

Bills Committee on Race Discrimination Bill
Administration's Response to the outstanding general issues
raised by members of the Bills Committee

| | Issues (Relevant Clauses) |
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| I. | Application to Government (Clause 3) |
| (4) | <p>To provide a legal analysis elaborating (with specific examples) on the extent of regulatory control to be imposed on the Government by this Bill and its acts to be excluded by Clause 3, as well as the scope of the Government's legal liability in the area of racial discrimination under HKBORO.</p> <p><u>Administration's Response</u></p> <p>At previous meetings, the Administration has explained the rationale of the original wordings of Clause 3 and the protection against discrimination on the ground of race under the Hong Kong Bill of Rights Ordinance (HKBORO). To address Members' concern, the Administration is going to move a Committee Stage Amendment (CSA) to amend Clause 3.</p> |
| II. | Racial discrimination and criteria for determining "justifiability" (Clause 4) |
| (2) | <p>To explain the basis of applying the rationality and proportionality test and the practicability test to justify the application of a requirement or condition under Clause 4(1)(b), given that the fundamental right to have equal and effective protection before the law without any discrimination under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) is an unqualified one.</p> <p><u>Administration's Response</u></p> <p>To address Members' concern, the Administration is going to move a CSA to amend Clause 4.</p> |

| | <p style="text-align: center;">Issues (Relevant Clauses)</p> |
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| <p>III.</p> | <p>Meaning of "on the ground of race" and application to new arrivals from the Mainland (Clause 8)</p> |
| <p>(10)</p> | <p>To provide information on additional resources to be allocated and new policies/measures to be implemented to address the problem of discrimination against new arrivals from the Mainland.</p> <p><u>Administration's Response</u></p> <p>A wide range of public services are available to new arrivals. These include education, employment, vocational training, medical, housing, social and community services, details of which are set out in LC Paper No. CB(2)1773/07-08(02). In most cases, these services are provided as the relevant bureaux/departments' services to new arrivals and other members of the public. Hence, it is not possible to provide a separate break-down of the government expenditure on the various services for new arrivals. Where the services can be separately identified, the expenditures involved are listed at Annex A.</p> <p>To facilitate planning and provision of services for early integration of new arrivals in the local community, the Home Affairs Department and the Immigration Department have jointly put in place a standing mechanism to collect data on their profile and service needs. A data collection mechanism is set up at border control points and questionnaires are distributed at the Registration of Persons offices to collect information of new arrivals from the Mainland.</p> <p>A question was raised by a Member on the rationale for Social Welfare Department to replace the former Post-Migration Centres by provision of services through Integrated Family Service Centres. The relevant information is at Annex B.</p> |

| | Issues (Relevant Clauses) |
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| V. | Provision of goods, facilities and services (Clause 58) |
| (1) | <p>To provide further justification for the exception for use, or failure to use, particular language in regard to the provision of goods, services and facilities.</p> <p><u>Administration's Response</u></p> <p>Language is not a ground of race. For clarity of the law, Clause 58 of the Bill, therefore, makes it clear that the use of, or failure to use, any languages in circumstances relevant to certain specified provisions (including the provision of services and facilities) is not unlawful. As a matter of fact, it would not be practicable or reasonable for service providers in the private or public sectors to conduct their business in all languages or in the language of their client's choice. It is, therefore, not appropriate to amend or delete Clause 58.</p> |
| (2) | <p>To explain the circumstances under which it is not practicable for Government departments to use English (which is an official language) in their provision of goods, facilities and services to the public.</p> <p><u>Administration's Response</u></p> <p>Chinese and English are the official languages of Hong Kong. Requests for information or enquiries from members of the public should be responded to, as far as possible, in the official language used in the in-coming correspondence. All frontline staff are required to answer enquiries or provide assistance in either English or Chinese depending on the language used by the client. In certain circumstances such as activities organised in local districts, Chinese may be used predominantly and English interpretation may not be provided. Transcripts of speeches issued by the Information Services Department are also only made available in the language as delivered. It would not be practicable to require the Government to provide all services in both Chinese and English at all times.</p> |

| | Issues (Relevant Clauses) |
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| (3) | <p>To follow up the complaints made by deputations that ethnic minorities are unable to receive appropriate medical treatment at public hospitals/clinics due to language problem, and to provide the number of complaints lodged by ethnic minorities to the Administration and other public organisations in the past few years about failures of public hospitals/clinics to provide translation services to cater for NCS service users as well as information on any public organisations/government departments which only use Chinese in their provision of services to the public.</p> <p><u>Administration's Response</u></p> <p>The Hospital Authority will implement additional measures on providing interpretation service to ethnic minorities on the use of public medical service. These measures are detailed in the paper entitled "Administration's response to views received from deputations on vocational training and on interpretation services at hospitals" issued separately.</p> |
| (5) | <p>To respond to the views expressed by deputations on vocational training and interpretation services at hospitals for ethnic minorities.</p> <p><u>Administration's Response</u></p> <p>A paper entitled "Administration's response to views received from deputations on vocational training and on interpretation services at hospitals" issued separately.</p> |
| VIII. | Immigration legislation (Clause 55) |
| (1) | <p>To provide justification for the exception for immigration legislation.</p> <p><u>Administration's Response</u></p> <p>Detailed explanation of the exception for immigration legislation and nationality legislation is at Annex C.</p> |

Public expenditure on services for new arrivals

| Bureau/department | Estimated expenditure in 2008-09 | | | | | | | | |
|---|---|---|--------------|--|------------|---|------------------|--------|--------------|
| Home Affairs Department | <table> <tr> <td data-bbox="600 506 1158 607">Service Handbook for New Arrivals from the Mainland</td> <td data-bbox="1158 506 1410 607" style="text-align: right;">\$700,000</td> </tr> <tr> <td data-bbox="600 607 1158 730">Allocation to non-governmental Organizations</td> <td data-bbox="1158 607 1410 730" style="text-align: right;">600,000</td> </tr> <tr> <td data-bbox="600 730 1158 831">Allocation to 18 District Offices for new arrivals programmes</td> <td data-bbox="1158 730 1410 831" style="text-align: right;"><u>300,000</u></td> </tr> <tr> <td data-bbox="600 831 1158 882">Total:</td> <td data-bbox="1158 831 1410 882" style="text-align: right;">\$1,600,000</td> </tr> </table> | Service Handbook for New Arrivals from the Mainland | \$700,000 | Allocation to non-governmental Organizations | 600,000 | Allocation to 18 District Offices for new arrivals programmes | <u>300,000</u> | Total: | \$1,600,000 |
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| Total: | \$1,600,000 | | | | | | | | |
| Education Bureau | <table> <tr> <td data-bbox="600 882 1158 934">Initiation programme</td> <td data-bbox="1158 882 1410 934" style="text-align: right;">\$10,000,000</td> </tr> <tr> <td data-bbox="600 934 1158 985">School-based Support Scheme Grant</td> <td data-bbox="1158 934 1410 985" style="text-align: right;">16,000,000</td> </tr> <tr> <td data-bbox="600 985 1158 1037">Induction programme</td> <td data-bbox="1158 985 1410 1037" style="text-align: right;"><u>3,500,000</u></td> </tr> <tr> <td data-bbox="600 1037 1158 1142">Total:</td> <td data-bbox="1158 1037 1410 1142" style="text-align: right;">\$29,500,000</td> </tr> </table> | Initiation programme | \$10,000,000 | School-based Support Scheme Grant | 16,000,000 | Induction programme | <u>3,500,000</u> | Total: | \$29,500,000 |
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Replacement of former Post-Migration Centres (PMCs) by Integrated Family Service Centres (IFSCs)

The change in the mode of service delivery, from services provided at the PMCs of the Social Welfare Department to provision through the IFSCs, was the result of a re-engineering exercise aimed at ensuring better coordination of family services and more effective interface so that problems encountered by the family could be addressed in a more holistic and effective manner.

2. Compared to the PMCs which were dedicated to new arrival services, the IFSC model has the following advantages –

- (a) More accessible: Compared to the PMCs which were located in specific districts and served a much larger geographical boundary, the 61 IFSCs are distributed all over the territory and are more accessible to new arrivals and other families in need;
- (b) More comprehensive services: The IFSC service model emphasizes early prevention and intervention and provides additional services not available in PMCs, which includes intensive counselling, assessment for compassionate rehousing, arrangement for clinical psychological services, etc. With the provision of a continuum of preventive, supportive and therapeutic services, IFSCs can better meet the multi-farious needs of new arrivals in a holistic manner;
- (c) Less stigmatization: Unlike PMCs, the fact that IFSCs do not serve only specific groups of service users minimizes possible stigmatization for new arrivals using the services; and
- (d) Better social integration: With service users of IFSCs coming from different backgrounds, new arrivals have greater opportunities to interact with other families and individuals through participating in support groups or programmes organized by IFSCs, which, in turn, facilitates their integration into the local community.

3. As at the end of March 2008, of the 45 726 active cases receiving counselling and supportive casework services in IFSCs, 994 (2.2%) were new arrival cases. Between April 2007 and March 2008, IFSCs had organized 198 groups, including therapeutic, support, educational, developmental and mutual help groups, specifically for about 2 202 new arrivals.

**Exceptions for nationality law and immigration legislation
(Clauses 54 and 55)**

Article 1(3) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) states, inter alia, that “nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality”. The purpose of clause 54 is to make it clear that the Race Discrimination Bill (RDB) does not interfere with any domestic legislation governing nationality, citizenship, resident status or naturalization.

2. As example, the Immigration Department is authorized by the Central People's Government to process Naturalization applications as Chinese nationals in accordance with the Chinese Nationality Law. The assessment criteria of a naturalization application include whether the applicant is habitually resided in Hong Kong, whether the principal members of the family are in Hong Kong, whether the applicant has sufficient knowledge of the Chinese language, etc. While each application will be considered on its own merits, a person whose application is refused may allege that the decision is made because of his/her Chinese language proficiency, and thus constitute indirect discrimination on the ground of his/her race. Clause 54 of the Bill makes it clear that a decision under the Chinese Nationality Law, including a decision on naturalization application, is not subject to challenge under the Race Discrimination Ordinance (if enacted). This will help minimise any unnecessary arguments or disputes over such a requirement. It may be noted that the language requirement for naturalisation is justifiable irrespective of race and is common in other places. Moreover, section 5 of the Chinese Nationality (Miscellaneous Provisions) Ordinance, Cap 540, provides that any discretion exercised under or pursuant to any of the provisions of the Nationality Laws shall be without regard to the race, colour or religion of any person who may be affected by its exercise.

3. Similarly, “immigrant status” is not a prohibited ground of discrimination under ICERD. Article 1(2) of the ICERD states, inter alia, 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”.

4. It is common practice internationally that each country or territory has its own immigration legislation under which a visa policy governing entry or stay of visitors may be formulated for effective immigration control. Any visa policy so formulated serves as a useful and effective tool to protect the interests and well being of its people through an immigration control mechanism.

5. As example, under section 11 of the Immigration Ordinance, Cap. 115, immigration officers in performing their duties may grant or refuse permission for persons having no right of abode or right to land in Hong Kong to enter Hong Kong.

6. In general, a visitor may be given permission to land in Hong Kong subject to normal immigration requirements being met, such as possession of a valid travel document, possession of adequate funds for visiting Hong Kong, having no adverse record, etc. and that the bona fides of his/her purpose of visiting Hong Kong is being satisfied. In making such a decision, due regard is also accorded to the individual circumstances and relevant compassionate factors, if any, on a case-by-case basis. Immigration officers have the power to refuse permission to land in Hong Kong where necessary.

7. Under the existing legislation, any person who is aggrieved by the decision to refuse him/her permission to land in Hong Kong may lodge an objection under section 53 of the Immigration Ordinance with the Chief Secretary for Administration (CS) against the decision. The person may also seek leave from the Court for a judicial review of the relevant decision.

8. Clause 55 of the Race Discrimination Bill (RDB) makes it clear that the Bill does not affect any law concerning immigration legislation. Without such provision, a person who does not have the right to enter or remain in Hong Kong and has been refused permission to land in Hong Kong may take advantage of the Race Discrimination Ordinance (if enacted) to challenge the refusal decision by lodging a claim with the District Court or making a complaint to the Equal Opportunities Commission, in addition to the existing avenues of complaint and redress. This would open the risks of vexatious litigation and impose unwarranted additional burden on the Immigration Department and its staff in dealing with the complaints and court cases.