

政制及內地事務局局長
政府總部

香港下環厘畢道



LC Paper No. CB(2)2121/07-08(01)
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS
GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

30 May 2008

The Honourable Margaret Ng
Chairman
Legislative Council Bills Committee
on the Race Discrimination Bill
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Chairman,
Race Discrimination Bill

Thank you for your letter of 26 May. I would like to apprise you and Members of the Bills Committee of the additional amendments we propose to make to the Race Discrimination Bill and our hope for timely completion of the legislative exercise. Our views on the proposed race equality scheme will be set out in a paper to be issued separately.

Additional proposed amendments to the Bill

In my letter dated 27 February 2008 and our Paper No. CB(2) 1292/07-08(01) issued on 12 March 2008, we advised you and Members of the Bills Committee on the amendments which the Administration would propose to make to Clauses 3 and 4 of the Bill.

I am pleased to enclose with this letter a further list setting out the additional amendments to the Bill, which we propose to make at Committee Stage upon resumption of the Second Reading of the Bill in the Legislative Council. These proposals have been drawn up after taking into account the discussions at the Bills Committee and the constructive views which we have received so far from Members and the public.

During discussions at Bills Committee meetings, some Members have raised a number of other issues and asked the Government to consider amendments to the relevant provisions. Amongst them, we have explained in our Paper No. CB(2)1292/07-08(01) the considerations for not expanding the scope of the Bill to cover all government functions, for not making amendments to Clause 8 regarding the provisions on new arrivals from the Mainland and for retaining Clause 58 regarding the use of language.

We have also considered two other major provisions of concern to Members, which are Clauses 20(2) and 26(2). The two clauses provide that the Bill does not require vocational training and education establishments to modify for persons of any racial groups the establishment's arrangements regarding holidays or medium of instruction, or to make special arrangements on those matters for persons of any racial group.

It is well established that the right to education does not carry with it the right to be educated in the language of the student or in the language of the parent's choice. Following the calendar of educational establishment and learning through the official languages of Hong Kong are necessary in order to ensure that ethnic minority students could genuinely integrate into the community. Clause 26(2) is provided to avoid unnecessary disputes and challenges. Similar consideration applies to Clause 20(2) regarding vocational training.

Whilst we do not consider it appropriate to amend Clauses 20(2) and 26(2), we recognise the importance of taking measures to address the special needs of ethnic minority students and trainees with regard to the medium of instruction. The Administration will continue to work with the vocational training and education establishments to make best endeavours to enhance the support to ethnic minority students and trainees.

Proposed Race Equality Scheme

We have examined carefully the Race Equality Scheme of the United Kingdom and the discussion draft amendment in LC Paper No. CB(2) 2068/07-08(01). Our views will be set out in detail in a paper to be issued separately to the Bills Committee.

Timetable for completing the legislative process

As the end of the present term of office of the Members of the Legislative Council draws near, we need to focus our mind on the timetable for completing the legislative exercise. The Government is committed to enacting the Race Discrimination Bill before the end of the current Legislative Council Session.

We are very grateful to the Bills Committee for arranging additional meetings since April to examine the Bill. We very much hope that progress will continue to be made to complete the clause by clause examination. If necessary, the Administration stands ready to work with Members and to attend further additional meetings of the Bills Committee.

The Race Discrimination Bill is an important initiative. The Bill has been undergoing scrutiny for almost one and a half years. Our objective is to have the legislation enacted within the current term of the Legislative Council. We very much hope that with further cooperation on the part of all, we can resume second reading of the bill as soon as possible. To avoid last minute bunching of debates on bills, we hope that it will be possible to resume second reading by 25 June 2008. At any rate, we should complete the legislative process by the final sitting on 9 July 2008.

I would like to take this opportunity to reassure Members of the Government's commitment to safeguard the rights of all persons in Hong Kong against racial discrimination. Our objective is to enact an appropriate piece of legislation which takes into account local circumstances, is reasonable and practicable, and one which strikes the

right balance between the rights of the individual and those of others in the community.

I look forward to discussing these issues with you and Members at the Bills Committee meeting on 3 June.

*Yours sincerely,
Stephen Lam*

(Stephen Lam)
Secretary for Constitutional and Mainland Affairs

Race Discrimination Bill (RDB)

The Administration's proposed CSAs (in addition to those concerning Clauses 3 & 4 set out in LC Paper No. CB(2)1292/07-08(01))

Proposed CSA	Remarks
<p>Clauses 1(2), 64(3) and 84(1):</p> <p>To replace "Secretary for Home Affairs" by "Secretary for Constitutional and Mainland Affairs".</p>	<ul style="list-style-type: none"> • To reflect the transfer of responsibility for co-ordination of human rights policies from the Home Affairs Bureau to the Constitutional and Mainland Affairs Bureau with effect from 1 July 2007.
<p>Clauses 2(1): Definition of club</p> <p>To amend the definition of "club" in Clause 2(1) by deleting "sells or supplies liquor for consumption on its premises" so as to cover also clubs <u>not</u> selling liquor.</p> <p>This proposal would also include similar amendments to the three existing anti-discrimination ordinances.</p>	<ul style="list-style-type: none"> • Under existing definition, "club" means an association "of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that – <ul style="list-style-type: none"> (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and (b) sells or supplies liquor for consumption on its premises". • Clause 36 prohibits discrimination by clubs. Clause 37 provides for an exception from Clause 36 for a club "the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour".

Proposed CSA	Remarks
	<ul style="list-style-type: none"> The proposed deletion will ensure that all clubs, except for those with less than 30 members and those covered in Clause 37, are subject to the anti-discrimination provisions in Clause 36.
<p>Clause 2(1): Definition of estate agent</p> <p>To amend the definition of “estate agent” so that it “has the same meaning as in the Estate Agents Ordinance (Cap 511)”</p> <p>This proposal would also include similar amendments to the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO).</p>	<ul style="list-style-type: none"> Under existing definition, “estates agent” means “a person who, by way of profession or trade, provides services for the purpose of – <ul style="list-style-type: none"> (a) finding premises for persons seeking to acquire them; or (b) assisting in the disposal of premises.” The existing definition is outdated. The proposed CSA would bring the definition in line with the definition in the Estate Agents Ordinance which defines an “estate agent” as “a person who in the course of a business (whether or not he carries on that or any other business) does estate agency work”. The proposal is also in line with the existing definition of “estates agent” in the Family Status Discrimination Ordinance.
<p>Clause 2(1): Definition of near relative</p> <p>To include parents-in-law, children-in-law, brothers-in-law and sisters-in-law in the definition of “near relative” and to delete the reference to “illegitimate child” by defining</p>	<ul style="list-style-type: none"> In the Bill, “near relative” is used – <ul style="list-style-type: none"> (a) in Clauses 5 and 7 which prohibit discrimination and harassment because

Proposed CSA	Remarks
<p>a child to mean “a child (whether his parents are married)”.</p> <p>The proposal would also include similar amendments to the three existing anti-discrimination ordinances.</p>	<p>of the race of a person’s near relative;</p> <p>(b) in Clause 10(7) for the exemption for the employment of a domestic helper (under which exemption a person may lawfully choose on racial grounds an employee who is appointed to work at the residence of the employer or the employer’s near relative);</p> <p>(c) in Clauses 29(2) and 30 for the “small dwelling” exemption in relation to the disposal, management and subletting of premises under which exemption a person may, for example, lawfully choose a tenant on racial grounds if the person (or his near relatives) lives in the same premises and shares the kitchen or other common facilities with the tenant.</p> <ul style="list-style-type: none"> • Under the existing definition, “near relative” means “the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the person (whether of full blood or half-blood or by affinity) and “child” includes an illegitimate child and the wife or husband of an illegitimate child”. • The proposed CSA would ensure that the wife and husband of a child, irrespective of whether the child is born out of wedlock, will be treated equally. For completeness, it would also be appropriate to extend the definition to cover parents-in-law, brothers-in-law and

Proposed CSA	Remarks
	<p>sisters-in-law.</p> <ul style="list-style-type: none"> The proposed amendment to the reference to “illegitimate child” is designed to remove unnecessary stigma against children born out of wedlock.
<p>Clause 7(2): Racial harassment</p> <p>To expand the scope of Clause 7(2) to cover <u>all</u> the circumstances relevant for the purposes of any provision of the Bill.</p> <p>The proposal would also include a similar amendment to the SDO.</p>	<ul style="list-style-type: none"> Under existing Clause 7(2), a person harasses another person if the first-mentioned person “engages in conduct (which may include an oral or a written statement) that renders hostile or intimidating the environment in which the second-mentioned person works, studies or undergoes training, or carries out related or incidental activities”. This is an extension of the scope of a similar provision in SDO, which was confined to the work environment. The proposed CSA would extend the scope of Clause 7(2) to cover other environment, such as those in which a person carries out recreational activities or receives service.
<p>Clause 15(1): Discrimination against contract workers</p> <p>To amend Clause 15(1) so that it covers not only those contract workers who are employed by a contractor but also those employed by a sub-contractor.</p> <p>The proposal would also include a similar</p>	<ul style="list-style-type: none"> Clause 15 prohibits discrimination by a principal against contract workers “who are employed not by the principal himself or herself but by another person, who supplies them under a contract made with the principal”.

Proposed CSA	Remarks
<p>amendment to the three existing anti-discrimination ordinances.</p>	<ul style="list-style-type: none"> • We recognise that there are market practices in which contract workers are employed by another person who do not have a direct contract with the principal. The proposed CSA would ensure that such contract workers would also be protected under the Bill.
<p>Clauses 18(5): Exception for trade unions, etc.</p> <p>To expand Clause 18(5) to also grandfather “any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists”.</p>	<ul style="list-style-type: none"> • Clause 18 prohibits certain organizations from discrimination in their admission of members or treatment of members. Organizations subject to Clause 18 include “an organization of workers, an organization of employers, an organization of both workers and employers, or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists”. • Clause 18(5) grandfathers “an organization of workers, an organization of employers, or an organization of both workers and employers”, but not “any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists”. • The proposed CSA would ensure parity of treatment for an “organization whose members carry on a particular profession or trade for the purposes of which the

Proposed CSA	Remarks
	<p>organization exists” with that for “an organization of workers, an organization of employers or an organization of both workers and employers”.</p>
<p>Clauses 20(2)(b) and 26(2)(b) “those matters”</p> <p>To replace “those matters” by “holidays or medium of instruction”.</p>	<ul style="list-style-type: none"> • To avoid any argument over the meaning of “those matters”.
<p>Clause 34(2): Discrimination in eligibility to stand for election, etc.</p> <p>To delete Clause 34(2).</p>	<ul style="list-style-type: none"> • Under Clause 34(1), it is unlawful to discriminate in respect of eligibility to vote for and to be elected or appointed to relevant positions or relevant bodies (i.e. public body, public authority, statutory advisory body or prescribed body). • Existing Clause 34(2) provides that Clause 34(1) does not apply to, or in relation to, a person’s eligibility for appointment as the Chief Executive, to Executive Council, as a Principal Official, to LegCo or as Chief Justice of the Court of Final Appeal or Chief Judge of the High Court. • The inclusion of Clause 34(2) was intended to exempt the appointment of public offices which is specified in the Basic Law. Deleting such provision will not alter the legal position since no law shall contravene the Basic Law which is superior to local legislation. Deletion of

Proposed CSA	Remarks
	<p>this clause would also avoid undue misimpression that racial discrimination in the appointment of these public offices is not unlawful.</p>
<p>Clause 44(1)(b): Pressure to discriminate</p> <p>To replace “subjecting or threatening the person” by “subjecting or threatening to subject the person”.</p>	<ul style="list-style-type: none"> • Existing Clause 44(1) reads: “It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part 3 or 4 by – <ul style="list-style-type: none"> (a) providing or offering to provide the person with any benefit; or (b) subjecting or threatening the person to any detriment.” • The proposed CSA is a technical amendment to correct a clerical error.
<p>Clause 45(2)(b): Vilification</p> <p>To amend Clause 45(2)(b) to cover an activity in public that -</p> <p>(i) is a communication or the distribution or dissemination of any matter; and</p> <p>(ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation.</p> <p>The proposal would also include a similar amendment to the DDO which contains a similar provision.</p>	<ul style="list-style-type: none"> • Under Clause 45(2)(b), nothing in section 45 renders unlawful “an activity in public being a communication for the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation”. • The proposed CSA is a technical amendment for clarity of meaning.

Proposed CSA	Remarks
<p>Clause 46(1): Serious vilification</p> <p>To amend Clause 46(1) which refers 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 is a necessary element of the activity in public which would constitute serious vilification.</p> <p>The proposal would also include a similar amendment to the DDO which contains a similar provision.</p>	<ul style="list-style-type: none"> • Clause 46(1), which governs offence of serious vilification, refers to activity in public “which includes” threatening physical harm or inciting others to threaten physical harm. • The proposed CSA is a technical amendment for clarity of meaning.