it should be noted that the "two-week rule" is imposed to ensure effective immigration control and to deter foreign domestic helpers (FDHs) from taking up unauthorized work after termination of their</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	<p>employment contracts. The policy does not preclude FDHs from working in Hong Kong again after returning to their places of domicile. It applies equally to other migrant workers, such as workers imported under the Supplementary Labour Scheme, irrespective of their countries of origin. Likewise, the Employees Retraining Levy is imposed on all employers of foreign domestic helpers and other employers using other labour importation schemes under the Employees Retraining Ordinance, irrespective of the race of employers or employees. Neither of these is based on consideration of race and therefore does not entail racial discrimination.</p> <p>FDHs are not admitted to Hong Kong for settlement and they are not "new immigrants". They are admitted only for specific employment on a fixed-term contract and are expected to leave at the end of their contracts. Home leave is granted to FDHs to ensure that they will maintain links in their own countries. Besides, foreign nationals sponsoring the entry of their dependants must be responsible for their families' accommodation and living expenses during their stay in Hong Kong. FDHs are generally unable to fulfill such maintenance requirements. They are also specifically hired to work and live in their employers' homes. It is also relevant to note that workers imported under labour importation schemes are not allowed to bring in family members. Nevertheless, family members of FDHs may come to Hong Kong as visitors.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
	<p data-bbox="678 379 2040 507">(e) EOC should be empowered to extend the visas of FDWs involved in cases of contract violation so that they would not be forced to return to their place of origin without being given the chance to seek proper redress.</p> <p data-bbox="678 571 1064 603"><u>Administration's response:</u></p> <p data-bbox="741 667 2013 938">The Director of Immigration has the statutory authority vested in him under the Immigration Ordinance (Cap 115) to issue and extend visas, including those for FDHs. FDHs seeking redress from their employers or former employers may apply to the Immigration Department for extension of stay in Hong Kong. Applications will be considered in accordance with the relevant immigration policy and individual circumstances.</p> <p data-bbox="678 1007 2040 1086">(f) The right to participate in labour unions should be protected by ensuring that migrant workers are issued visas for their union work.</p> <p data-bbox="678 1150 1064 1182"><u>Administration's response:</u></p> <p data-bbox="741 1246 2013 1374">All employees in Hong Kong including migrant workers have the right to participate in union activities. However, their applications for visas or permission to take up employment, where required, are processed by the Immigration Department in accordance</p>

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	<p>with established policy. All applications are considered and determined in accordance with policy prevailing with due regard to individual circumstances. Race is not a criterion or factor of consideration.</p> <p>(g) The visa ban in respect of Nepalese migrant workers contradicts the provisions of the Bill and should be abolished.</p> <p><u>Administration's response:</u></p> <p>The HKSAR Government regularly reviews its visa policy for entry to Hong Kong to ensure that an appropriate balance is struck between facilitating entry of foreign nationals on the one hand and maintaining effective immigration control and safeguarding Hong Kong's security and interests on the other. Other relevant factors will also be taken into account, e.g. economic and trade relations, reciprocity and the political situation, and other circumstances of individual country or territory. Suitable adjustments of the visa policy will be made in the light of changes in the circumstances from time to time.</p> <p>The policy of applying different visa requirements on nationals from different countries or territories and the practice of reviewing visa policies in the light of changes in circumstances are consistent with the practices adopted by other overseas jurisdiction.</p>

Deputation/Individual [LC Paper no. of submission]	Issues raised and the Administration's response
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>(h) Exemptions concerning immigration legislation, statutory requirements, application to New Territories land, and languages should all be justified by applying the proportionality test.</p> <p><u>Administration's response:</u></p> <p>We have critically examined each of the proposed exception clauses to ensure that they are consistent with the internationally accepted principles of rationality and proportionality before their inclusion. The rationale for them are explained in paragraphs 25 and 26 of the relevant LegCo brief, with supporting details provided in Annex B of the paper.</p>
Equal Opportunities Commission (Clauses 60 to 85)	
Society for Community Organisation [CB(2)1168/06-07(01)] Hong Kong Human Rights Commission [CB(2)1168/06-07(01)] Mr Y K CHONG	<p>(a) EOC should be empowered to regularly review existing policies in the light of provisions of the Bill.</p> <p><u>Administration's response:</u></p> <p>This is catered for in clause 60(1)(e) of the Bill which empowers EOC to keep under</p>

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[CB(2)1226/06-07(04)]	<p>review the working of the Bill when enacted and, as appropriate, to draw up and submit to the Chief Executive proposals for amending it.</p> <p>(b) Ethnic minority representatives should be appointed as members of EOC.</p> <p><u>Administration's response:</u></p> <p>Noted.</p> <p>(c) EOC should make available multilingual services in handling complaints lodged under the Bill, and EOC should be given adequate resources for implementation of the Bill after its enactment, e.g. adequate translation service support throughout the process of handling such complaints.</p> <p><u>Administration's response:</u></p> <p>Noted. We shall also convey the suggestion for multilingual services to EOC as appropriate.</p> <p>(d) The body responsible for implementing the Bill should comply with the Paris Principles, should include members from diverse backgrounds to reflect the ethnic diversity of the</p>

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	<p>society, and should be empowered to bring civil proceedings against those who have performed discriminatory acts and to advise private or public bodies on compliance with the requirements of the Bill.</p> <p>The EOC does include members from diverse background from a wide spectrum of the community. It also has power and responsibility under existing anti-discrimination legislation to assist aggrieved parties in bringing civil proceedings against discriminators and acts of discrimination under the ordinances. Similar provisions have been proposed in the Bill.</p>

**Home Affairs Bureau
April 2007**