

**Bills Committee on Race Discrimination Bill**  
**The Administration's response to**  
**views received from deputations/individuals on specific clauses of the Bill**

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
<b>Clause 1 Short title and commencement</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>A date should be fixed in the Bill for the commencement of the Ordinance.</p> <p><u>Administration's response:</u></p> <p>It is not possible to fix the commencement date of the Bill now as time is required for the Equal Opportunities Commission to prepare code of practice in accordance with Clause 64 of the Bill after the Bill is passed by the Legislative Council.</p>
<b>Clause 2 Interpretation</b>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>The definition of "club" requires that the association must "sell or supply liquor for consumption on its premises". This definition excludes effectively clubs or associations catering for a membership that, e.g. share the Muslim faith, and cannot be what is intended.</p> <p><u>Administration's response:</u></p> <p>Clause 2 confines the definition of clubs to that "sells or supplies liquor for consumption on its premises". This is consistent with the existing anti-discrimination ordinances.</p> <p>In view of the comments received, we will introduce a committee stage amendment (CSA) to amend the definition of "club" in Clause 2 by deleting "sells or supplies liquor for consumption on its premises" so as to cover also clubs <u>not</u> selling liquor. The proposed CSA will also include related amendments to the three existing anti-discrimination ordinances.</p>

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Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>The Bill should deal with discrimination on the ground of language, and “languages” should be defined as Chinese and English.</p> <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”. Language is not a ground of race.</p>
<p><b>Clause 3 Application to Government</b></p>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]  Hong Kong SKH Lady Maclehole Centre [CB(2)759/07-08(01)]  Hong Kong Christian Service [CB(2)759/07-08(02)]  Dr James KEEZHANGATTE [CB(2)775/07-08(02)]  Hong Kong Christian Council [CB(2)775/07-08(03)]  Christian Action [CB(2)783/07-08(01)]	<p>(a) Clause 3 should be re-drafted as “This Ordinance binds the Government” and there are views that the provision should apply expressly to all Government policies, actions, measures, functions, enforcement and business too.</p> <p>(b) The Civic Party further suggests that the term “Government” should be defined to include “public authorities”.</p> <p>(c) The Bar Association also questions whether Clause 3 would have the effect of excluding the application of the Bill to acts performed by the Judiciary.</p> <p><u>Administration’s response:</u></p> <p>The intent of the Bill is to apply to private sector, as well as the Government, the provisions on prohibition of racial discrimination. To address the concern on the possible misimpression that a broad exemption, is provided to the Government, the Administration will introduce a CSA so as to amend Clause 3 as “This Ordinance binds the Government.”</p>

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<p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Colours in Peace [CB(2)798/07-08(05)]</p>	
<p>Equal Opportunities Commission (EOC) [CB(2)759/07-08(03)]</p> <p>Mr Y K CHONG [CB(2)759/07-08(04)]</p> <p>Dr Kelly LOPER [Oral presentation at the meeting on 10 January 2008]</p>	<p>SDO, DDO and FSDO have specific provisions (i.e. sections 21 and 28 in SDO, sections 21 and 36 in DDO, and sections 17 and 28 in FSDO) stating clearly that it is unlawful for the Government to discriminate “in the performance of its functions or the exercise of its powers”. If the scope of the Bill is not intended to be narrower than that of the three anti-discrimination ordinances, apart from specifying “This Ordinance binds the Government”, the Bill should include a provision similar to section 21 of SDO – “it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers”.</p> <p><u>Administration’s response:</u></p> <p>To expand the scope of the Bill to cover all Government functions would cause uncertain and potentially far-reaching adverse implications on the Government’s ability to make and implement policies. The court could be unduly dragged into political controversies involving any policy or practice, for example, because of the different demographic profiles of different racial groups. This would render the Government vulnerable to an influx of litigations. The efforts required for such litigation would detract resources unnecessarily and affect the effectiveness of Government administration.</p>
<p>Mr Patrick YU [CB(2)783/07-08(06) revised]</p>	<p>Re-drafting Clause 3 as “This Ordinance binds the Government” cannot tackle the root of the problem that the Administration is limiting the application of the Bill to only the functional areas of the Administration.</p>

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	<p><u>Administration’s response:</u></p> <p>Please see our response above.</p>
<b>Clause 4 Racial discrimination</b>	
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>The drafting of Clause 4(2), which sets out the criteria for determining “justifiability”, deviates from the drafting approach for relevant provisions of the three anti-discrimination ordinances.</p> <p><u>Administration’s response:</u></p> <p>We appreciate the concerns raised, especially in regard to the inclusion of the alternative test of “reasonable practicability” in Clause 4(2)(b). We will introduce a CSA to delete Clause 4(2)(b) as well as Clause 4(3) to 4(5). We consider it appropriate to retain the “proportionality” principle in Clause 4(2)(a), which is in line with internationally accepted principles of rationality and proportionality.</p>
<p>EOC [CB(2)1168/06-07(05)] [CB(2)759/07-08(03)]</p> <p>Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)] [CB(2)759/07-08(04)]</p> <p>Association for the Advancement of Feminism</p>	<p>(a) EOC and the Civic Party suggest that “requirement or condition” in Clause 4(1)(b) should be replaced by the expression “provision, criterion or practice”.</p> <p>(b) EOC is concerned that Clause 4(5) may lead to a conclusion that a requirement or condition is justifiable as long as the alternatives involve additional expenditure.</p> <p>(c) Civic Party and Mr Y K CHONG suggest that Clauses 4(2)(b) and 4(5) should be deleted. Mr CHONG further suggests that, as Clause 4(2)(b) makes it very difficult to prove a case of indirect discrimination, the test should be “failure to consider alternatives” and reference should be made to section 4 of DDO.</p> <p>(d) The Civic Party also suggests that the definition of indirect discrimination should be based on the one in DDO, i.e. introducing unjustifiable hardship, similar to section 4 of DDO, and Clause 4(1)(b) should be amended to provide that race discrimination is constituted if a person only waives a person but not another person from meeting a requirement or condition merely on the ground of race.</p>

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<p>[CB(2)901/07-08(01) &amp; (02)]</p> <p>Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]</p>	<p>(e) The Association for the Advancement of Feminism considers that DDO provides for a more precise and simpler definition of indirect discrimination.</p> <p><u>Administration’s response:</u></p> <p>The reference to “requirement or condition” is in line with the existing anti-discrimination ordinances. The European Council Directive version of the Race Relations Act 1976 (UK), which broadened the definition to cover “provision, criterion or practice” was promulgated in 2000 in response to the rising tide of racist violence in Europe, combined with the impending enlargement of the European Community and the rise of the far right in certain countries. The situation was different from that in Hong Kong. The effect and implications of the new definition have yet to be fully tested and it would not be prudent to adopt it in Hong Kong now.</p> <p>The difficulties and discrimination encountered by persons with disability may not be entirely the same as those suffered by members of ethnic minorities. The defence of “unjustifiable hardship” may not be suitable for this Bill.</p> <p>“Unjustifiable hardship” provisions in the Disability Discrimination Ordinance (DDO) set out the criteria under which all alleged discriminator is not required to provide special services or facilities to accommodate a disabled person. It does not apply to the definition of indirect discrimination which is found in Section 6(b) of the DDO in the following manner:</p> <p>“A person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if-</p> <p>(a) ...</p> <p>(b) he applies to that other person a requirement or condition which he applies or would apply equally to a person without a disability but-</p> <p>(i) which is such that the proportion of persons with a disability who can comply with it is considerably smaller than the proportion of persons without a disability who can comply with it;</p> <p>(ii) which he cannot show to be justifiable irrespective of the disability or absence of the disability of the person to whom it is applied; and</p>

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	<p>(iii) which is to that person's detriment because he cannot comply with it”.</p> <p>The term “justifiable” under s. 6(b)(ii) is not defined under the DDO. Nor does the DDO provide a test of justification. In considering whether a requirement or condition having disparate adverse impact on a person with a disability is justifiable, the Court applied a proportionality test developed by the English court. Under the DDO, the unjustifiable hardship defence provides an exemption to otherwise unlawful discrimination. It is not a substitute for the proportionality test in the DDO which assists to define indirect discrimination.</p> <p>As explained in our response above, we will introduce a CSA to delete Clause 4(2)(b) and Clause 4(3) to 4(5).</p>
<p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p> <p>Dr Kelley LOPER [Oral presentation at the meeting on 10 January 2008]</p>	<p>Clause 4(1)(b) prescribes a test of “disproportionate impact” for indirect discrimination. Clauses 4(2) to 4(5) provide for two alternative tests to determine “justifiability”. The second test on the “reasonable practicability” of the alleged discriminator does not appear to be in line with English jurisprudence and runs the risk of amounting to a less stringent test than the alternative test, i.e. proportionality test. Clauses 4(2) to 4(5) are suggested to be deleted.</p> <p><u>Administration’s response:</u></p> <p>As explained in our response above, we will introduce a CSA to delete Clause 4(2)(b) and Clause 4(3) to 4(5).</p>
<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>(a) Clause 4(2) defines “justifiable” in a very restrictive manner. A requirement or condition is regarded as justifiable if -</p> <ul style="list-style-type: none"> <li>- the condition serves a legitimate objective and bears a rational and proportionate connection to the objective; or</li> <li>- it is not reasonably practicable for the person who allegedly discriminates not to apply the restriction or condition.</li> </ul> <p>The provision could create doubt as to whether or not a requirement or condition is justifiable and such</p>

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	<p>“justifiable” requirement is not contained in the three anti-discrimination ordinances.</p> <p>(b) Certain financial/investment services (e.g. offering of Initial Public Offers of shares) may not be available to certain nationals by reason of the laws/regulations of their home countries. Clause 4(4)(d) should be amended to provide for appropriate exceptions for banks.</p> <p><u>Administration’s response:</u></p> <p>As explained in our response above, we will introduce a CSA to delete Clause 4(2)(b) and Clauses 4(3) to 4(5).</p>
<b>Clause 5 Discrimination on the ground of race of near relative</b>	
<p>EOC [CB(2)1168/06-07(05)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p> <p>Hong Kong Unison Limited [CB(2)775/07-08(01)]</p>	<p>(a) The concept of “near relative” as defined under Clause 2 is too narrow as compared with that of an “associate” under DDO, and the latter term should be adopted for the Bill.</p> <p>(b) The scope of Clause 5 should be broadened similar to section 6(c) of DDO that “a person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if on the ground of the disability of an associate of that other person he treats him less favourably than he treats or would treat a person without such a disability”.</p> <p><u>Administration’s response:</u></p> <p>Given the characteristics of disabled persons, the purpose of section 6(c) of DDO is to prevent a person from being discriminated on the ground of the disability of a person who has close tie with that person. Clause 2 of RDB serves a different purpose. The concept of “associate” is unique to the DDO as it is recognized that a person with disability is more likely to require the assistance of a carer or a helper because of his or her disability.</p> <p>The existing definition of “near relative” is identical to that in the existing anti-discrimination ordinances.</p>

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	<p>In the light of the comments received, we will introduce a CSA to include parents-in-law, children-in-law, brothers-in-law and sisters-in-law in the definition of “near relative”. The proposed CSA will also include related amendments to the existing anti-discrimination ordinances to amend the definition in the same manner.</p>
<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>“Near relative” is defined widely to include a person's wife/husband/parent/child/grandparent/grandchild/brother/sister/stepchildren/illegitimate children. It may be difficult for a person to know whether he is inadvertently discriminating as he may not necessarily know the racial background of all the persons who come within the definition.</p> <p><u>Administration’s response:</u></p> <p>Clause 5 of the Bill provides that it is considered discrimination if a person (the discriminator) discriminates against another person (“relevant person”) on the ground of the race of a near relative of the relevant person. In other words, the racial background of the concerned near relative is a cause of the discriminatory treatment. If the discriminator does not know the racial background of the near relative, depending on the circumstances of the case, the causal link may be missing.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>Clause 5 should be amended to provide that race discrimination is constituted if a person treats another more favourably on the ground of having an ethnic near relative than others who have no such near relative.</p> <p><u>Administration’s response:</u></p> <p>The current drafting of Clause 5 is consistent with Clause 4(1)(a) in that a person (“the discriminator”) discriminates against another person if he treats that other person less favourably on the ground of the race of that other person’s near relative.</p>
<p><b>Clause 8    Meaning of “race”, “on the ground of race”, “racial group” and comparison of cases of persons or different racial groups</b></p>	

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The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>The scope of the Bill is unduly narrow in excluding discrimination on the ground of (former) immigrant status and other grounds specified in Clauses 8(2) and 8(3)(b)-(d).</p> <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 does not exclude any person from the protection of the Bill. An immigrant would also be protected by the Bill. Clause 8(2) and (3) are intended to make it clear that considerations such as Hong Kong permanent resident status and length of residence do not come within the definition of race.</p>
Civic Party [CB(2)1243/06-07(02)]	<p>The term “national origin” in Clause 8(1)(a) should be defined to include “origin from any territory outside the Hong Kong Special Administrative Region” in meaning to protect overseas Chinese in Hong Kong.</p> <p><u>Administration’s response:</u></p> <p>According to Lord Cross of Chelsea in <u>Ealing LBC v CRE</u> [1972]AC 342, (p. 365 D - E), national origin refers to a connection subsisting at the time of birth between an individual and one or more groups of people who are described as a “nation”. Hong Kong is not a nation. It is inappropriate to define “national origin” by reference to whether a person’s origin is from within or outside Hong Kong. Chinese people in Hong Kong, no matter where they are from originally, would all be protected under the proposed legislation if they suffer direct discrimination on the ground of race or if they as person of Chinese national origin would have greater difficulty than members of other national origins to comply with a particular requirement or condition.</p>
Alliance of Returning Chinese from Overseas Against Discrimination [CB(2)783/07-08(02)]	<p>The definition of “race” is too restrictive which will exclude discrimination on the grounds of language/country of origin/immigrant status, and the definition of “race” should be expanded to include new arrivals.</p> <p><u>Administration’s response:</u></p>

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<p>Hong Kong Human Rights Commission, New Immigrants' Mutual Aid Association, Society for Community Organization and Voices of the Rights of Asylum Seekers and Refugees [No. CB(2)798/07-08(01)]</p> <p>New Immigrants' Mutual Aid Association [LC Paper No. CB(2)798/07-08(02)]</p> <p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Association for the Advancement of Feminism [B(2)901/07-08(01) &amp; (02)]</p>	<p>The definition of “race” in Clause 8(1)(a) of the Bill is identical to that in Article 1(1) of ICERD. The Bill does not exclude new arrivals from its ambit. Like anyone else in Hong Kong, they are protected under the Bill.</p>
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Mr Patrick YU [CB(2)783/07-08(06)]</p>	<p>(a) Mr Y K CHONG and Mr Patrick YU consider that the scope of the Bill should be extended to cover the following grounds of discrimination: language/place of origin outside Hong Kong/nationality/residency (Hong Kong resident status)/status of being, or having been an immigrant.</p> <p>(b) Clause 8(1) should be amended to bring in the concept of perceived or imputed race, and the phrase “actual or perceived” should be added before the words “race, colour, decent, national or ethnic origin” in Clause 8(1)(a).</p> <p>(c) Mr CHONG further suggests that Clause 8(3)(b)-(d) should be deleted.</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
	<p>(d) Mr Patrick YU also suggests to include the following new provisions after Clause 8(1)(e) to cover new arrivals from the Mainland and to delete the original Clause 8(3)(b)(i) and Clause 8(3)(c) -</p> <p><u>Clause 8(2)</u></p> <p>In this Ordinance “racial grounds” includes the grounds of belonging to new arrivals from the Mainland, that is to say the community of people commonly so-called who are Chinese origin and is not a Hong Kong permanent resident or has not the right of abode in Hong Kong. It also includes the length of residence in Hong Kong of a person or that a person is regarded as a member of the group of persons who have been granted one way permit by the relevant Mainland authorities to come to Hong Kong, and have recently come to settle in Hong Kong from the Mainland.</p> <p><u>Clause 8(3)</u></p> <p>In this Ordinance “racial group” includes the new arrivals from the Mainland.</p> <p><u>Administration’s response:</u></p> <p>Please see our response above.</p> <p>In addition, removal of the provisions that clearly distinguishes concepts of Hong Kong permanent resident status, right of abode, length of residence etc from the concept of race in the Bill or any addition of the concept of perceived race would create uncertainty. This would run against the objective that the Bill should be clear to avoid unnecessary litigations which would be disruptive to the society.</p>

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<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>(a) The definition of “race” in Clause 8(1)(a) is extremely wide, covering not only race and colour but also descent or national or ethnic origin. The definition does not provide for how persons of mixed blood or origin should be dealt with.</p> <p>(b) Clause 8(1)(c) deals with discrimination on the ground of descent based on social stratification. Whether such a form of discrimination should be covered by the Bill should be discussed. In practice, it might be difficult to determine a person's descent.</p> <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 ICERD.</p>
<p><b>Clause 10 Discrimination against applicants and employees</b></p>	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) &amp; CB(2)798/07-08(01)]</p> <p>The Democratic Party [CB(2)1226/06-07(03)]</p> <p>International Social Service - Hong Kong Branch [Oral presentation at the meeting]</p>	<p>The three-year transitional period under Clause 10(8) for small employers should be reduced to not more than one year.</p> <p><u>Administration’s response:</u></p> <p>There are divergent views within the community. We consider that a three-year transitional period is reasonable to smoothen implementation and to minimize 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>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
on 3 March 2007]	
Christian Action [CB(2)783/07-08(01)]	<p>The three-year transitional period for small companies should be reduced to 18 months.</p> <p><u>Administration's response:</u></p> <p>Please see our response above.</p>
The New Territories General Chamber of Commerce (NTGCC) [Oral presentation at the meeting on 3 March 2007]	<p>The exemption should be granted permanently, instead of only three years.</p> <p><u>Administration's response:</u></p> <p>Please see our response above. Having regard to the experience in implementing the three existing anti-discrimination ordinances, we consider that small employers should be able to adapt to the new law at the end of the three-year grace period. We do not see the justifications to exempt small employers on a permanent basis.</p>
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>(a) The exception for small companies/employers in Clause 10(3) and 10(8) is unwarranted. It is unclear whether domestic helpers are to be counted as employees of small employers for the purpose of the temporary exception under Clause 10(3).</p> <p>(b) Clause 10(10) is highly undesirable as it empowers the Government to extend the above exception to the detriment of those intended to be protected by the legislation.</p> <p><u>Administration's response:</u></p> <p>(a) There are divergent views within the community. We consider that a three-year transitional period is reasonable to smoothen implementation and to minimize 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</p>

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	<p>law.</p> <p>Similar provisions were also made in all the existing anti-discrimination ordinances.</p> <p>The last sentence of clause 10(3) states that the exception for small employers is not applicable to domestic helpers. Domestic helpers are not counted as employees of small employers.</p> <p>(b) The amendment by the Chief Executive-in-Council referred to in Clause 10(10) is subject to negative vetting by LegCo.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>The benefits stated in Clause 10(5) should be amended to incorporate housing benefits, travel allowances, salary increase (without promotion), pension benefits and right to take sabbatical.</p> <p><u>Administration's response:</u></p> <p>It should be noted that Clause 10(1)(b) and (2) is the general provision, to which Clause 10(4) provides an exception. The exception is in turn narrowed down under Clause 10(5). Clause 10(1)(b) and (2) reflects the non-discrimination principle and covers all kinds of benefits, housing benefits, travel allowances etc. Clause 10(4) disapplies that general principle with respect to existing provision in relation to death or retirement, i.e. a grandfathering clause. Clause 10(5) excludes the grandfathering as far as promotion, transfer or training is concerned. Clause 10(5) should not apply to the other terms and benefits in the provision in relation to death or retirement.</p>
<p><b>Clause 11 Exception for genuine occupational qualification</b></p>	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(a) Clauses 11(2)(c) to (e) should be deleted or defined more clearly to prevent abuse.</p> <p>(b) "Reasons of authenticity" has a wide application. Proper checks and balances should be built into the clause by stipulating conditions of application of the exception in order to prevent abuses and not to legitimize existing racial discriminatory practices in employment.</p>

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<p>[CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]</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 preservation of authenticity in dramatic performances or other entertainment/art/visual image work; the creation of authentic atmosphere in restaurant; 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 been found to present difficulties or have been abused.</p>
<p><b>Clause 12 Exception for employment intended to provide training in skills to be exercised outside Hong Kong</b></p>	
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>It is not clear why ordinary residents are excluded as training opportunities should be open to all regardless of one's racial background.</p> <p><u>Administration's response:</u></p> <p>Clause 12 is to cover a common commercial practice in providing training to those employees who are brought into Hong Kong from outside Hong Kong for training in skills which are intended to be exercised wholly outside Hong Kong. This clause does not exclude anybody from training opportunities.</p>
<p><b>Clause 13 Exception for employment of person with special skills, knowledge or experience</b></p>	
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>(a) Clause 13(1)(c)(ii) is unclear and employers will have difficulty relying on the exemption until the relevant case law has been laid down. The exemption "any other relevant circumstances" is also too wide and specific examples should be provided by adopting the drafting format of "including...but not limited to ..."</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
	<p>(b) The words “as the court may consider appropriate” should be added after “...race of the person)” in Clause 13(1)(c)(ii).</p> <p><u>Administration’s response:</u></p> <p>Clause 13 is not meant to be exhaustive as to the different circumstances in which overseas terms may be lawful. Clauses 4, 8(5) and 10 of the Bill on employment are broadly in line with sections 1, 3(4) and 4 of the Race Relations Act 1976 (UK). Clause 4(1)(b) limits discrimination to the case where a requirement or condition cannot be justified irrespective of race; Clause 8(5) limits comparison under Clause 4(1) to comparison between like cases. For offers of overseas terms in circumstances not specified in Clause 13, an employer can always defend them if he can provide justification under Clauses 4(1)(b) or can show that the circumstances in the two cases are materially different under Clause 8(5).</p> <p>A specific example is provided in Clause 13(1)(c)(i), namely, the prevailing terms of employment offered to persons with the relevant skills, knowledge or experience in places outside Hong Kong. As the situation of each industry and position varies, it is difficult to include all specific circumstances in the legislation.</p>
<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>(a) Clause 13 only allows preferential terms to be offered to persons who possess special skills, knowledge or experience if they are recruited or transferred from a place outside Hong Kong. It is queried why there is a need to specify that the persons have to be recruited or transferred from a place outside Hong Kong if it is established that the persons possess skills not readily available in Hong Kong.</p> <p>(b) The expression “special skills, knowledge or experience” can be extremely broad. It should be defined more clearly.</p> <p>(c) Under Clause 13(1)(c)(i), the terms of employment of the person concerned must have regard to the prevailing terms offered to persons with the relevant skills, knowledge or experience outside Hong Kong. This is inappropriate as salaries in Hong Kong are normally higher than those paid abroad and employers would need to induce a person to move to Hong Kong with a higher salary.</p>

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	<p><u>Administration's response:</u></p> <p>Clause 13 provides that an employer may offer overseas terms of employment to a person with special skills, knowledge or experience not readily available who is recruited from a place outside Hong Kong. If the person is located in Hong Kong, the fact that such skill, knowledge or experience is not readily available in Hong Kong may or may not justify offering the person overseas terms. As the situation of each industry and position varies, it is difficult to impose a unified definition for skill, knowledge or experience which can fit all.</p>
<b>Clause 14 Exception for existing employment on local and overseas terms of employment (and Schedule 2 Employee in existing employment)</b>	
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>Many employers determine an individual's entitlement to expatriate terms or local terms by reference to various factors which may not be related to the individual's permanent residency status. Paragraph 11 of Schedule 2 should be replaced by -</p> <p>“local terms of employment” (本地僱用條款) 和 “overseas terms of employment” (海外僱用條款)-</p> <p>(a) in relation to any employee (other than a public officer), means respectively -</p> <p>(i) such conditions or terms of service as are not “overseas terms of employment”;</p> <p>(ii) such conditions or terms of service as are generally known as “expatriate terms” due to their being related in whole or in part to the residency or nationality status of the employee...”</p> <p><u>Administration's response:</u></p> <p>Section 10 of Schedule 2 provides that the Bill apply irrespective of whether or not an employee is or has become a Hong Kong permanent resident. Section 11 of Schedule 2, which applies to Clause 14 of the Bill, makes reference to “local terms of employment” or “overseas terms of employment” as such conditions or terms of service as apply, from time to time, <u>primarily</u> to the appointment or employment by the employer concerned of a person who is a Hong Kong permanent resident or not a Hong Kong permanent resident</p>

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	respectively.
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>Paragraph 2(b) of Schedule 2 requires that there should not be a break in the service of the employee; otherwise, the existing employment would cease to be grandfathered. There should be some flexibility to allow for a break not exceeding six months to cover leave arrangements.</p> <p><u>Administration's response:</u></p> <p>Sabbatical and vacation is usually not treated as break of service. In addition, it would be difficult to specify a single duration of break in the Bill which can fit all as the situation in each case differs</p>
<b>Clause 15 Discrimination against contract workers</b>	
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>Concerns raised by the Association of Banks on Clause 13 also apply.</p> <p><u>Administration's response:</u></p> <p>Please see our response above on Clause 13.</p>
<b>Clause 16 Meaning of employment at establishment in Hong Kong</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>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. This would ensure consistency among the anti-discrimination ordinances and would be familiar to members of the public who have experience with the existing anti-discrimination ordinances.</p>

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The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>(a) Clause 16 is less generous in scope than the corresponding provisions of the Race Relations Act (RRA) of the United Kingdom (UK). The Administration should explain why the latest provisions in RRA are not adopted in the Bill, given the increasing number of the Hong Kong Special Administrative Region permanent residents being stationed outside Hong Kong by their employers.</p> <p>(b) Clause 16(2) should be re-drafted to indicate whether employment on a Hong Kong registered ship, aircraft or dynamically supported craft is or is not subject to protection of the Bill when enacted.</p> <p><u>Administration's response:</u></p> <p>(a) Clause 16 is in line with the existing anti-discrimination ordinances. This would ensure consistency among the anti-discrimination ordinances and would be familiar to members of the public who have experience with the existing anti-discrimination ordinances.</p> <p>(b) Clause 16(2) states that such employment (i.e. employment referred to in Clause 16(2)(a) or (b)) is regarded as being at an establishment in Hong Kong unless the employee does his or her work wholly outside Hong Kong.</p>
<b>Clause 17 Partnerships</b>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>Clause 17(1) seeks to outlaw race discrimination in relation to partnerships but its protection is limited to a firm consisting of not less than six partners. The same limitation existed in section 10(1) of RRA but it was removed in 2003. Clause 17(7) provides for the removal of this limitation by the Chief Executive in Council. The Administration should explain the circumstances in which this power may be exercised.</p> <p><u>Administration's response:</u></p> <p>Partnership is a close business relationship that results in a partner being exposed to liability and responsibility incurred by other members of the partnership. A small partnership is much more personal</p>

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	<p>and is likely to have less support and resources as compared with a bigger partnership. It is, therefore, necessary to exempt small partnerships from Clause 17 of the Bill. The scope of application to partnerships is in line with existing anti-discrimination ordinances. Clause 17(7) provides for a mechanism to alter or abolish the exemption if it is considered appropriate to do so in the light of the implementation experience after enactment of the Bill.</p>
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Society for Community Organization, New Immigrants Mutual Aid Association, Hong Kong Human Rights Commission and Voices of the Rights of Asylum Seekers and Refugees [CB(2)1226/06-07(02)(revised)]</p>	<p>The Administration should provide justification for restricting application of this provision to partnerships of not less than six and consider removing this restriction.</p> <p><u>Administration's response:</u> Please see our response above.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>It is unclear why partnerships of less than six can be exempted from the Bill as it may give rise to a situation that firms of different numbers of partners would be subject to different legislative requirements.</p> <p><u>Administration's response:</u> Please see our response above.</p>
<p><b>Clause 18 Trade unions, etc.</b></p>	

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The Federation of Hong Kong & Kowloon Labour Unions [CB(2)1168/06-07(06)]	As cases of race discrimination in trade unions are rare, the words “trade unions” should be deleted from Clause 18 to avoid unnecessary disputes.  <u>Administration's response:</u>  The coverage of Clause 18 is in line with existing anti-discrimination ordinances.
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 18(5) seeks to provide for an exception for organizations of workers/employers/both workers and employers established prior to the enactment of the Bill. The provision, if enacted, will undermine the effectiveness of Clause 18.  <u>Administration's response:</u>  This exception clause is to exempt existing organization of workers or employers, the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group, to continue with their practice. We believe that the impact of this exception is minimal and would not undermine the effectiveness of Clause 18.
<b>Clause 19 Qualifying bodies</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The Administration should consider if it is a case of over-legislation to include Clause 19(2) and Schedule 3.  <u>Administration's response:</u>  This clause is incorporated to provide for clarity and certainty, particularly 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.
Civic Party	Clause 19 may prevent a highly qualified professional from being conferred the relevant qualification in

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[CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>Hong Kong simply because of the person's failure to meet requirements of proficiency in either Chinese or English.</p> <p><u>Administration's response:</u></p> <p>Clause 19(2)(b) is limited to a few professions for which language requirements are imposed because of clear needs of the professions concerned.</p> <p>Clause 19(2)(a) generally allows the imposition of Chinese or English proficiency requirement only if the requirement is reasonable, having regard to the demands of, or associated with, the profession or trade concerned.</p>
<p><b>Clause 20 Persons concerned with provision of vocational training</b></p>	
Hong Kong SKH Lady Maclehole Centre [CB(2)1202/06-07(02)]  Hong Kong Unison Limited [CB(2)1226/06-07(01)]  Mr Y K CHONG [CB(2)1226/06-07(04)]  Hong Kong Christian Service [CB(2)1226/06-07(06)] [CB(2)759/07-08(02)]  Civic Party [CB(2)1243/06-07(02)]	<p>(a) The exemption under Clause 20(2) will allow educational institutions to continue ignoring the demands of the ethnic minorities in vocational training and should be removed.</p> <p>(b) The Civic Party further suggests that Clause 20(2)(a) should be deleted whereas Hong Kong Unison Limited further suggests that both Clauses 20(2)(a) and (b) should be deleted in order to tackle the problem of language barrier suffered by ethnic minorities in vocational training.</p> <p><u>Administration's response:</u></p> <p>The Government firmly upholds the right of individuals 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 Hong Kong, i.e. English and/or Chinese) are necessary. This is to ensure that ethnic minority students could genuinely integrate into the community and be able to maximize their learning alongside other students attending the institution/educational establishments concerned.</p>

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Hong Kong Christian Institute [CB(2)798/07-08(04)]	<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>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.</p>
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>There is no provision in RRA equivalent to Clause 20(2) which seeks to stipulate that the Bill is not to be construed as requiring a person concerned with the provision of vocational training or education to modify for persons of any racial group its arrangements regarding holidays or medium of instruction or to make different arrangements on those matters for persons of any racial group. It is concerned that the argument that it is not reasonably practicable for the arrangements will not satisfy a proportionality test.</p> <p><u>Administration's response:</u></p> <p>Please see our response above.</p>
<b>Clause 21 Employment agencies</b>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>Clause 21(4) aims to provide a defence to an employment agency which relies on a statement by the employer to the effect that the employer could lawfully refuse to offer employment to the person in question. The lack of a requirement under Clause 21(4)(a) of providing such a statement in writing is likely to create difficulties in enforcement.</p> <p><u>Administration's response:</u></p> <p>This is a matter of evidence. An employment agency can ask for a written statement to protect itself. However, if an employment agency can prove that the employer has made an oral statement, the defence under Clause 21(4) will also be available.</p>

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Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>(a) Employment agencies should be imposed a statutory obligation to report on cases of alleged practices of racial discrimination in employment matters by employers, and the Labour Department should be regarded as an employment agency under the Bill.</p> <p>(b) A provision should be made to outlaw any requirement for job applicants to disclose their ethnicity or nationality in any applications.</p> <p><u>Administration's response:</u></p> <p>(a) The employment services provided by the Labour Department (LD) include, inter alia, the functions of employment agency as defined in Clause 2 of the Bill.</p> <p>(b) The way the Bill is drafted is consistent with the existing anti-discrimination ordinances. We do not see the need to impose undue legal obligation on employment agencies.</p> <p>(c) Employers should be able to seek factual information from job applicants so long as they do not discriminate against job applicants on the ground of race.</p> <p>(d) The Equal Opportunities Commission (EOC) has issued a “Code of Practice on Employment under the Sex Discrimination Ordinance” containing advice for employers to avoid imposing measures which could lead to discrimination on the ground of sex. After the Bill is enacted, the EOC will also issue code of practice to provide practical guideline to employers.</p>
<b>Clause 23 Employment, etc. for religion</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>“Organized religion” in the clause should be defined, and a list of organized religions intended to be covered by the clause should be incorporated.</p> <p><u>Administration's response:</u></p>

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	The exception provided under Clause 23 is consistent with that provided under the SDO (Section 22) and it is not possible to provide an exhaustive list of organized religions. Neither would it be appropriate to provide for a definition as this may inadvertently exclude some religion from the application of the clause.
<b>Clause 24 Employees, etc.</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	It is unclear whether university placement, summer jobs and voluntary work would be protected under the clause.  <u>Administration's response:</u>  The definition of “employment” in the Bill is in line with that in the existing anti-discrimination ordinances. It means employment under a contract of service or of apprenticeship, or a contract personally to execute any work or labour. University placement, summer jobs and voluntary work are covered if they involve such a contract.
<b>Clause 26 Discrimination by responsible bodies for educational establishments</b>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	There is no provision in RRA equivalent to Clause 26(2) which stipulates that the Bill is not to be construed as requiring a responsible body for an educational establishment to modify for persons of any racial group its arrangements regarding holidays or medium of instruction or to make different arrangements on those matters for persons of any racial group. It is concerned that an argument that it is not reasonably practicable to make the arrangements will not satisfy a proportionality test.  <u>Administration's response</u>  Please see our response above to Clause 20 on Vocational Training.
Hong Kong SKH Lady	Clause 26(2) should be deleted since language discrimination is a form of indirect discrimination and this

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<p>Maclehose Centre [CB(2)1202/06-07(02)]</p> <p>The Democratic Party [CB(2)1226/06-07(03)] Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>The Hong Kong Christian Service [CB(2)1226/06-07(06)] [CB(2)759/07-08(02)]</p> <p>Hong Kong Christian Service [CB(2)759/07-08(02)]</p> <p>Hong Kong Unison Limited [CB(2)775/07-08(01)]</p> <p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Association for the Advancement of Feminism [CB(2)901/07-08(01) &amp; (02)]</p>	<p>provision may legitimize existing discriminatory arrangements.</p> <p><u>Administration's response:</u></p> <p>Please see our response above to Clause 20 on Vocational Training.</p>
<p>Civic Party</p>	<p>Clause 26(2)(a) should be deleted to protect equal rights of ethnic minorities in education.</p>

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[CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p><u>Administration response:</u></p> <p>Please see our response above to Clause 20 on vocational training.</p>
Dr Keezhangatte James Joseph [CB(2)1243/06-07(01)]	<p>Provisions should be made to permit affirmative action to be taken under Clause 26 on education.</p> <p><u>Administration's response</u></p> <p>The purpose of the Bill, in line with our obligations under International Covenant on the Elimination of All Forms of Racial Discrimination, 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 their race. While we are mindful of the need to advance the opportunities of the ethnic minorities, we should not undermine the rights of other individuals in the community to compete on equal terms. In particular, we should not introduce measures 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 targetted racial group. This is consistent with the principle of non-discrimination. The standard and approach proposed in the Bill are also consistent with those enshrined in the existing anti-discrimination ordinances.</p>
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>Clause 26(2) provides a blanket shield for the Administration and other educational bodies which will be exempted from any requirement that reasonable arrangements should be put in place to provide adequate support for ethnic minority students. It is suggested that the Administration should also review section 24(4) of DDO which provides for an exception for an educational establishment if its provision of services/facilities for students with a disability would impose unjustifiable hardship on the establishment.</p> <p><u>Administration's response:</u></p> <p>Please see our response above to Clause 20 on vocational training.</p>

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<b>Clause 27 Discrimination in provision of goods, facilities or services</b>	
Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	As Clause 27 will permit racial discrimination to take place, its scope of application needs to be restricted.  <u>Administration's response:</u> Clause 27 is in line with existing anti-discrimination ordinances. It prohibits any person concerned with the provision of goods, facilities or services from discriminating against another person who seeks to obtain or use those goods, facilities or services. The clause does not permit racial discrimination.
<b>Clause 28 Discrimination in disposal or management of premises</b>	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 28(3) provides for an exception on disposal of premises by their owner-occupiers, unless the service of an estate agent is used or an advertisement is published in connection with the disposal. Its equivalent provision in RRA is section 21, which was amended in 2003 to remove the exclusion in relation to discrimination on grounds of race/ethnic/national origins. The Administration should justify why such an amendment has not been adopted for Clause 28.  <u>Administration's response:</u>  Clause 28(3) is in line with existing anti-discrimination ordinances. It is appropriate to maintain the freedom of a person who owns an estate or interest in the premises to choose his tenant or buyer if he wholly occupies the premises and relies not on advertisement or an estate agent but word of mouth in disposing of the premises.
<b>Clause 30 Exceptions for small dwellings</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	Clause 30 provides for an exception for letting and assignment of "small dwellings". Its equivalent provision in RRA is section 22, which was amended in 2003 to remove the exclusion of discrimination on grounds of race/ethnic/national origins. The Administration should justify why such an amendment has not

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The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>been adopted for Clause 30.</p> <p><u>Administration’s response:</u></p> <p>In general, the Bill makes unlawful racial discrimination which consists of withholding licence or consent for assignment or sub-letting. 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 for small dwellings. It permits a landlord in similar circumstances to choose his tenant by reference to race.</p> <p>Existing anti-discrimination ordinances in Hong Kong contain similar provisions.</p>
<b>Clause 31 Exceptions for voluntary bodies</b>	
Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>This exception clause may encourage groups like White Supremacy, neo-Nazi groups and anti-Japanese groups to be formed in Hong Kong. A “voluntary body” should be properly defined in the Bill.</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. Existing anti-discrimination legislation in Hong Kong contains similar provisions. 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. Moreover racist behaviour is outlawed by Clauses 45 and 46 which cover vilification and serious vilification respectively.</p>

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<b>Clause 32 Exceptions for cemeteries</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>As mixed marriages are common in Hong Kong, it is concerned whether this clause may disallow a person from being buried together with his/her spouse of a different race.</p> <p><u>Administration's response:</u></p> <p>Clause 32 seeks to avoid affecting arrangements in cemeteries, which may be public or private. Clause 32 does not impose any prohibition and there is no legislation prohibiting a person from being buried together with his / her spouse of a different race.</p>
<b>Clause 33 Further exceptions</b>	
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>Paragraph 19 of the Explanatory Memorandum states that “Clauses 27(1) and 28 do not extend to discrimination covered by the employment or education provisions of the Bill (Clause 33(2) as read with Schedule 4)”. It is necessary to clarify how the specific provisions of Clause 33(2) and Schedule 4 should be read in the context of the Explanatory Memorandum.</p> <p><u>Administration's response:</u></p> <p>Clause 33(2) &amp; Schedule 4 deal with a possible overlap between Part 3 (ie employment) and Clause 26 (ie education) on the one hand and Clauses 27(1) (ie provision of services etc) and 28 (ie disposal or manangement of premises) on the other hand. For example, Clause 27(1)(b) may cover provision of facilities for education and “education” is defined in clause 2 as including any form of training. This can cover the case where an employer provides training for employment (Clause 10(2)(b)). So Clause 27 may overlap with Clause 10(2)(b) regarding training.</p> <p>Suppose the circumstances are such that a person of a particular race who lodges a claim under clause 10(2)(b) for being refused training by his employer and his claim is defeated because race is a genuine</p>

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	occupational qualification, i.e., Clause 11(1)(b) applies. Such a person may also lodge a claim under Clause 27(1)(b) for discrimination in providing “facilities for education”. In this case, Clause 33(2) and Schedule 4 operate so that, if the exception of “genuine occupational qualification” applies and defeats a claim under clause 10(2)(b), a claim under clause 27 will similarly fail.
<b>Clause 34 Discrimination in eligibility to stand for election, etc.</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The Administration should consider if it is a case of over-legislation to include Clause 34(2).  <u>Administration’s response:</u>  Clause 34(2) is added for the sake of clarity concerning the elections or appointment to public bodies which are not covered by the proposed legislation. Since the eligibility for being elected or appointed to the positions concerned is governed by the Basic Law which is superior to local legislation, deleting Clause 34(2) will not alter the legal position. We will introduce a CSA to delete Clause 34(2).
<b>Clause 37 Exception from section 36 for certain clubs</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	The Government should clarify the intended parties which can enjoy this exception.  <u>Administration’s response:</u>  Clause 37 is included having regard to the special circumstances of clubs the main objective of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group or of a number of different racial groups. Any club that falls within the description in Clause 37 can invoke the exception.
<b>Clause 39 Other harassment</b>	
Association for the Advancement	Protection against racial harassment should be extended to service providers, and not just to service users,

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of Feminism (the Association) [CB(2)901/07-08(01) & (02)]	under Clause 39(1).  <u>Administration's response:</u>  Clause 39(1) is consistent with existing anti-discrimination ordinances.
Mr Y K CHONG [CB(2)1226/06-07(04)]	(a) Clauses 39(3) and (4) should be amended to protect tenants and sub-tenants occupying the same premises from racial harassment.  (b) The definition of a “club” under Clause 39(10) is too narrow and should be broadened by deleting paragraph (b) from its definition under Clause 2.  <u>Administration's response:</u>  (a) Clause 39(3) and (4) is consistent with existing anti-discrimination ordinances.  (b) Please see our response on the definition of “club” under Clause 2 above.
<b>Clause 46 Offence of serious vilification</b>	
A member of the public [CB(2)2792/06-07(01)]	Clause 46 should be amended to the effect that a person commits an offence if the person, by any activity in public, incites hatred towards, serious contempt for, or ridicule of, another person on the ground of the race of that person.  Wording of suggested amendment put forward is “任何人如因另一人的種族而藉公開活動煽動或嘲諷對該人的仇恨、嚴重的鄙視，即屬違法。”  <u>Administration's response:</u>  Clause 46 is consistent with relevant provision in the Disability Discrimination Ordinance.

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<b>Clause 49 Special measures</b>	
Civic Party [CB(2)783/07-08(04)]	<p>“Special needs” under the clause should be defined and objective test should be provided to prevent abuse of the clause.</p> <p><u>Administration’s response:</u></p> <p>Context is important in determining what special needs are in a particular case. It would be difficult to draw up a definition or an exhaustive list of special needs. Whether there is a special need would depend on the circumstance on a case by case basis.</p>
<b>Clause 50 Charities</b>	
Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>Clause 50 provides for the exception for certain provisions in charitable instruments from the scope of the Bill. Its equivalent provision in RRA is section 34. Since the exemption was removed from RRA in 2003, the Administration should justify why a similar amendment has not been made to Clause 50.</p> <p><u>Administration’s response:</u></p> <p>Clause 50 is in line with existing anti-discrimination ordinances. It is appropriate to protect the freedom of people to choose the beneficiaries of their donations.</p>
<b>Clause 51 Discriminatory training by certain bodies</b>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>It is not clear why ordinary residents are excluded as training opportunities should be open to all regardless one's racial background.</p> <p><u>Administration’s response:</u></p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
	Ordinary residents are not excluded from Clause 51.
<b>Clause 54 Nationality law, etc. not affected</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>The provision is too broad and unnecessary because of the existence of Clause 8(3)(d).</p> <p><u>Administration's response:</u></p> <p>Article 1(3) of ICERD states 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.</p>
<b>Clause 55 Immigration legislation</b>	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) &amp; CB(2)798/07-08(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>The exemption for immigration legislation should be removed in order to protect the rights of asylum seekers and not to legitimize existing discriminatory arrangements against foreign domestic helpers e.g. two-week rule.</p> <p><u>Administration's response:</u></p> <p>Clause 55 is included for avoidance of doubt. It is in line with section 11 of the HKBORO, which provides that “as regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation”. Moreover, 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”. Therefore, under the ICERD, the exercise of effective immigration control by a State Party or a territory is not a form of discrimination to be restricted.</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
<p>The Coalition For Migrants Rights, Indonesian Migrant Workers Union, Far East Overseas Nepalese Association, Filipinos Domestic Helper General Union, Alliance of Progressive Labor, Hong Kong, the Hong Kong Coalition of Indonesian Migrants Workers Organization [CB(2)1226/06-07(05)]</p> <p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p> <p>Association for the Advancement of Feminism [CB(2)901/07-08(01) &amp; (02)]</p>	<p>It is a common practice 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 will serve as a useful and effective tool to protect the interests and well being of its people through an immigration control mechanism.</p>
<p><b>Clause 56 Acts done under statutory authority not affected by Parts 3, 4 and 5</b></p>	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p>	<p>This clause which seeks to exempt acts done for the purpose of complying with an existing statutory requirement from being rendered unlawful is opposed.</p> <p><u>Administration's response:</u></p> <p>This is consistent with existing anti-discrimination ordinances. The provision is necessary to avoid an act done by a person to comply with an existing statutory provision from being rendered unlawful by the Bill.</p>
<p>The Hong Kong Association of</p>	<p>(a) The scope of exceptions should be widened to cater to the needs of established banking practices.</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
Banks [CB(2)1668/06-07(01)]	<p>Clause 56 refers to an “existing statutory provision”, which means compliance with non-statutory requirements such as the Hong Kong Monetary Authority's guidelines and sanctions issued by overseas regulatory authorities will fall outside the scope of protection of the Clause.</p> <p>(b) Unlike section 41 of RRA, Clause 56 of the Bill applies to existing statutory provision (i.e. excludes future legislation). Hence, the scope of protection provided by Clause 56 will not apply to any new ordinance enacted after the Bill becomes enacted. The scope of Clause 56 should be expanded to include future legislation and non-statutory requirements that banks are expected to comply with in the prevention of money laundering and terrorist financing activities.</p> <p><u>Administration’s response:</u></p> <p>(a) The section on customer acceptance policies and guidelines as referred by the HKBA is the “Supplement to the Guideline on Prevention of Money Laundering” issued by the Hong Kong Monetary Authority in April 2003. The guideline does not ask the banks to impose different treatments to their customers based on their race. Instead, financial institutions should observe various characteristics of their customers, group them based on their assessed levels of risk and monitor the activities of such accounts accordingly.</p> <p>(b) We consider it appropriate that, if any future bill may contain provisions that require differential treatment of persons on ground of race, Government and LegCo should consider how to sort out such provisions on a case by case basis.</p>
<b>Clause 57 Application to New Territories land</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]  The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>The rights of inhabitants in the New Territories are protected by Article 40 of the Basic Law. The indigenous inhabitants of the New Territories should not be granted exemption from the coverage of the Bill as it will widen their rights.</p> <p><u>Administration’s response:</u></p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
	<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”. Clause 57 is intended to make it clear that the Bill does not affect the existing administration of land in the New Territories, which is not based on the ground of race. It does not widen the rights of indigenous inhabitants of the New Territories.</p>
<p><b>Clause 58 Exception for languages</b></p>	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) &amp; CB(2)798/07-08(01)]</p> <p>Hong Kong SKH Lady Maclehose Centre [CB(2)1202/06-07(02)]</p> <p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)] [CB(2)759/07-08(04)]</p>	<p>(a) The exception for use, or failure to use, particular languages in regard to provision of goods and services, etc. should not be provided for, particularly in these essential areas like medical and care services, educational and vocational training, welfare services, judiciary services, legal aid, housing, immigration, labour and the Police, in order to safeguard the rights of ethnic minorities.</p> <p>(b) Mr Y K CHONG further considers that the Administration should clarify the meaning of “in any circumstances relevant for the purpose of the section” in Clause 58(1).</p> <p>(c) Dr Kelly LOPER further points out that as Clause 4 already provides for the test of justifiability, Clause 58 is unnecessary.</p> <p><u>Administration’s response:</u></p> <p>(a) and (c) 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 businesses in all languages or in the language of their client’s choice.</p> <p>(b) The phrase “any circumstances relevant for the purposes of the section” in Clause 58(c) means any circumstances relevant for the purposes of “sections 20, 21, 26, 27, 28, 29, 35 or 36” referred to in the</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
<p>The Coalition For Migrants Rights, Indonesian Migrant Workers Union, Far East Overseas Nepalese Association, Filipinos Domestic Helper General Union, Alliance of Progressive Labor, Hong Kong, the Hong Kong Coalition of Indonesian Migrants Workers Organization [CB(2)1226/06-07(05)]</p> <p>The Hong Kong Christian Service [CB(2)1226/06-07(06)]</p> <p>Christian Action [CB(2)783/07-08(01)]</p> <p>Pakistan Islamic Welfare Union Inc (HK) Limited [CB(2)783/07-08(03)]</p> <p>Hong Kong SKH Lady Macle hose Centre [CB(2)759/07-08(01)]</p> <p>Hong Kong Christian Service [CB(2)759/07-08(02)]</p>	<p>beginning of Clause 58. Those sections cover the following areas –</p> <ul style="list-style-type: none"> <li>• Section 20 on vocational training,</li> <li>• Section 21 on employment agencies,</li> <li>• Section 26 on education,</li> <li>• Section 27 on provision of goods, facilities or services,</li> <li>• Section 28 on disposal or management of premises,</li> <li>• Section 29 on consent for assignment or sub-letting,</li> <li>• Section 35 on barristers</li> <li>• Section 36 on clubs.</li> </ul>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
<p>Hong Kong Unison Limited [CB(2)775/07-08(01)]</p> <p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Mr Patrick YU [CB(2)783/07-08(06) revised]</p> <p>Colours in Peace [CB(2)798/07-08(05)]</p> <p>Hong Kong Women Christian Council [CB(2)798/07-08(07)]</p> <p>YMCA of Hong Kong (Cheung Sha Wan Centre) [CB(2)798/07-08(08)]</p> <p>Association for the Advancement of Feminism [CB(2)901/07-08(01) &amp; (02)]</p> <p>Dr Kelley LOPER [Oral presentation at the meeting on 11 January 2008]</p>	

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>Clause 58 should be amended by adopting the wording “...would impose unjustifiable hardship”, in line with similar wording of section 26(2) of DDO.</p> <p><u>Administration’s response:</u></p> <p>Please see our response above.</p>
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>This exception for use, or failure to use, particular languages should also cover Clause 10 and other provisions relating to employment.</p> <p><u>Administration’s response:</u></p> <p>While language is not a ground of race under the Bill, it would be unlawful for an employer to impose a language requirement that has a disproportionate negative impact on a racial group if the requirement cannot be shown to be justifiable. Therefore, we do not consider it appropriate to extend Clause 58 to employment.</p>
<p>The Hong Kong Federation of Insurers [CB(2)1168/06-07(07)]</p> <p>Tsim Sha Tsui District Kai Fong Welfare Association [CB(2)1168/06-07(08)]</p> <p>Yau Tsim Mong Committee on Promotion of Hong Kong Economy</p>	<p>(a) The Bill should not impose mandatory requirement for all service providers including educational establishments to conduct their activities and business in all languages or any specified language.</p> <p>(b) Provision of the exemption under Clause 58 is supported.</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>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Comments/Proposed amendments</b>
<p>[CB(2)1168/06-07(09)]</p> <p>Equal Opportunities Officer/University of Hong Kong [CB(2)1168/06-07(10)]</p> <p>The Association of Hong Kong Chinese Middle Schools [CB(2)1168/06-07(11)]</p> <p>Vocational Training Council [CB(2)1202/06-07(03)]</p> <p>Hong Kong Swatow Merchants Association Limited [CB(2)1266/06-07(01)]</p>	
<p>EOC [CB(2)759/07-08(03)]</p>	<p>If an express provision is made to oblige public service providers, say, medical and vocational training, to accommodate the specific language needs of users, it should be subject to a defence of unjustifiable hardship. It will be useful if the Bill can specify the intended obligations of service providers by way of a list of examples. It is also desirable to provide for a non-exhaustive list of factors relevant to the defence of unjustifiable hardship, which may include –</p> <ul style="list-style-type: none"> <li>● nature of the service;</li> <li>● language profile of the customers or users;</li> <li>● number of the people likely to require the service in a particular language;</li> <li>● resources required in making the accommodation required; and</li> <li>● resources available to the operators.</li> </ul> <p><u>Administration's response:</u></p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
	Please see our response above which explains the reasons for retaining Clause 58.
<b>Part 7 Commission</b>	
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>(a) As the dual role of EOC as investigator and conciliator may result in respondents feeling pressured to agree to settlements, provisions to provide for the setting up of a panel of independent conciliators/mediators should be incorporated into the Bill.</p> <p>(b) The existing protection against usual costs orders in relation to complaints to EOC is unjustified. EOC should avoid giving the impression that complainants receive preferential treatment over respondents in discrimination cases.</p> <p><u>Administration's response:</u></p> <p>The EOC is empowered to enforce the existing anti-discrimination ordinances. This has been working effectively and the EOC should be given the same power to enforce the Bill (when enacted).</p>
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>Clauses 60 and 79 on “Functions and powers of Commission” and “Assistance by way of conciliation” should be amended to enhance the functions and powers of EOC, such as by including the power to sue and to enable EOC to bring civil proceedings against those who have committed discriminatory practices without going through the process of formal investigation.</p> <p><u>Administration's response:</u></p> <p>The EOC is empowered to enforce the existing anti-discrimination ordinances. This has been working effectively and the EOC should be given the same power to enforce the RDB (when enacted). Enhancing the functions and powers of EOC is beyond the scope of the Bill.</p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
<b>Clause 83 Rules</b>	
<b>Schedule 5 Other matters not affected by this Ordinance</b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>The Administration should explain the rationale of having an exemption for the portable comprehensive social security assistance scheme policy and the effect if this schedule is deleted?</p> <p><u>Administration's response:</u></p> <p>Schedule 5 is included for clarification. If this schedule is deleted, it would create an uncertain situation in which the portable comprehensive social security assistance scheme (for people eligible for comprehensive social security assistance but take up permanent residence in Guangdong or Fujian) may be challenged as unlawful under the Bill.</p>

**Constitutional and Mainland Affairs Bureau**  
**May 2008**