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Ms Flora Tai
Clerk to Bills Committee
on the Race Discrimination Bill
Legislative Council Building
8 Jackson Road
Hong Kong
(By fax: 2509 9055)

26 June 2008

Dear Flora,

Race Discrimination Bill

Attached please find the final draft of the Committee Stage Amendments to be proposed by the Administration to be issued to Members.

In addition to those amendments we have reported to the Bills Committee as outlined in the paper entitled “the Administration’s proposals for Committee Stage Amendments” (LC Paper No. CB(2)2251/07-08(01)), we have also proposed the following additional amendments –

Vilification and serious vilification

- (a) in response to members request, we have recast Clause 46 –
 - (i) in which new subclause (1)(b) clarifies our policy intent as to the mental element required as an ingredient of the offence;
 - (ii) a new clause 46(1A) clarifies that it is immaterial whether a person is actually incited. A similar subclause (1A) would also be included in Clause 45.

- (b) we would make similar amendments to sections 46 and 47 of the Disability Discrimination Ordinance, Cap 487, which contain similar provisions.

Other amendments

On Clause 18(5) (which makes it lawful for a trade union, employers' organization or professional or trade organization etc whose main object is to confer benefits of membership to a particular racial group before the enactment date to continue to do so), further drafting changes are made.

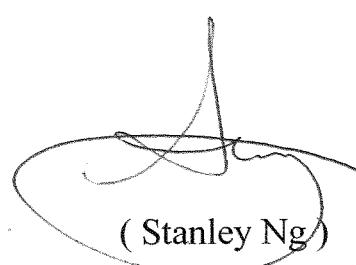
We will also make amendments to the Chinese text of –

- (a) Clause 27(1)and the corresponding section 28(1) of the Sex Discrimination Ordinance, Cap 480, and section 19(1) of the Family Status Discrimination Ordinance, Cap. 527, to clarify our policy intent; and
- (b) Clause 71 to fine-tune the presentation; and
- (c) sections 7, 8 and 9 of Schedule 2 to achieve internal consistency.

These are technical changes and do not affect substance.

We will also remove the reference to Construction Industry Training Authority (CITA) in Schedule 1 by removing item 15 as the CITA has ceased to exist after the establishment of the Construction Industry Council (item 17 of Schedule 1).

Please let me know if you need further information.



A handwritten signature in black ink, appearing to read "Stanley Ng". The signature is fluid and cursive, with a prominent vertical stroke at the top.

for Secretary for Constitutional and Mainland Affairs

RACE DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;” and substituting “to amend certain definitions, and the provisions on discrimination against contract workers, in existing anti-discrimination legislation as well as the provision on unlawful sexual harassment by creating a hostile or intimidating environment in the Sex Discrimination Ordinance for alignment with corresponding provisions in this Ordinance;”.
1(2)	By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
2(1)	In the definition of “club”, by deleting everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”.
2(1)	By deleting the definition of “estate agent” and substituting – ““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”.
2(1)	By deleting the definition of “near relative” and substituting – ““near relative” (近親), in relation to a person, means – (a) the person’s spouse; (b) a parent of the person or of the spouse;

- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

3 By deleting the clause and substituting –

“3. Application to Government

This Ordinance binds the Government.”.

4 By deleting subclauses (2), (3), (4) and (5) and substituting –

(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.”.

7(2) By deleting everything after “that” and substituting “creates a hostile or intimidating environment for the second-mentioned person.”.

15(1) By deleting everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

15 By adding -

“(7) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person

directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

18 By deleting the heading and substituting –

“18. Organizations of workers or employers or professional or trade organizations, etc.”.

18 By deleting subclause (5) and substituting –

“(5) Where, immediately before the enactment of this Ordinance, the main object of an organization to which this section applies was to enable the benefits of membership to be enjoyed by persons of a particular racial group (defined otherwise than by reference to colour), then, in so far as that continues to be its main object, this section is not to be construed as affecting that object and does not render unlawful an act that is done in order to give effect to that object.”.

18(6) By deleting “an organization of workers, an organization of employers, or an organization of both workers and employers” and substituting “an organization to which this section applies”.

20(2)(b) By deleting “on those matters” and substituting “regarding holidays or medium of instruction”.

26 By deleting subclause (2)(b) and substituting -

“(b) to make different arrangements regarding holidays or medium of instruction for persons of any racial group.”.

27

In the Chinese text, by deleting subsection (1)(b) and substituting –

“(b) 前者在正常情況下，會以某方式並按某些條款向其他公眾人士，或(如後者屬於某部分的公眾人士)向屬該部分的其他公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕以相同方式並按相同條款，或故意不以相同方式並按相同條款，向後者提供具有相同品質或質素的該等貨品、設施或服務。”

34

By deleting subclause (2).

44(1)(b)

In the English text, by deleting “threatening” and substituting “threatening to subject”.

45

(a) In the Chinese text, by deleting subclause (1) and substituting –

“(1) 任何人如藉公開活動，煽動基於另一人的種族或屬某類別人士的成員的種族的、對該另一人或屬該類別人士的成員的仇恨、嚴重的鄙視或強烈的嘲諷，即屬違法。”

(b) By adding –

“(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to—

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”.

45

By deleting subclause (2)(b) and substituting –

- “(b) an activity in public that –
 - (i) is a communication or the distribution or dissemination of any matter; and
 - (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

46

By deleting subclause (1) and substituting –

- “(1) A person commits an offence if –
 - (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) or members of a class of persons, on the ground of the race of the second-mentioned person or the members of the class of persons;
 - (b) the person intentionally incites such hatred, serious contempt or severe ridicule on such ground; and
 - (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, the second-mentioned person or the members of the class of persons; or
 - (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(1A) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

(a) hatred towards;
 (b) serious contempt for; or
 (c) severe ridicule of,
 another person or members of a class of persons on the ground of the race of the person or members of the class of persons.”.

64(3) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.

65 By deleting the clause and substituting –

“65. Power to conduct formal investigations

Without limiting section 60 –

- (a) if the Commission thinks fit, it may conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section; and
- (b) if required by the Chief Secretary for Administration, the Commission shall conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.”.

71 By deleting subclause (1) and substituting -

“(1) A claim by or on behalf of any person (“the claimant”) that another person (“the respondent”) –

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;
- (b) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4;
- (c) has committed an act which is unlawful by virtue

of section 45; or

(d) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),

may be made the subject of civil proceedings in like manner as any other claim in tort.”.

- 72(5) By deleting “67(4)” and substituting “67(5)”.
- 81(3) By deleting “conciliation under section 79 was concluded” and substituting “the complaint was disposed of under section 79(3) or (4)”.
- 84(1) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
- 89 By deleting the cross-heading immediately before the clause and the clause.
- 93 By deleting the clause and substituting –
- “93. Interpretation**
- (1) Section 2(1) of the Sex Discrimination Ordinance (Cap. 480) is amended –
- (a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;
- (b) by repealing the definition of “estate agent” and substituting –
- ““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap.

511);”;

(c) by adding -

““near relative” (近親), in relation to a person, means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(4) is repealed.
- (3) Section 2(5)(b) is amended by repealing “sexually” and “work”.

(4) Section 2(6) is repealed.”.

New

By adding immediately after Clause 93 –

“93A. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 13 is amended by adding –

“(5) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93B. Discrimination in provision of goods, facilities or services

Section 28 is amended, in the Chinese text, by repealing subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人，如藉以下做法歧視一名謀求獲得或使用該等貨品、設施或服務的女性，即屬違法 –

(a) 拒絕向她提供或故意不向她提供任何該等貨品、設施或服務；或

(b) 該人在正常情況下，會以某方式並按某些條款向男性公眾人士，或(如她屬於某部分的公眾人士)向

屬該部分的男性公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而該人拒絕以相同方式並按相同條款，或故意不以相同方式並按相同條款，向她提供具有相同品質或質素的該等貨品、設施或服務。”

93C. Discrimination in disposal or management of premises

Section 29(3) is amended, in the Chinese text, by repealing “地產中介人” and substituting “地產代理”.

93D. Claims under Part III or IV

Section 76(1) is amended –

- (a) by repealing paragraph (b);
- (b) in paragraph (c), by repealing the comma and substituting “; or”;
- (c) by adding –
“(d) is to be treated, by virtue of section 46 or 47, as having committed an act of discrimination or sexual harassment referred to in paragraph (a) or (c) against the claimant.”.

93E. Period within which proceedings to be brought

Section 86(2A) is amended by repealing “conciliation under section 84 was concluded” and substituting “the complaint was disposed of under section 84(3) or (4)”.

Disability Discrimination Ordinance

93F. Interpretation

(1) Section 2(1) of the Disability Discrimination Ordinance (Cap. 487) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person, means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of such a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a

grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

(2) Section 2(5) is repealed.

93G. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 13 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93H. Vilification

(1) Section 46 is amended by adding –

“(1A) For the purposes of subsection (1), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.”.

(2) Section 46(2)(b) is repealed and the following substituted –

- “(b) an activity in public that –
 - (i) is a communication or the distribution or dissemination of any matter; and
 - (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

93I. Section substituted

Section 47 is repealed and the following substituted –

“47. Offence of serious vilification

- (1) A person commits an offence if –
 - (a) the person, by any activity, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) with a disability or members of a class of persons with a disability;
 - (b) the person intentionally incites such hatred, serious contempt or severe ridicule; and
 - (c) the activity is an activity in public and consists of threatening physical harm, or inciting others to threaten physical harm –

- (i) towards, or towards any premises or property of, the second-mentioned person or the members of the class of persons; or
- (ii) towards the premises or property of any other person to which the second-mentioned person or the members of the class of persons have access.

(2) For the purposes of subsection (1)(a), it is immaterial whether a person is actually incited, by an activity, to –

- (a) hatred towards;
- (b) serious contempt for; or
- (c) severe ridicule of,

another person with a disability or members of a class of persons with a disability.

(3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.”.

93J. Claims under Part III or IV

Section 72(1)(d) is repealed and the following substituted –

“(d) is to be treated, by virtue of section 48 or 49, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),”.

93K. Period within which proceedings to be brought

Section 82(2A) is amended by repealing “conciliation under

section 80 was concluded” and substituting “the complaint was disposed of under section 80(3) or (4)”.

Family Status Discrimination Ordinance

93L. Interpretation

(1) Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association”;

(b) by adding –

““near relative” (近親), in relation to a person, means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of such a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a grandchild, and, in determining the above relationships, children born out of

wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent.”.

(2) Section 2(4) is repealed.

93M. Discrimination against contract workers

(1) Section 9(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 9 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93N. Discrimination in provision of goods, facilities or services

(1) Section 19(1)(a) is amended, in the English text, by adding “or” at the end.

(2) Section 19 is amended, in the Chinese text, by repealing and the subsection (1) and substituting –

“(1) 從事向公眾人士或部分公眾人士提供貨品、設施或服務(不論是否為此而收取款項)的人(“前者”)，如藉以下做法歧視任何具有

家庭崗位且謀求獲得或使用該等貨品、設施或服務的人（“後者”），即屬違法 —

(a) 拒絕向後者提供或故意不向後者提供任何該等貨品、設施或服務；或

(b) 前者在正常情況下，會以某方式並按某些條款向並無家庭崗位或並無某家庭崗位的公眾人士，或(如後者屬於某部分的公眾人士)向屬於該部分的並無家庭崗位或並無某家庭崗位的公眾人士，提供具有某種品質或質素的貨品、設施或服務，然而前者拒絕以相同方式並按相同條款，或故意不以相同方式並按相同條款，向後者提供具有相同品質或質素的該等貨品、設施或服務。”.

93O. Period within which proceedings are to be brought

Section 64(3) is amended by repealing “conciliation under section 62 was concluded” and substituting “the complaint was disposed of under section 62(3) or (4)”.”.

94

By deleting the cross-heading immediately before the clause and the clause.

Schedule 1 (a) In item 14, by deleting “and Manpower”.

(b) By deleting item 15.

Schedule 2, (a) In the English text, by deleting “remains to be” and substituting section 7 “remains”.

(b) In the Chinese text, by deleting “是或曾經是依據” and substituting “是否依據或在過去曾依據”.

- Schedule 2, (a) In the English text, by deleting “remains to be” and substituting section 8 “remains”.
- (b) In the Chinese text, by deleting “是或曾經是依據” and substituting “是否依據或在過去曾依據”.
- Schedule 2, (a) In the English text, by deleting “remains to be” and substituting section 9 “remains”.
- (b) In paragraph (b), by deleting “and Manpower”.
- Schedule 2, (a) In the definition of “public officer”, in paragraph (b), by deleting section 11 “and Manpower”.
- (b) In the definition of “specified English teacher”, in paragraph (c)(i), by deleting “and Manpower”.