

Race Discrimination Bill

**The Administration's Views on the
Committee Stage Amendments proposed by Hon Margaret Ng**

This note provides the Administration's views on Hon Margaret Ng's proposed Committee Stage Amendments ("CSAs") against the relevant provisions (Rule 57(4) and (6)) in the Rules of Procedures of the Legislative Council.

2. We are of the view that the following CSAs proposed by the Hon Margaret Ng have charging effect on Government expenditure –

- (a) proposed amendments to Clause 4;
- (b) proposed addition of Part 2A and new Clauses 9A and 9B; and
- (c) proposed amendment to Clause 58.

Our detailed justifications are set out in the paragraphs below.

Clause 4: Definition of discrimination

3. Clause 4(1)(b) of the Race Discrimination Bill defines indirect racial discrimination. Broadly speaking, it refers to the application by a person (the discriminator) of a "requirement or condition" which, although applicable to all, has a disproportionate adverse effect on persons of a particular racial group and cannot be shown to be justifiable irrespective of race.

4. Hon Margaret Ng's CSA broadens the definition and brings within the scope of the Bill the informal practices of "provision, criterion or practice", in addition to the application of a "requirement or condition". As a result, the number of complaints and court cases, not only against Government and public authorities but also against individuals and organisation in the private sector, may increase substantially.

5. The Government will have to incur additional public expenditure in dealing with the additional number of complaints and court cases against the Government. Furthermore, bearing in mind the responsibilities of the Equal Opportunity Commission (EOC) for investigation, conciliation etc under Part 7 of the Bill, the Government will have to provide significant additional subvention to the EOC in order for the latter to discharge its statutory duties and to deal with the much increased volume of work. Besides, additional funding would also be required to provide legal aid to parties involved in civil litigation for claims and damages.

New Part 2A: Clause 9A (Government) and Clause 9B (General statutory duty of the Government)

6. The existing Bill covers six prescribed areas, i.e. "employment", "education", "goods, facilities, services and premises", "election and appointment to public bodies", "barristers" and "clubs". Hon Margaret Ng's proposed Clause 9A makes it unlawful for the Government to discriminate against a person on the ground of race of that person in the performance of its functions or the exercise of its powers. Hence, it extends the liability of tort on the Government to other areas outside the prescribed areas and renders the Government liable to claims in these other areas. The Government will have to devote additional resources for

handling the additional complaints and litigation cases, irrespective of whether the allegations and claims are justified. Additional funding will also have to be provided to the EOC for investigation and conciliation of complaints against the Government in these other areas.

7. Hon Margaret Ng's proposed Clause 9B imposes on the Government and the public authorities specified in Schedule 6 specific duties and obligations which are listed in the proposed Clause 9B(2). These are new functions which go beyond what is provided in the Bill. The statutory obligation to be imposed by the proposal will incur additional financial resources by the Bureaux and Departments concerned and by the relevant public authorities which are subvented by the Government, in order for them to discharge the new duties.

Clause 58: Exception for languages

8. Hon Margaret Ng's proposed CSA limits the exception in Clause 58 of the Bill so that, barring the circumstances stated in proposed Clause 58(1C), it does not apply to vocational training courses which are specifically provided for persons speaking a particular vernacular (proposed Clause 58(1A)) or to the provision of medical treatment within the meaning of section 2 of the Medical Clinics Ordinance, Cap 343 (proposed Clause 58(1B)).

9. The effect of this CSA is that the Administration will be obliged by statute to devote significant government resources to vocational training bodies funded by Government in the conduct of vocational training classes which are dedicated to the ethnic minorities; and to the Hospital Authority and the Department of Health in the provision of medical treatment - not

only in the official languages of English and Chinese but, more significantly, in the languages of the ethnic minorities receiving such training or medical treatment.

10. Having regard to the large number of ethnic minorities languages that may be involved, the additional financial implications on the Government would be enormous.

11. In addition, apart from the resources required for providing the services, the Government will have to devote additional resources for handling the additional complaints and litigation cases initiated by people who are not satisfied with the use of particular languages in the provision of the services, irrespective of whether the allegations and claims are justified. Additional funding will also have to be provided to the EOC for investigation and conciliation of complaints.

Other CSAs

12. We offer no comments on Hon Margaret Ng's other CSAs.

Constitutional and Mainland Affairs Bureau

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