

LEGISLATIVE COUNCIL BRIEF

RACE DISCRIMINATION BILL

INTRODUCTION

A At the meeting of the Executive Council on 21 November 2006, the Council ADVISED and the Acting Chief Executive ORDERED that the Race Discrimination Bill (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. Racial discrimination is not a prevalent or serious problem in Hong Kong. Although over 95% of the population is ethnic Chinese, Hong Kong has always been a cosmopolitan city and Hong Kong people have a long tradition of living in harmony with and respect for persons from diverse cultural background and ethnic origins. While there are occasional complaints and incidents among individuals (e.g. on refusal to let properties and rejection for job interviews), as a community the relationship between the Chinese majority and the ethnic minorities in Hong Kong has generally been peaceful and harmonious. There have also been, from time to time, mild expressions of intolerance (such as over the congregation of Filipino maids in Central), but there are certainly no real antipathy, division or entrenched prejudice and discrimination against any particular groups on account of their race or ethnic origin.

3. That said, the Government firmly upholds the principles of equality and, as policy, recognises protection against racial discrimination to be a fundamental human right for all persons. Over the years, we have also endeavoured to foster understanding and racial harmony through public education and other promotional activities.

4. Policy commitment apart, we are obliged under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to take steps “to prohibit and to eliminate racial discrimination in all its forms”. In this connection, the United Nations (UN) Committee on the Elimination of All Forms of Racial Discrimination, which is the monitoring body of ICERD, has

consistently maintained that specific legislation should be enacted to give effect to the relevant provisions.

5. Under existing legislation, the Hong Kong Bill of Rights Ordinance (Chapter 383) (HKBORO), prohibits the Government and all public authorities, and any person acting on behalf of the Government or a public authority, from engaging in practices which entail discrimination on any grounds, including race and colour. However, HKBORO is not applicable to acts of discrimination committed by private individuals and organisations.

6. The absence of specific legislation in Hong Kong against racial discrimination applicable to the private sector has been the subject of much criticism and concern, both locally and internationally. Over the last ten years, there have been calls from the UN High Commissioner for Human Rights for Hong Kong to enact the necessary legislation. These calls have been repeated in unison by various UN human rights treaty monitoring bodies (including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on Elimination of All Forms of Racial Discrimination) every time the Hong Kong human rights reports are scrutinised and discussed at international hearings. Locally, while there remains a body of opinion which does not consider legislative controls necessary, public demand for legislation against racial discrimination has been increasing in force, not least among human rights advocates and members of the ethnic minorities.

7. In pursuance of the Government's policy commitment and in appreciation of community aspirations, the Government accepted the need to legislate against racial discrimination in both the public and private sectors in 2003. A public consultation exercise was conducted to gauge public opinion on the scope of regulation and the ways in which individual persons should be protected against racial discrimination. The consultation was completed in February 2005. Subsequently, we have announced in public and at UN hearings our plan to introduce the draft legislation within the 2005-06 LegCo Session. However, because of the need to refine the legislative proposal, both for effectiveness and clarity, we were unable to meet this target. We have repeatedly reassured the public of our commitment and have publicly pledged to introduce the Bill into the LegCo before the end of the current calendar year.

THE BILL

8. The main object of the Bill is two-fold:

- (a) to make racial discrimination and harassment in prescribed areas and vilification on the ground of race

unlawful and to prohibit serious vilification on that ground; and

- (b) to extend the jurisdiction of the Equal Opportunities Commission (EOC) to cover racial discrimination.

Where appropriate, exceptions to application of the provisions are spelt out. The Bill is divided into nine parts and the salient features are summarised below.

9. **Part 1** contains definitions of the various terms used in the Bill. By virtue of Clause 3, the Bill, when passed into legislation, will apply to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.

10. **Part 2** specifies the circumstances in which a person would be regarded as discriminating against, or harassing, another person. Racial discrimination may take the form of direct or indirect discrimination. Broadly speaking, “direct discrimination” occurs when a person on the ground of race treats another person less favourably than he would treat others. “Indirect discrimination”, which is a less obvious form of discrimination, occurs when a person imposes a requirement or condition which, although applicable to all, will cause a disproportionate and unjustifiable adverse impact on one particular ethnic group or another. The details of these are spelt out in Clause 4 of the Bill. A requirement or condition is justifiable if it has a rational and proportionate connection with a legitimate aim, or if it is not reasonably practicable not to apply it. The clause also sets out examples of the circumstances relevant for determining whether it is reasonably practicable to disapply a requirement or condition. Clauses 5 and 6 further make it unlawful to discriminate on the basis of the race of a near relative and against a person being involved or likely to be involved in complaints and proceedings for discrimination respectively.

11. Racial harassment is defined in Clause 7 of the Bill. In general, this is when a person offends, humiliates, or intimidates another person because of the latter’s race or the race of his near relative. It also applies to cases when a person acts in such a way as to render the environment of work or study hostile or intimidating for another person, again on the grounds of the latter’s race or the race of his near relative. For the purpose of the Bill, Clause 8 defines the meaning of “race”, “on the ground of race” and “racial groups”. In particular, “race” means race, colour, descent, or national or ethnic origin but does not mean nationality, Hong Kong permanent resident status, length of residence in Hong Kong or indigenous inhabitant status. These definitions are consistent with those internationally adopted under ICERD.

12. Parts 3 and 4 of the Bill prescribe the areas of activity in which racial discrimination and harassment are prohibited under the Bill. They are, specifically,

- (a) employment;
- (b) education;
- (c) goods, facilities, services and premises;
- (d) election and appointment to public bodies;
- (e) pupillage and tenancy by, and instructions to, a barrister;
and
- (f) membership of and access to clubs.

These parts spell out the circumstances which constitute racial discrimination and harassment in the specified areas of activities, which are made unlawful under the Bill.

13. **Part 3** prohibits racial discrimination in employment. Clause 10 makes it unlawful for an employer to discriminate between job applicants or between employees in offers of employment, the terms of employment, promotion, transfer, training and dismissal. This provision does not apply to employment of domestic helpers and, for the first three years from the enactment of the Ordinance, to employers with five employees or less. Further exceptions to Clause 10 are also provided in Clauses 11 to 13, particularly to allow for differential treatment in circumstances where it is justified by the nature of work as a genuine occupational qualification, and for recruitment/retention of overseas employees on more favourable terms where the consideration does not involve race. Existing employment and the terms of employment are protected and grandfathered under Clause 14 and Schedule 2. Clauses 15 to 22 extend similar controls and protections to other areas of employment and related activities, including engagement of contract worker and commission agent, admission to partnership and professional or trade organisation, professional qualification and vocational training, and provision of services by employment agencies. However, a language proficiency requirement imposed by a qualifying body is excepted if it is reasonable or is one conferred for the purposes of a qualification specified in Schedule 3. Further, it is provided that vocational training bodies are not required to make special arrangements regarding holidays and medium of instruction for particular racial groups. Employment and granting of authorization or qualification for religious purposes are excepted under prescribed circumstances in Clause 23. Clauses 24 and 25 render unlawful racial harassment in the employment field and spell out the circumstances involved.

14. **Part 4** prohibits racial discrimination and harassment in education and other fields. Clause 26 makes it unlawful for an educational establishment to discriminate in the admission of students and in allowing access of the student to benefits, facilities and services. It makes it clear, however, that the educational establishments are not obligated to make special arrangements regarding holidays and medium of instruction for any students of particular racial groups. Clauses 27 to 37 prohibit racial discrimination in the other specified areas, viz.: goods, facilities, services and premises; public bodies; barristers and clubs. Detailed exceptions are provided in the case of premises forming part of small dwellings which are shared by the landlord or the landlord's near relatives, restriction of membership to voluntary bodies or to clubs established specifically for the benefits of particular racial groups, allocation of cemeteries, columbaria and related services, and foster care and similar arrangements. Racial harassment in these areas of activities is prohibited under Clauses 38 and 39.

15. **Part 5** prohibits and sets out the circumstances of other unlawful acts relating to racial discrimination, including discriminatory practices and advertisements, aiding and causing others to discriminate, as well as vilification. Clauses 47 and 48 impose vicarious liability on an employer or principal unless he proved that he had tried to prevent his employee from doing the act or it was outside the agent's authority. It makes serious vilifications an offence punishable by a fine and imprisonment. Knowingly or recklessly making a false or misleading statement as to the discriminatory nature of an act or advertisement to get another to do that act or publish that advertisement is also an offence, punishable by a fine.

16. **Part 6** contains general exception clauses to Parts 3 to 5 of the Bill. These relate particularly to charities and provision of special measures and benefits to meet the special needs of a particular racial group to, for example, give them equal opportunities with others. Clauses 54 and 55 make it clear that the Bill does not affect any law concerning nationality, citizenship, resident status or naturalization or immigration legislation. Acts done pursuant to statutory authority, the operation of the New Territories Ordinance (Chapter 97) and the New Territories Leases (Extension) Ordinance (Chapter 150) are protected. Without affecting the operation of the Official Languages Ordinance (Chapter 5), there is no duty to use, or provide translation into, any language. Further, Clause 59 and Schedule 5 provide for other matters not affected by the Bill, including the Portable Comprehensive Social Security Assistance Scheme.

17. **Part 7** extends the functions and powers of the EOC to cover racial discrimination and other matters under this Bill. These functions and powers are similar to those the EOC currently has under the other existing anti-discrimination ordinances. **Part 8** deals with procedural matters for enforcement and proceedings for remedies, as well as the jurisdiction of the District Court to determine claims. The EOC is empowered to conduct formal investigation, issue enforcement notices, assist persons suffering discrimination, harassment or vilification, and to apply for an injunction against persistent discrimination, harassment or vilification. **Part 9** contains other miscellaneous provisions as well as consequential and related amendments. In particular, Clause 91 amends the Sex Discrimination Ordinance (Chapter 480), to extend unlawful sexual harassment to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating.

ISSUES OF INTEREST

18. In preparing the Bill, we have been careful to take into account the public views collected from extensive public consultations, as well as the likely impact of the provisions upon implementation. Of particular importance, we aim to arrive at a regulatory regime which not only satisfies our policy objectives and international obligations, but also one which balances the divergent interests of the different parties and is reasonable in its justifications, practicable in implementation and acceptable to the people affected. We have also been careful to ensure that the provisions in the law are clearly defined so as to minimise the risk of potential litigation that would pose unnecessary burden and disruptions to the society.

19. For overall perspective and to facilitate understanding of the Bill, the key issues that have attracted greater interest are highlighted in the paragraphs below.

Overall legal framework: the Basic Law, the Hong Kong Bill of Rights Ordinance and the proposed Bill

20. Article 39 of the Basic Law provides for the application of the International Covenant on Civil and Political Rights (ICCPR) to Hong Kong. This provision has been implemented through the HKBORO. It prohibits the Government from engaging in practices that would entail any form of discrimination, including discrimination on the grounds of race. However, the HKBORO does not bind the private sector.

21. Similar to the other existing anti-discrimination Ordinances, the proposed Bill seeks to proscribe against racial discrimination and to provide for details of the areas of protection, enforcement mechanisms and remedies. When enacted, it will apply to both the Government and the private sector. The Bill also does not absolve the Government and public authorities from obligations under the HKBORO. Hence an act that contravenes the HKBORO (which prohibits all forms of discrimination by Government and public authorities) may be challenged in the Court under the HKBORO, even if it were not specifically covered under the Bill.

Comparison with other existing anti-discrimination Ordinances

22. The Bill is modelled primarily on the existing anti-discrimination laws, namely the Sex Discrimination Ordinance (Chapter 480) (SDO), the Disability Discrimination Ordinance (Chapter 487) (DDO) and the Family Status Discrimination Ordinance (Chapter 527) (FSDO). Thus, most of the principal provisions in the Bill are broadly similar to those in these Ordinances.

23. As a guiding principle, the Bill aims to ensure that people, especially the vulnerable, are protected against less favourable treatment on racial grounds and against any requirement or conditions that, although applicable to all, will have a disproportionate negative impact on a racial group and cannot be justified irrespective of race. While it will still be lawful to bestow benefits to persons of a particular race or ethnic origin for meeting their special needs, we are cautious that we do not impose an obligation for affirmative action. This is also the standard and the approach adopted in the SDO and FSDO. It is unlike the DDO which requires, for example, an employer to take steps to accommodate the special needs of a disabled employee unless to do so will cause “unjustifiable hardship” to the employer. Thus, Clause 4(2)(b) of the Bill states clearly that a person is not obliged to disapply a requirement or condition applicable generally (e.g. an employer requiring a good command of Chinese for applicants for the post of salesperson) even though it will have a disproportionate negative impact on a particular racial group if it is not “reasonably practicable” to disapply the requirement or condition. Further, Clause 4(5) is clear that nothing in this connection requires the person concerned to confer any benefits, provide any services or incur any expenditure which he otherwise does not have to. We believe this approach is reasonable and appropriate.

24. This Bill applies equally to Government in the same way as it applies to the private sector. Specifically, it applies to an act done by or for the purpose of the Government that is of a kind similar to that of a private person. It does not make separate provisions on Government functions.

Provisions for exceptions

25. A key consideration for the proposed legislation is to afford effective safeguards for the rights of individual against racial discrimination, while at the same time maintaining proper respect and protection for the legitimate rights and freedoms of others. In this context, we need to ensure clarity and certainty of the legislative provisions, especially to avoid misunderstanding and unnecessary disputes after enactment of the Bill. Hence, the Bill contains exception clauses which serve to clearly delineate the scope of control and regulation. Most of these mirror those in the other existing anti-discrimination ordinances. We have also taken into account local circumstances as well as international practice and experience of other common law jurisdictions with similar legislations. In particular, these exception clauses have been proposed for the following reasons –

- (a) to ensure that, despite no affirmative action being required in the Bill, special measures which are intended for bestowing benefits on ethnic minorities and promoting equal opportunities for them are not regarded racial discrimination, although these measures are targetted at particular ethnic groups to the exclusion of others;
- (b) to provide for lawful and justified protection for the legitimate rights and freedoms of others, and for other purposes which are justified on policy grounds and considerations; or
- (c) to delineate the scope of the Bill and to provide for clarity and certainty of the law in areas which were not intended to be covered by the Bill.

B

A detailed list of the exception clauses in the Bill with brief explanations of the rationale is at Annex B.

26. Consistent with the principles of rationality and proportionality, which have been widely adopted by international human rights authorities, each of the proposed exception clauses has been critically examined against the following criteria and benchmarks –

- (a) the provision serves a legitimate and needed purpose;
- (b) it is justified on reasonable grounds; and
- (c) the exception is proportional to the objective and to the level of protection required (i.e. it is not excessive).

Language proficiency and use of language

27. This is a matter of common concern among the ethnic minorities, arising especially from their disadvantage in the command of Chinese language which, unlike it is for the majority of the population, is not their mother tongue.

28. In regard to access to services, we appreciate the difficulties which are at times faced by some members of the ethnic minorities who do not use Chinese. However, we equally recognize that it would not be practicable for service providers, either in the public or private sectors, to conduct their activities and businesses in all languages, or to provide translations into different languages in their communications with clients/customers. Thus, Clause 58 of Bill has been included to stipulate that the use, or failure to use, of any languages for the purpose of communication will not be unlawful. We have no doubt that those service providers who target their service at specific minority groups will conduct their business in the appropriate language as is reasonably practicable in the circumstances. This is a pragmatic approach which we believe to be in the interest of the community as a whole and should be acceptable to all.

29. The requirement for language proficiency in education has been a matter of concern to the ethnic minorities. In this regard, the Government firmly upholds the right of children to education, irrespective of their race or ethnic origin. All children in Hong Kong have the right to nine years of free and universal basic education. However, as stipulated in Clause 26(2) of the Bill, this does not compel the schools to modify its arrangements regarding holidays or medium of instruction in order to cater for students of any racial group¹.

Differential employment terms for overseas employees

30. During earlier public consultations, questions were raised from the business community over whether the offer of more favourable terms of employment (commonly referred to as “overseas terms”) for employees from overseas would become unlawful under the Bill. Since the race discrimination legislation is not meant to affect such employment practices based on human resource policy considerations that do not relate to race, we consider it justified to provide an exception clause to ensure clarity and certainty. It should be recognised that although the exception clause sets out certain situations where the exception will apply, such as possession of skills not readily available, recruited from a place outside Hong Kong, etc. it

¹ In the Belgian Linguistics Case (1968) 1EHRR 252, the applicants, who were French-speaking residents in the Dutch-speaking part of Belgium, wanted their children to be educated in French. The European Court of Human Rights decided that the right to education did not include a right to be taught in the language of choice of the parents, nor a right of access to a particular school of the choice of the parents.

is not intended to prescribe conditions to be fulfilled before employers may offer overseas terms to their overseas employees. Rather, it seeks to provide a defence for employers in case they were challenged for giving overseas terms to individual staff. Basically, the Bill does not seek to restrict the offer of preferential overseas terms as long as the offer was justified by reasons not related to race.

Application to new arrivals

31. Discrimination against new arrivals from the Mainland has been a matter of concern in the community. There has also been continued pressure from human rights groups and new arrivals organizations for the Bill to make specific provisions against such discrimination.

32. There can be no questions that new arrivals should, as of right, enjoy the same protection against racial discrimination as everybody else in Hong Kong. However, as almost all of the new arrivals are of the same ethnic origin as the local Chinese, they do not constitute a separate racial group under the definition of “race” in Article 1 of the ICERD, which is adopted in the present Bill. More importantly, the discrimination which may at times be experienced by some new arrivals is in essence a form of social, not racial, discrimination. It is wrong in principle to seek to address these issues through legislation on racial discrimination. An extension of the scope of the Bill, as proposed by some advocates, would also have significant adverse implications on established Government policies and practices which are based on the seven-year residency requirement (e.g. the Comprehensive Social Security Assistance Scheme, eligibility to public housing).

LEGISLATIVE TIMETABLE

33. The legislative timetable will be –

Publication in the Gazette	1 December 2006
First Reading and commencement of the Second Reading debate	13 December 2006
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

34. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Race

C
Discrimination Bill, if enacted, will apply to the Government in accordance with Clause 3 of the Bill whereas the proposed consequential and related amendments to other enactments in the Bill, if enacted, will not affect the current binding effect of such enactments. Annex C addresses the financial, civil service, economic, sustainability and environmental implications of the proposal.

PUBLIC CONSULTATION

35. We issued a consultation paper entitled “Legislating Against Racial Discrimination” for public comments on 16 September 2004. The public consultation ended on 8 February 2005. We received 240 submissions and attended 67 meetings with or briefings for advisory and statutory bodies, business and employers’ associations, non-governmental organizations, representatives of ethnic minorities, human rights groups, the media and District Councils. The majority of our respondents expressed support for our legislative proposal.

PUBLICITY

D
36. Concurrent with the issue of this Legislative Council Brief, we will issue a press release and hold press briefings to introduce the provisions of the Bill on 29 November 2006. In addition, we have prepared a booklet with Q&As to explain, in layman terms, the key provisions of the Bill and their impacts, so as to enhance public understanding of the proposed legislation. A copy of the booklet is at Annex D. We shall also arrange briefings for interested groups, including those from the employment and education sectors, to clarify and to further explain the detailed provisions and the rationale for the proposals.

ENQUIRIES

37. Enquiries on this Brief can be directed to Mr Victor Ng, Principal Assistant Secretary for Home Affairs (4), at 2835 1552.

Home Affairs Bureau
29 November 2006

RACE DISCRIMINATION BILL

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A BILL

To

Render discrimination, harassment and vilification, on the ground of race, unlawful; to prohibit serious vilification of persons on that ground; to extend the jurisdiction of the Equal Opportunities Commission to include such unlawful acts; to confer on the Commission the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races; 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; to make other consequential and related amendments to enactments; and for related purposes.

Enacted by the Legislative Council.

PART 1

INTERPRETATION, APPLICATION, ETC.

1. Short title and commencement

(1) This Ordinance may be cited as the Race Discrimination Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –
“access” (獲得、享用) means access as construed in accordance with section 53;
“act” (作為) includes a deliberate omission;

“advertisement” (廣告) includes every form of advertisement, whether to the public or not, and whether –

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels, showcards or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material;
- (e) by exhibition of pictures, models or films; or
- (f) in any other way;

“club” (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that –

- (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
- (b) sells or supplies liquor for consumption on its premises;

“commencement date” (生效日期), except in section 74, in relation to any provision of this Ordinance, means –

- (a) the date appointed under section 1(2) for that provision to come into operation; or
- (b) if different dates are appointed for the provision to commence for different purposes, the date appointed for that provision to come into operation for the relevant purpose;

“Commission” (平機會) means the Equal Opportunities Commission established under section 63(1) of the Sex Discrimination Ordinance (Cap. 480);

“commission agent” (佣金經紀人) means a commission agent as construed in accordance with section 22;

“committee” (委員會) means a committee established under section 64(2)(a) of the Sex Discrimination Ordinance (Cap. 480);

“committee of management” (管理委員會), in relation to a club, means the group or body of persons (howsoever described) that manages the affairs of the club;

“conciliator” (調解人) means any person engaged by the Commission under section 64(2)(e) of the Sex Discrimination Ordinance (Cap. 480);

“contract worker” (合約工作者) means a contract worker as construed in accordance with section 15;

“discrimination” (歧視) means any discrimination falling within section 4, 5 or 6 and related expressions are to be construed accordingly;

“dispose” (處置), in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises are to be construed accordingly;

“dynamically supported craft” (動力承托的航行器) has the same meaning as in the Shipping and Port Control Ordinance (Cap. 313);

“education” (教育) includes any form of training or instruction;

“educational establishment” (教育機構) means an educational establishment specified in column 2 of Schedule 1;

“employment” (僱用) means employment under –

- (a) a contract of service or of apprenticeship; or
- (b) a contract personally to execute any work or labour;

“employment agency” (職業介紹所) means a person who, for profit or not, provides services for the purpose of –

- (a) finding employment for workers; or
- (b) supplying employers with workers;

“enforcement notice” (執行通知) means a notice served under section 72(2);

“estate agent” (地產中介人) means a person who, by way of profession or trade, provides services for the purpose of –

- (a) finding premises for persons seeking to acquire them; or

(b) assisting in the disposal of premises;

“firm” (商號) means a firm within the meaning of the Partnership Ordinance (Cap. 38);

“formal investigation” (正式調查) means an investigation conducted under section 65;

“general notice” (一般通告), in relation to a person, means a notice published by the person at a time and in a manner appearing to the person suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

“genuine occupational qualification” (真正的職業資格) means a genuine occupational qualification as construed in accordance with section 11(2);

“harass” (騷擾) means to harass within the meaning of section 7(1) or (2);

“near relative” (近親), in relation to a person, means the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the person (whether of full blood or half-blood or by affinity), and “child” (子女) includes an illegitimate child and the wife or husband of an illegitimate child;

“notice” (通告、通知) means a notice in writing;

“prescribed” (訂明) means prescribed in rules made under section 83;

“profession” (專業) includes any vocation or occupation;

“responsible body” (負責組織), in relation to an educational establishment, means the body specified in column 3 of Schedule 1 opposite to that establishment;

“retirement” (退休) includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;

“trade” (行業) includes any business;

“training” (訓練) includes any form of education or instruction.

(2) References in this Ordinance to “race”, “on the ground of race” and “racial group” shall be construed in accordance with section 8.

(3) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references –

- (a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms;
- (b) to the termination of that person's employment or partnership by any act of that person (including the giving of notice) in circumstances such that that person is entitled to terminate it without notice by reason of the conduct of the employer, or the other partners, as the case may be.

(4) For the purposes of this Ordinance, an enforcement notice or a finding by the District Court becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal having been brought; and for this purpose an appeal against an enforcement notice is taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 73(3).

(5) Subject to subsection (6), in this Ordinance, “existing statutory provision” (現有法例條文) means a provision of –

- (a) an Ordinance enacted before this Ordinance was enacted;
or
- (b) any subsidiary legislation made –
 - (i) under an Ordinance enacted before this Ordinance was enacted; and
 - (ii) before, on or after the enactment of this

Ordinance.

(6) Where an Ordinance, enacted after this Ordinance was enacted, re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted is to be treated for the purposes of subsection (5) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.

(7) The Secretary for Justice may, by notice published in the Gazette, amend this Ordinance by substituting, for a reference to the commencement date of a provision, the actual calendar date appointed for the commencement of that provision.

3. Application to Government

This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.

PART 2

DISCRIMINATION AND HARASSMENT TO WHICH THIS ORDINANCE APPLIES

4. Racial discrimination

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the discriminator”) discriminates against another person if –

- (a) on the ground of the race of that other person, the discriminator treats that other person less favourably than the discriminator treats or would treat other persons; or
- (b) the discriminator applies to that other person a requirement or condition which the discriminator applies or would apply equally to persons not of the same racial group as that other person but –

- (i) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it;
- (ii) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
- (iii) which is to the detriment of the other person because that person cannot comply with it.

(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable either –

- (a) if it serves a legitimate objective and bears a rational and proportionate connection to the objective; or
- (b) if it is not reasonably practicable for the person who allegedly discriminates against another person not to apply the requirement or condition.

(3) In determining for the purposes of subsection (2)(b) whether it is reasonably practicable for a person who allegedly discriminates against another person not to apply a requirement or condition, any relevant circumstances of the particular case may be taken into account including those referred to in subsection (4).

(4) The circumstances that may be taken into account include, but are not limited to –

- (a) the nature of the benefit or detriment likely to accrue to or be suffered by, or the likely impact on, all persons concerned;
- (b) an estimate of the proportion of persons likely to benefit out of all the persons concerned, if the requirement or condition is not applied;

- (c) whether any activities of the person who allegedly discriminates against another person will be disrupted if the requirement or condition is not applied and, if so, the extent of the disruption; and
- (d) whether the person who allegedly discriminates against another person will need to provide additional services or facilities or incur additional expenditure (including recurrent expenditure), if the requirement or condition is not applied.

(5) Nothing in subsection (3) or (4) is to be construed as requiring the person who allegedly discriminates against another person or any other person concerned to confer any benefit, suffer any detriment, provide any services or facilities or incur any expenditure which the person or that other person (as the case may be) is not otherwise required to confer, suffer, provide or incur.

(6) It is declared that, for the purposes of this Ordinance, segregating a person from other persons on the ground of the race of that person is treating that person less favourably than the other persons are treated.

5. Discrimination on the ground of race of near relative

In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the discriminator”) discriminates against another person (“relevant person”) if, on the ground of the race of a near relative of the relevant person, the discriminator treats the relevant person less favourably than the discriminator treats or would treat another person not having a near relative of the same racial group as the near relative of the relevant person.

6. Discrimination by way of victimization

(1) A person (“the discriminator”) discriminates against another person (“the person victimized”) in any circumstances relevant for the purposes of any provision of this Ordinance if the discriminator treats the person

victimized less favourably than in those circumstances the discriminator treats or would treat other persons, and does so –

- (a) by reason that the person victimized or any other person (“the third person”) has –
 - (i) brought proceedings against the discriminator or any other person under this Ordinance;
 - (ii) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Ordinance;
 - (iii) otherwise done anything under or by reference to this Ordinance in relation to the discriminator or any other person; or
 - (iv) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Ordinance; or
- (b) by reason that the discriminator –
 - (i) knows the person victimized or the third person, as the case may be, intends to do any of those things; or
 - (ii) suspects the person victimized or the third person, as the case may be, has done, or intends to do, any of them.

(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by that person if the allegation was false and not made in good faith.

7. Racial harassment

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person harasses another person if, on the ground of the race of that other person or a near relative of that other person, the first-mentioned person engages in unwelcome conduct (which may include an oral or a written statement), in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by that conduct.

(2) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the first-mentioned person”) harasses another person (“the second-mentioned person”) if, on the ground of the race of the second-mentioned person or his or her near relative, the first-mentioned person, alone or together with other persons, engages in conduct (which may include an oral or a written statement) that renders hostile or intimidating the environment in which the second-mentioned person works, studies or undergoes training, or carries out related or incidental activities.

8. Meaning of “race”, “on the ground of race”, “racial group” and comparison of cases of persons or different racial groups

(1) In this Ordinance and subject to subsections (2) and (3) –

- (a) “race” (種族), in relation to a person, means the race, colour, descent or national or ethnic origin of the person;
- (b) a reference to an act done on the ground of the race of a person is a reference to an act done on the ground of the race, colour, descent or national or ethnic origin of the person;
- (c) an act constitutes discrimination on the ground of descent only if it constitutes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which

nullify or impair their equal enjoyment of human rights;
and

- (d) “racial group” (種族群體) means a group of persons defined by reference to race, colour, descent or national or ethnic origin, and references to a person’s racial group refer to any racial group into which the person falls.

(2) An act done on the ground of any matter specified in subsection (3) does not constitute an act done on the ground of the race, colour, descent or national or ethnic origin of a person; and section 4(1)(b) does not apply to a requirement or condition as to any matter specified in subsection (3).

(3) The matters specified in this subsection are –

- (a) that the person –
- (i) is or is not an indigenous inhabitant of the New Territories; or
 - (ii) is or is not a person who was in 1898 a resident of an established village in Hong Kong or a person descended through the male line from such person;
- (b) that the person –
- (i) is or is not a Hong Kong permanent resident;
 - (ii) has or has not the right of abode or the right to land in Hong Kong;
 - (iii) is or is not subject to any restriction or condition of stay imposed under the Immigration Ordinance (Cap. 115); or
 - (iv) has or has not been given the permission to land or remain in Hong Kong under the Immigration Ordinance (Cap. 115);
- (c) the length of residence in Hong Kong of the person; or
- (d) the nationality, citizenship or resident status of the person under the law of any country or place concerning

nationality, citizenship, resident status or naturalization of or in that country or place.

(4) The fact that a racial group comprises 2 or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Ordinance.

(5) A comparison under section 4(1) of the case of a person of a particular racial group with that of a person not of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(6) A comparison under section 5 of the case of a person having a near relative who is of a particular racial group with that of a person not having a near relative who is of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

9. Act done for racial and other reason

If –

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the race of a person (whether or not it is the dominant reason or a substantial reason for doing the act),

then, for the purposes of this Ordinance, the act is taken to be done for the reason of the race of the person.

PART 3

DISCRIMINATION AND HARASSMENT IN EMPLOYMENT FIELD

Discrimination by employers

10. Discrimination against applicants and employees

(1) It is unlawful for a person (“the employer”), in relation to employment by the employer at an establishment in Hong Kong, to discriminate against another person –

- (a) in the arrangements the employer makes for the purpose of determining who should be offered that employment;
- (b) in the terms on which the employer offers that other person employment; or
- (c) by refusing, or deliberately omitting to offer, the other person that employment.

(2) It is unlawful for an employer, in the case of a person employed by that employer at an establishment in Hong Kong, to discriminate against that employee –

- (a) in the terms of employment which the employer affords that employee;
- (b) in the way the employer affords the employee access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford the employee access to them; or
- (c) by dismissing the employee, or subjecting him or her to any other detriment.

(3) Except in relation to discrimination falling within section 6, subsections (1) and (2) do not apply to employment when the number of persons

employed by the employer, added to the number employed by any associated employers of that employer, does not exceed 5. This subsection does not apply to the employment by a person of another person to perform domestic duties on the premises on which the first-mentioned person or his or her near relative resides.

(4) Subject to subsection (5), subsections (1)(b) and (2) do not apply to provision in relation to death or retirement for a person made before the commencement date in so far as any such provision continues for that person on and after that date.

(5) Subsections (1)(b) and (2) apply to provision made in relation to retirement of the kind mentioned in subsection (4) in so far as, in their application to such provision, they render it unlawful for a person (“the employer”) to discriminate against another person –

- (a) in such of the terms on which the employer offers that other person employment as make provision in relation to the way in which the employer will afford that other person access to opportunities for promotion, transfer or training or as provide for that other person’s dismissal or demotion;
- (b) in the way the employer affords that other person opportunities for promotion, transfer or training, or by refusing or deliberately omitting to afford that other person access to any such opportunities; or
- (c) by dismissing that other person or subjecting that other person to any detriment which results in that other person’s dismissal or consists in or involves that other person’s demotion.

(6) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or

not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the employee in question, unless –

- (a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his or her employees;
- (b) the provision of the benefits, facilities or services to the employee in question is regulated by the employee's contract of employment; or
- (c) the benefits, facilities or services relate to training.

(7) Except in relation to discrimination falling within section 5 or 6, nothing in subsection (1)(a) or (c) renders it unlawful for a person to discriminate against another person on the ground of the race of that other person, in connection with employment to perform domestic duties on the premises on which the first-mentioned person or his or her near relative resides.

(8) Subsection (3) expires on the third anniversary of the day on which this Ordinance is enacted.

(9) For the purposes of subsection (3), 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control.

(10) The Chief Executive in Council may, by notice published in the Gazette, do either or both of the following –

- (a) amend subsection (3) by substituting another number for the number appearing after the word “exceed” in that subsection;
- (b) amend subsection (8) by substituting another anniversary for the anniversary appearing in that subsection.

11. Exception for genuine occupational qualification

(1) In relation to discrimination falling within section 4 –

- (a) section 10(1)(a) and (c) does not apply to any employment where being of a particular racial group is a genuine occupational qualification for the job; and
 - (b) section 10(2)(b) does not apply to opportunities for promotion or transfer to, or training for, such employment.
- (2) Being of a particular racial group is a genuine occupational qualification only where –
- (a) the job involves participation in a dramatic performance or other entertainment in a capacity for which a person of that racial group is required for reasons of authenticity;
 - (b) the job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequence of visual images for which a person of that racial group is required for reasons of authenticity;
 - (c) the job involves working in a place where food or drink is (for payment or not) provided to and consumed by members of the public or a section of the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity;
 - (d) the holder of the job provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group; or
 - (e) the job involves providing persons of that racial group with personal services of such nature or in such circumstances as to require familiarity with the language, culture and customs of and sensitivity to the needs of that racial group, and those services can most effectively be provided by a person of that racial group.

12. Exception for employment intended to provide training in skills to be exercised outside Hong Kong

Without prejudice to section 8(2) and (3), nothing in section 10 renders unlawful any act done by an employer for the benefit of a person not ordinarily resident in Hong Kong in or in connection with employing the person at an establishment in Hong Kong, where the purpose of that employment is to provide the person with training in skills which the person appears to the employer to intend to exercise wholly outside Hong Kong.

13. Exception for employment of person with special skills, knowledge or experience

(1) Nothing in section 10 renders unlawful any act done by an employer for the benefit of any person in or in connection with employing the person at an establishment in Hong Kong, where –

- (a) the employment requires special skills, knowledge or experience not readily available in Hong Kong;
- (b) the person –
 - (i) possesses those skills, knowledge or experience; and
 - (ii) is recruited or transferred from a place outside Hong Kong; and
- (c) the act is reasonably done for a person so recruited or transferred, having regard to –
 - (i) the prevailing terms of employment offered to persons with those skills, knowledge or experience in places outside Hong Kong; and
 - (ii) any other relevant circumstances (other than the race of the person).

(2) Where in an employment of a person to which subsection (1) or this subsection applies –

- (a) the employment terminates and is immediately followed by renewal or re-engagement (whether or not on the same terms);
- (b) the person is promoted; or
- (c) the person is transferred within the same group of companies,

nothing in section 10 renders unlawful any act done, by the employer or the employer upon transfer (as the case may be), for the benefit of the person in or in connection with the renewal, re-engagement, promotion or transfer, or in or in connection with the employment pursuant to it, so long as the act is reasonably done for the person having regard to the matters referred to in subsection (1)(c).

(3) In this section –

- (a) “group of companies” (公司集團) means a group of companies within the meaning of the Companies Ordinance (Cap. 32);
- (b) an employee is transferred within the same group of companies if the termination of the employment of the employee by one employer is immediately followed by the employment of the employee by another employer, both employers being at that time within the same group of companies; and a reference to transfer of employment within the same group of companies shall be construed accordingly.

(4) Nothing in this section shall prejudice the operation of section 8(2) and (3).

14. Exception for existing employment on local and overseas terms of employment

(1) Nothing in section 10 renders unlawful –

- (a) any differential treatment by an employer in or in connection with employing an employee on local terms of employment on the one hand and employing another employee on overseas terms of employment on the other hand in accordance with those two sets of terms respectively; or
- (b) any differential treatment by an employer in or in connection with employing on overseas terms of employment an employee who is a national or citizen of a country or place on the one hand and employing also on those terms another employee who is a national or citizen of another country or place on the other hand in accordance with those terms.

(2) Subsection (1) applies only to an employee in an existing employment as specified in Schedule 2.

(3) In this section, “local terms of employment” (本地僱用條款) and “overseas terms of employment” (海外僱用條款) have the meanings assigned to them respectively by section 11 of Schedule 2.

(4) Nothing in this section shall prejudice the operation of section 8(2) and (3).

15. Discrimination against contract workers

(1) This section applies to any work for a person (“the principal”) that is available for doing by individuals (“contract workers”) who are employed not by the principal himself or herself but by another person, who supplies them under a contract made with the principal.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a contract worker –

- (a) in the terms on which the principal allows that contract worker to do that work;

- (b) by not allowing the contract worker to do it or continue to do it;
- (c) in the way the principal affords the contract worker access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them; or
- (d) by subjecting the contract worker to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person not of a particular racial group at a time when, if the work were to be done by a person taken into the principal's employment, being of that racial group would be a genuine occupational qualification for the job.

(4) Without prejudice to section 8(2) and (3), nothing in this section renders unlawful any act done by the principal for the benefit of a contract worker not ordinarily resident in Hong Kong in or in connection with allowing the contract worker to do work to which this section applies, where the purpose of the contract worker's being allowed to do that work is to provide him or her with training in skills which he or she appears to the principal to intend to exercise wholly outside Hong Kong.

(5) Without prejudice to section 8(2) and (3), nothing in this section renders unlawful any act done by the principal for the benefit of any contract worker in or in connection with allowing the contract worker to do work to which this section applies, where –

- (a) the work requires special skills, knowledge or experience not readily available in Hong Kong;
- (b) the contract worker –
 - (i) possesses those skills, knowledge or experience; and
 - (ii) comes to do the work from a place outside Hong Kong; and

- (c) the act is reasonably done for a person who comes from that place, having regard to –
 - (i) the prevailing terms of employment offered to persons with those skills, knowledge or experience in places outside Hong Kong; and
 - (ii) any other relevant circumstances (other than the race of the person).

(6) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his or her contract workers.

16. Meaning of employment at establishment in Hong Kong

(1) For the purposes of this Ordinance (“the relevant purposes”), employment is to be regarded as being at an establishment in Hong Kong unless the employee does his or her work wholly or mainly outside Hong Kong.

(2) Subsection (1) does not apply to –

- (a) employment on board a ship registered in Hong Kong; or
- (b) employment on an aircraft or a dynamically supported craft registered in Hong Kong and operated by a person whose principal place of business is in Hong Kong or who is ordinarily resident in Hong Kong,

but for the relevant purposes such employment is to be regarded as being at an establishment in Hong Kong unless the employee does his or her work wholly outside Hong Kong.

(3) In the case of employment on board a ship registered in Hong Kong (except where the employee does his or her work wholly outside Hong Kong) the ship is deemed for the relevant purposes to be the establishment.

(4) Where work is not done at an establishment it is to be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with which it has the closest connection.

Discrimination by other bodies

17. Partnerships

(1) It is unlawful for a firm consisting of not less than 6 partners, in relation to a position as partner in the firm, to discriminate against a person –

- (a) in the arrangements they make for the purpose of determining who should be offered that position;
- (b) in the terms on which they offer the person that position;
- (c) by refusing, or deliberately omitting to offer, the person that position; or
- (d) in a case where the person already holds that position –
 - (i) in the way they afford the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them; or
 - (ii) by expelling the person from that position, or subjecting him or her to any other detriment.

(2) Subsection (1) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(3) Subsection (1)(a) and (c) does not apply to a position as partner, where, if it were employment, being of a particular racial group would be a genuine occupational qualification for the job.

(4) Subject to subsection (5), subsection (1)(b) and (d) does not apply to provision in relation to death or retirement for a person made before the commencement date in so far as any such provision continues for that person on and after that date.

(5) Subsection (1)(b) and (d) applies to provision made in relation to retirement of the kind mentioned in subsection (4) in so far as, in its application to such provision, it renders it unlawful for a firm to discriminate against a person –

- (a) in such of the terms on which the firm offers the person a position as partner as provide for his or her expulsion from that position; or
- (b) by expelling the person from a position as partner or subjecting him or her to any detriment which results in his or her expulsion from such a position.

(6) In the case of a limited partnership, references in subsection (1) to a partner shall be construed as references to a general partner within the meaning of section 2(1) of the Limited Partnerships Ordinance (Cap. 37).

(7) The Chief Executive in Council may, by notice published in the Gazette, amend subsection (1) by –

- (a) substituting another number for the number appearing in that subsection; or
- (b) repealing the words and number appearing after “for a firm” and before “, in relation to”.

18. Trade unions, etc.

(1) This section applies to an organization of workers, an organization of employers, an organization of both workers and employers, or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists.

(2) It is unlawful for an organization to which this section applies, in the case of a person who is not a member of the organization, to discriminate against the person –

- (a) in the terms on which it is prepared to admit the person to membership; or

- (b) by refusing, or deliberately omitting to accept, the person's application for membership.

(3) It is unlawful for an organization to which this section applies, in the case of a person who is a member of the organization, to discriminate against the person –

- (a) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them;
- (b) by depriving the person of his or her membership, or varying the terms on which he or she is a member; or
- (c) by subjecting the person to any other detriment.

(4) This section does not apply to provision in relation to the death or retirement from work of a member made before the commencement date in so far as any such provision continues for that member on and after that date.

(5) This section does not apply to or in relation to an organization of workers, an organization of employers, or an organization of both workers and employers –

- (a) the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour; and
- (b) which had been established before the enactment of this Ordinance.

(6) In determining whether the main object of an organization of workers, an organization of employers, or an organization of both workers and employers is as stated in subsection (5), regard shall be had to –

- (a) the essential character of the organization;
- (b) the extent to which the affairs of the organization are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question; and
- (c) any other relevant circumstances.

19. Qualifying bodies

(1) It is unlawful for an authority or body which can confer an authorization or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a person –

- (a) in the terms on which it is prepared to confer on the person that authorization or qualification;
- (b) by refusing, or deliberately omitting to grant, the person's application for it; or
- (c) by withdrawing it from the person or varying the terms on which he or she holds it.

(2) Subsection (1) does not render unlawful any requirement for proficiency in either Chinese or English, or in both of them (whether or not to equivalent or comparable levels) imposed for the conferment of an authorization or qualification if –

- (a) the requirement is reasonable, having regard to the demands of, or associated with, the profession or trade concerned; or
- (b) without prejudice to paragraph (a), the authorization or qualification is one specified in Schedule 3.

(3) Where an authority or body is required by law to satisfy itself as to a person's good character before conferring on the person an authorization or qualification which is needed for, or facilitates, the person's engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that the person, or any of his or her employees or agents (whether past or present), has –

- (a) practised unlawful discrimination;
- (b) engaged in unlawful harassment; or
- (c) engaged in acts which contravene section 45,

in, or in connection with, the carrying on of any profession or trade.

(4) Subsection (1) does not apply to discrimination which is rendered unlawful by section 26.

(5) In this section –
 “authorization or qualification” (授權或資格) includes recognition, licensing, registration, enrolment, approval and certification;
 “confer” (授予) includes renew or extend.

20. Persons concerned with provision of vocational training

(1) It is unlawful, in the case of a person (“the first-mentioned person”) seeking or undergoing training which would help to fit him or her for employment, for any person (“the second-mentioned person”) who provides, or makes arrangements for the provision of, facilities for such training to discriminate against the first-mentioned person –

- (a) in the terms on which the second-mentioned person affords the first-mentioned person access to any training course or other facilities concerned with such training;
- (b) by refusing, or deliberately omitting to afford, the first-mentioned person such access;
- (c) by terminating the first-mentioned person’s training; or
- (d) by subjecting the first-mentioned person to any other detriment during the course of his or her training.

(2) Nothing in subsection (1) is to be construed as requiring a person who provides, or makes arrangements for the provision of, facilities for such training –

- (a) to modify for persons of any racial group its arrangements regarding holidays or medium of instruction; or
- (b) to make different arrangements on those matters for persons of any racial group.

(3) Subsection (1) does not apply to –

- (a) discrimination which is rendered unlawful by any of the provisions of section 10 or 26; or
- (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Ordinance.

21. Employment agencies

(1) It is unlawful for an employment agency to discriminate against a person –

- (a) in the terms on which the agency offers to provide any of its services;
- (b) by refusing, or deliberately omitting to provide, any of its services; or
- (c) in the way it provides any of its services.

(2) References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person.

(4) An employment agency is not subject to any liability under this section if it proves –

- (a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful; and
- (b) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

22. Discrimination against commission agents

(1) This section applies to any work for a person (“the principal”) which is available for doing by individuals (“commission agents”) as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a person who is a commission agent –

- (a) in the terms on which he or she allows the person to do that work;
- (b) by not allowing the person to do it or continue to do it;
- (c) in the way he or she affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or
- (d) by subjecting the person to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person not of a particular racial group at a time when, if the work were to be done by a person taken into the principal’s employment, being of that racial group would be a genuine occupational qualification for the job.

(4) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the person belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his or her commission agents.

Special cases

23. Employment, etc. for religion

(1) Nothing in this Part applies to employment for the purposes of an organized religion where the employment is limited to a particular racial group

so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.

(2) Nothing in section 19 applies to an authorization or qualification (within the meaning of that section) for the purposes of an organized religion where the authorization or qualification is limited to a particular racial group so as to comply with the doctrines of the religion or to avoid offending the religious susceptibilities common to its followers.

Harassment

24. Employees, etc.

(1) It is unlawful for a person, in relation to employment by that person at an establishment in Hong Kong, to harass a person who is seeking to be employed by that person.

(2) It is unlawful for a person (“the first-mentioned person”), in the case of a person employed by that first-mentioned person at an establishment in Hong Kong, to harass that other person.

(3) It is unlawful for a person, who is employed by another person (“the second-mentioned person”) at an establishment in Hong Kong to harass a person who is seeking to be, or who is, employed by that second-mentioned person.

(4) It is unlawful for the principal, in relation to work to which section 15 applies, to harass another person who is a contract worker.

(5) It is unlawful for a contract worker to harass another person who is a fellow contract worker.

(6) It is unlawful for a partner of a firm to harass a person who is seeking to be, or who is, a partner in the firm.

(7) Subsection (6) applies in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

(8) Section 17(6) applies to subsection (6) as it applies to section 17(1).

(9) It is unlawful for the principal, in relation to work to which section 22 applies, to harass a person who is a commission agent.

(10) It is unlawful for a commission agent to harass a person who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a person at an establishment in Hong Kong to harass the second-mentioned person.

(12) It is unlawful for a person residing in any premises to harass another person who is –

- (a) employed by a third person at an establishment in Hong Kong (whether or not the third person also resides in those premises and whether or not those premises are that establishment); and
- (b) carrying out in those premises all or part of his or her work in relation to the employment (whether or not he or she resides in those premises).

25. Other harassment

(1) It is unlawful for a member of an organization to which section 18 applies to harass a person who is seeking to be, or who is, a member of that organization.

(2) It is unlawful for a member of an authority or body referred to in section 19 to harass a person who is seeking an authorization or qualification (within the meaning of that section) which can be conferred by the authority or body or to harass a person holding such an authorization or qualification. This subsection does not apply to harassment which is rendered unlawful by section 38.

(3) It is unlawful for a person to harass another person who is seeking or undergoing training which would help to fit that other person for any employment if the person provides, or makes arrangements for the provision of,

facilities for such training. This subsection does not apply to harassment which is rendered unlawful by section 24(1) or (2) or 38.

(4) It is unlawful for a person who –

(a) operates an employment agency; or

(b) is a member of the staff of an employment agency,

to harass a person to whom the agency provides any of the agency's services or who is seeking the provision of such services.

PART 4

DISCRIMINATION AND HARASSMENT IN OTHER FIELDS

Education

26. Discrimination by responsible bodies for educational establishments

(1) It is unlawful for the responsible body for an educational establishment to discriminate against a person –

(a) in the terms on which it offers to admit that person to the establishment as a student;

(b) by refusing, or deliberately omitting to accept, an application for that person's admission to the establishment as a student; or

(c) where the person is a student of the establishment –

(i) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or

(ii) by expelling the person from the establishment or subjecting him or her to any other detriment.

(2) Nothing in subsection (1) is to be construed as requiring the responsible body for an educational establishment –

- (a) to modify for persons of any racial group arrangements of the establishment regarding holidays or medium of instruction; or
- (b) to make different arrangements on those matters for persons of any racial group persons.

Goods, facilities, services and premises

27. Discrimination in provision of goods, facilities or services

(1) It is unlawful for any person (“the first-mentioned person”) concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against another person (“the second-mentioned person”) who seeks to obtain or use those goods, facilities or services –

- (a) by refusing, or deliberately omitting to provide, the second-mentioned person with any of them; or
- (b) by refusing or deliberately omitting to provide the second-mentioned person with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in the first-mentioned person’s case in relation to other members of the public or (where the second-mentioned person belongs to a section of the public) to other members of that section.

(2) The following are examples of the facilities and services referred to in subsection (1) –

- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
- (b) accommodation in a hotel, guesthouse or other similar establishment;

- (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (d) facilities for education;
- (e) facilities for entertainment, recreation or refreshment;
- (f) facilities for transport or travel;
- (g) the services of any profession or trade;
- (h) the services of –
 - (i) any department of the Government; or
 - (ii) any undertaking by or of the Government.

28. Discrimination in disposal or management of premises

(1) It is unlawful for a person, in relation to premises in Hong Kong of which that person has power to dispose, to discriminate against another person –

- (a) in the terms on which the person offers that other person the premises;
- (b) by refusing the other person's application for those premises; or
- (c) in the person's treatment of the other person in relation to any list of persons in need of the premises of that description.

(2) It is unlawful for a person, in relation to premises managed by that person, to discriminate against another person ("the second-mentioned person") –

- (a) in the way he or she affords the second-mentioned person access to any benefits or facilities, or by refusing or deliberately omitting to afford the second-mentioned person access to them; or
- (b) by evicting the second-mentioned person, or subjecting him or her to any other detriment.

(3) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless the person uses the services of an estate agent for the purposes of the disposal of the premises, or publishes or causes to be published, an advertisement in connection with the disposal.

(4) In this section, “power to dispose” (有權處置), in relation to premises, includes the power to sell, rent, let, sub-let or otherwise part with possession of those premises.

29. Discrimination: consent for assignment or sub-letting

(1) Where the licence or consent of a landlord or of any other person is required for the disposal to any person of premises in Hong Kong comprised in a tenancy, it is unlawful for the landlord or other person to discriminate against a person (“assignee/sublettee”) by withholding the licence or consent for disposal of the premises to the assignee/sublettee.

(2) Subsection (1) does not apply if –

- (a) the person withholding the licence or consent or a near relative of that person (“the relevant occupier”) resides, and intends to continue to reside, on the premises;
- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
- (c) the premises are small premises as construed according to section 30(2).

(3) For the avoidance of doubt, it is declared that this section applies to tenancies created before the enactment of this Ordinance as well as to tenancies created on or after the enactment of this Ordinance.

(4) In this section –
 “disposal” (處置), in relation to premises comprised in a tenancy, includes assignment of the tenancy and sub-letting or parting with possession of the premises or any part of the premises;

“tenancy” (租賃) means a tenancy created –

- (a) by a lease or sub-lease;
- (b) by a tenancy agreement; or
- (c) pursuant to any agreement.

30. Exceptions for small dwellings

(1) Sections 27(1) and 28 do not apply to the provision by a person of accommodation in any premises, or the disposal of premises, by the person, if –

- (a) that person or a near relative of that person (“the relevant occupier”) resides, and intends to continue to reside, on the premises;
- (b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of the relevant occupier’s household; and
- (c) the premises are small premises.

(2) Premises are to be treated for the purposes of subsection (1) as small premises if –

- (a) in the case of premises comprising residential accommodation for one or more households (under

separate letting or similar agreements) in addition to the accommodation occupied by the relevant occupier –

- (i) there is not normally residential accommodation on the premises for more than 2 such households; and
 - (ii) only the relevant occupier and any member of his or her household reside in the accommodation occupied by the relevant occupier; and
- (b) in the case of premises not falling within paragraph (a), there is not normally residential accommodation on the premises for more than 6 persons in addition to the relevant occupier and any members of his or her household.

(3) The Chief Executive in Council may, by notice published in the Gazette, amend subsection (2)(b) by substituting another number for the number appearing in that subsection.

31. Exceptions for voluntary bodies

(1) Sections 27(1) and 28 are not to be construed as rendering unlawful –

- (a) the restriction of membership of any voluntary body to persons of a particular racial group (disregarding any minor exceptions); or
- (b) the provision of benefits, facilities or services to members of any voluntary body where the membership is so restricted,

even though membership of the body is open to the public, or to a section of the public.

(2) Nothing in section 27(1) or 28 –

- (a) is to be construed as affecting a specified provision; or

- (b) renders unlawful an act which is done in order to give effect to a specified provision.

(3) In this section –

“specified provision” (指明規定) means a provision for conferring benefits on persons of a particular racial group (disregarding any benefits to persons of another racial group which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a voluntary body;

“voluntary body” (志願團體) means a body the activities of which are carried on otherwise than for profit.

32. Exceptions for cemeteries

Nothing in section 27(1), 28 or 29(1) renders unlawful –

- (a) any act to set aside or allocate a cemetery, crematorium or columbarium (in whole or in part) for the reception of human remains of persons belonging to any particular community, race or religion;
- (b) any act to provide goods, facilities or services in a cemetery, crematorium or columbarium, or part of it, that is so set aside or allocated; or
- (c) any act done in connection with an act referred to in paragraph (a) or (b).

33. Further exceptions

(1) Section 27(1) does not apply to anything done by a person as a participant in arrangements under which he or she (for reward or not) takes into his or her home, and treats as if they were members of his or her family, any children, elderly persons or persons requiring a special degree of care and attention.

(2) Sections 27(1) and 28 do not apply –

- (a) to discrimination which is rendered unlawful by any provision or Part of this Ordinance specified in column 2 of Schedule 4; or
- (b) to discrimination which would be so unlawful but for any provision or Part of this Ordinance specified in column 3 of that Schedule.

Public bodies, etc.

34. Discrimination in eligibility to stand for election, etc.

(1) It is unlawful for a person to discriminate against another person in –

- (a) determining the eligibility of a person to stand for election to a relevant body or relevant position, or to be selected for a relevant position;
- (b) the terms or conditions on which a person is considered eligible to stand for election to a relevant body or relevant position, or to be selected for a relevant position;
- (c) determining the eligibility of a person to vote in elections of members of a relevant body or the holder of a relevant position;
- (d) the terms or conditions on which a person is considered eligible to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;
- (e) considering whether a person should be appointed as a member of a relevant body, where some or all of the members of that body are appointed; or

- (f) considering whether a person should be appointed to a relevant position, approved as a member of a relevant body or recognized as holding a relevant position.
- (2) Subsection (1) does not apply to, or in relation to, a person's eligibility –
 - (a) to be selected and be appointed the Chief Executive;
 - (b) to be appointed to the Executive Council;
 - (c) to be nominated and be appointed a principal official of the Hong Kong Special Administrative Region;
 - (d) to be elected to the Legislative Council;
 - (e) to be elected the President of the Legislative Council; or
 - (f) to be appointed the Chief Justice of the Court of Final Appeal or the Chief Judge of the High Court.
- (3) In this section –
 - (a) a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body;
 - (b) a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position.

Barristers

35. Discrimination by, or in relation to, barristers

- (1) It is unlawful for a barrister or barrister's clerk, in relation to any offer of a pupillage or a tenancy, to discriminate against a person –
 - (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
 - (b) in respect of any terms on which it is offered; or
 - (c) by refusing, or deliberately omitting, to offer it to that person.

(2) It is unlawful for a barrister or barrister’s clerk, in relation to a person who is a pupil or a tenant in the chambers concerned, to discriminate against that person –

- (a) in respect of any terms applicable to that person as a pupil or a tenant;
- (b) in the opportunities for training, or gaining experience, which are afforded or denied to that person;
- (c) in the benefits, facilities or services which are afforded or denied to that person; or
- (d) by terminating that person’s pupillage or by subjecting him or her to any pressure to leave the chambers or other detriment.

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a person.

(4) In this section –

“barrister’s clerk” (大律師書記) includes any person carrying out any of the functions of a barrister’s clerk;

“pupil” (見習大律師), “pupillage” (見習職位), “tenancy” (租賃) and “tenant” (承租人) have the meanings commonly associated with their use in the context of a set of barrister’s chambers.

Clubs

36. Discrimination by clubs

(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club –

- (a) by refusing or failing to accept the person’s application for membership; or

- (b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club –

- (a) by refusing or failing to accept the person's application for a particular class or type of membership;
- (b) in the terms or conditions of membership that is afforded to the person;
- (c) by denying the person access, or limiting his or her access, to any benefits, services or facilities provided by the club;
- (d) by depriving the person of membership or varying the terms of membership; or
- (e) by subjecting the person to any other detriment.

37. Exception from section 36 for certain clubs

(1) Section 36 does not apply to, or in relation to, a club the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour.

(2) In determining whether the main object of a club is as stated in subsection (1), regard shall be had to –

- (a) the essential character of the club;
- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question; and
- (c) any other relevant circumstances.

(3) Where the main object of a club is to enable the benefits of membership to be enjoyed by persons of a number of different racial groups defined otherwise than by reference to colour –

- (a) nothing in section 36 shall render unlawful any arrangements concerning membership which is designed to give effect to such object; and
- (b) nothing in section 36 shall render unlawful a provision to which this paragraph applies or any act done in order to give effect to such a provision.

(4) Subsection (3)(b) applies to a provision which is designed to ensure that the committee of management of the club includes, in relation to each of the relevant racial groups, a minimum number of members, and –

- (a) which for that purpose –
 - (i) reserves seats for each of those racial groups on that committee; or
 - (ii) makes extra seats available for persons of any such racial group when the number of persons of that racial group in the other seats falls below the minimum; and
- (b) which, in the opinion of the club or its committee of management, is needed in the circumstances to secure a reasonable lower limit to the number of members of each of those racial groups serving on the committee.

(5) In determining whether the main object of a club is as stated in subsection (3), regard shall be had to –

- (a) the essential character of the club;
- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the different racial groups in question; and
- (c) any other relevant circumstances.

Harassment

38. Educational establishments

(1) It is unlawful for a person who is, or is a member of, the responsible body for an educational establishment to harass a person who is seeking to be, or who is, a student of the establishment.

(2) It is unlawful for a person who is a member of the staff of an educational establishment to harass a person who is seeking to be, or who is, a student of the establishment.

(3) It is unlawful for a person who is a student of an educational establishment to harass a person who is seeking to be, or who is, a student of the establishment.

(4) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to harass a person –

(a) who is, or is a member of, the responsible body for the establishment; or

(b) who is a member of the staff of the establishment.

39. Other harassment

(1) It is unlawful for a person concerned with the provision of goods, facilities or services to harass another person who seeks to obtain or use those goods, facilities or services or to whom the person provides those goods, facilities or services.

(2) It is unlawful for a person, in relation to premises in Hong Kong of which that person has power to dispose, to harass another person who applies for those premises.

(3) It is unlawful for a person, in relation to premises managed by that person, to harass a person occupying the premises.

(4) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Hong Kong comprised in a tenancy, it is unlawful for the landlord or other person to harass a person

seeking the licence or consent for the disposal of the premises to him or her, or a person from whom the licence or consent is withheld.

(5) Subsections (1), (2), (3) and (4) do not apply to harassment which is rendered unlawful by section 24, 25 or 38.

(6) Section 29(4) applies to subsection (4) as it applies to section 29.

(7) It is unlawful for a barrister or barrister's clerk, in relation to any chambers, to harass a person who is, or has applied to be, a pupil or tenant in the chambers.

(8) It is unlawful for any person, in the course of giving, withholding or acceptance of instructions to a barrister, to harass a person.

(9) Section 35(4) applies to subsections (7) and (8) as it applies to section 35.

(10) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to harass a person who is, or has applied to be, a member of the club.

Extent

40. Extent of Part 4

(1) Section 27(1) –

(a) does not apply to goods, facilities or services outside Hong Kong except as provided in subsections (2) and (3); and

(b) does not apply to facilities –

(i) by way of banking or insurance; or

(ii) for grants, loans, credit or finance,

where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Hong Kong.

(2) Section 27(1) applies to the provision of facilities for travel outside Hong Kong where the refusal or omission occurs in Hong Kong or on a ship, aircraft or dynamically supported craft referred to in subsection (3).

- (3) Section 27(1) applies on and in relation to –
- (a) any ship registered in Hong Kong;
 - (b) any aircraft or dynamically supported craft registered in Hong Kong and operated by a person whose principal place of business is in Hong Kong or who is ordinarily resident in Hong Kong; or
 - (c) any ship, aircraft or dynamically supported craft belonging to or possessed by the Government,

even if the ship, aircraft or craft is outside Hong Kong.

(4) This section does not render unlawful an act done in or over a place outside Hong Kong, or in or over that place's territorial waters for the purpose of complying with the laws of that place.

(5) Section 26 does not apply to benefits, facilities or services outside Hong Kong except –

- (a) travel on a ship registered in Hong Kong; or
- (b) benefits, facilities or services provided on a ship so registered.

PART 5

OTHER UNLAWFUL ACTS

41. Discriminatory practices

(1) In this section, “discriminatory practice” (歧視性的做法) means the application of a requirement or condition –

- (a) which results in an act of discrimination which is unlawful by virtue of any provision of Part 3 or 4 as read with section 4(1)(b); or
- (b) which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of the same racial group.

(2) A person acts in contravention of this section if and so long as the person –

- (a) applies a discriminatory practice; or
- (b) operates practices or other arrangements which in any circumstances would call for the application by the person of a discriminatory practice.

(3) Proceedings in respect of a contravention of this section may be brought only by the Commission and any such proceedings must be brought in accordance with sections 72, 73, 74, 75 and 76.

42. Discriminatory advertisements

(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part 3 or 4.

(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be unlawful.

(3) For the purposes of subsection (1), use of a job description which is specific with reference to race is to be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

(4) The publisher of an advertisement made unlawful by subsection (1) is not subject to any liability under that subsection in respect of the publication of the advertisement if the publisher proves –

- (a) that the advertisement was published in reliance on a statement made to the publisher by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and
- (b) that it was reasonable for the publisher to rely on the statement.

(5) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (4)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

43. Instructions to discriminate

It is unlawful for a person –

- (a) who has authority over another person; or
- (b) in accordance with whose wishes that other person is accustomed to act,

to instruct that other person to do any act which is unlawful by virtue of Part 3 or 4, or procure or attempt to procure the doing by him or her of any such act.

44. Pressure to discriminate

(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part 3 or 4 by –

- (a) providing or offering to provide the person with any benefit; or
- (b) subjecting or threatening the person to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person concerned, if it is made in such a way that he or she is likely to hear of it.

45. Vilification

(1) It is unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or 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.

(2) Nothing in this section renders unlawful –

- (a) a fair report on an activity in public;
- (b) an activity in public being a communication for the distribution or dissemination of any matter comprising a

publication which is subject to a defence of absolute privilege in proceedings for defamation; or

- (c) an activity in public done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussions about and expositions of any matter.

(3) In this section and section 46, “activity in public” (公開活動) includes any of the following activities, whether or not the person carrying out the activity is in a public place while carrying out the activity –

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia;
- (c) the distribution or dissemination of any matter to the public.

46. Offence of serious vilification

(1) A person commits an offence if the person, by any activity in public, 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 that second-mentioned person or the members of that class of persons which includes –

- (a) threatening physical harm –
 - (i) towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons; or

- (ii) towards the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access; or
- (b) inciting others to threaten physical harm –
 - (i) towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons; or
 - (ii) towards the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access.

(2) 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.

47. Liability of employers and principals

(1) Anything done by a person in the course of the person's employment is to be treated for the purposes of this Ordinance as done by that person's employer as well as by that person, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person ("the first-mentioned person") as agent for another person ("the second-mentioned person") with the authority (whether express or implied, and whether precedent or subsequent) of the second-mentioned person is to be treated for the purposes of this Ordinance as done by the second-mentioned person as well as the first-mentioned person.

(3) In proceedings brought under this Ordinance against any other person in respect of an act alleged to have been done by an employee of that person, it is a defence for that other person to prove that he or she took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of the employee's employment acts of that description.

(4) For the avoidance of doubt, it is declared that this section does not apply for the purposes of any criminal proceedings.

48. Aiding unlawful acts

(1) A person who knowingly aids another person to do an act made unlawful by this Ordinance is to be treated for the purposes of this Ordinance as himself or herself doing an unlawful act of the like description.

(2) For the purposes of subsection (1), an employee or agent for whose act the employer or principal is liable under section 47 (or would be so liable but for section 47(3)) is deemed to aid the doing of the act by the employer or principal.

(3) A person (“the first-mentioned person”) does not under this section knowingly aid another person (“the second-mentioned person”) to do an unlawful act if –

- (a) the first-mentioned person acts on a statement made to him or her by the second-mentioned person that, by reason of any provision of this Ordinance, the act which the first-mentioned person aids would not be unlawful; and
- (b) it is reasonable for the first-mentioned person to rely on that statement.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

PART 6

MATTERS NOT AFFECTED BY PARTS 3, 4 AND 5

49. Special measures

Nothing in Part 3, 4 or 5 renders unlawful an act that is reasonably intended to –

- (a) ensure that persons of a particular racial group have equal opportunities with other persons in circumstances in relation to which a provision is made by this Ordinance;
- (b) afford persons of a particular racial group goods or access to services, facilities or opportunities to meet their special needs in relation to –
 - (i) employment, education, welfare or clubs; or
 - (ii) the provision of premises, goods, services or facilities; or
- (c) afford persons of a particular racial group grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to –
 - (i) employment, education, welfare or clubs; or
 - (ii) the provision of premises, goods, services or facilities.

50. Charities

- (1) Nothing in Part 3, 4 or 5 –
 - (a) is to be construed as affecting a provision to which this subsection applies; or
 - (b) renders unlawful an act which is done in order to give effect to such a provision.

(2) Subsection (1) applies to a provision for conferring benefits on persons of a particular racial group (disregarding any benefits to persons of another racial group which are exceptional or relatively insignificant), being a provision which is contained in a charitable instrument.

- (3) In applying this section –

“charitable instrument” (慈善文書) means an enactment or other instrument so far as it relates to charitable purposes;

“charitable purposes” (慈善目的) means purposes which are exclusively charitable according to any enactment or rule of law.

51. Discriminatory training by certain bodies

(1) Nothing in Part 3, 4 or 5 renders unlawful any act done in relation to particular work by any person in, or in connection with –

- (a) affording only persons of a particular racial group access to facilities for training which would help to fit them for that work; or
- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work,

where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act –

- (c) there were no persons of the racial group concerned doing that work in Hong Kong; or
- (d) the number of persons of that racial group doing the work in Hong Kong was comparatively small.

(2) Subsection (1) does not apply in relation to any discrimination that is rendered unlawful by section 10.

52. Discriminatory training by employers, trade unions, etc.

(1) Nothing in Part 3, 4 or 5 renders unlawful any act done by an employer in relation to a particular work in his or her employment at a particular establishment in Hong Kong, being an act done in, or in connection with –

- (a) affording only those of his or her employees working at that establishment who are of a particular racial group access to facilities for training which would help to fit them for that work; or

- (b) encouraging only persons of a particular racial group to take advantage of opportunities for doing that work at that establishment,

where at any time within the 12 months immediately preceding the doing of the act –

- (c) there were no persons of the racial group concerned among those doing that work at that establishment; or
- (d) the number of persons of that racial group among those doing that work was comparatively small.

(2) Nothing in section 18 renders unlawful any act done by an organization to which that section applies in, or in connection with –

- (a) affording only members of the organization who are of a particular racial group access to facilities for training which would help to fit them for holding a post of any kind in the organization; or
- (b) encouraging only members of a particular racial group to take advantage of opportunities for holding such posts in the organization,

where at any time within the 12 months immediately preceding the doing of the act –

- (c) there were no persons of the racial group concerned among persons holding such posts in the organization; or
- (d) the number of persons of that racial group holding such posts was comparatively small.

(3) Nothing in Part 3, 4 or 5 renders unlawful any act done by an organization to which section 18 applies in, or in connection with, encouraging persons of a particular racial group to become members of the organization where at any time within the 12 months immediately preceding the doing of the act –

- (a) no persons of the racial group were members of that organization; or
- (b) the proportion of persons of the racial group among members of that organization was comparatively small.

53. Indirect access to benefits, etc.

(1) References in this Ordinance to the affording by any person of access to benefits, facilities or services –

- (a) are not limited to benefits, facilities or services provided by that person himself or herself; but
- (b) include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person ("actual provider").

(2) Where by any provision of this Ordinance the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision is to extend also to the liability under this Ordinance of any actual provider.

54. Nationality law, etc. not affected

Nothing in this Ordinance –

- (a) is to be construed as affecting in any way any law concerning nationality, citizenship, resident status or naturalization; or
- (b) renders unlawful any act done by any person in, or in connection with, the operation of any such law.

55. Immigration legislation

Nothing in Part 3, 4 or 5 affects, as regards a person not having the right to enter and remain in Hong Kong, any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.

56. Acts done under statutory authority not affected by Parts 3, 4 and 5

Nothing in Part 3, 4 or 5 renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.

57. Application to New Territories land

Nothing in Part 4 or 5 –

- (a) is to be construed as affecting the operation of any of the provisions of –
 - (i) the New Territories Ordinance (Cap. 97); or
 - (ii) the New Territories Leases (Extension) Ordinance (Cap. 150); or
- (b) renders unlawful any act done by any person in, or in connection with, the operation of any of those provisions.

58. Exception for languages

(1) Nothing in section 20, 21, 26, 27, 28, 29, 35 or 36 renders unlawful the use of, or the failure to use, any language in any circumstances relevant for the purposes of the section.

(2) For the avoidance of doubt, nothing in subsection (1) affects the Official Languages Ordinance (Cap. 5) or provisions on the use of language contained in any other enactment.

(3) In this section, a reference to the use of, or failure to use, a language includes a reference to the provision of, or failure to provide, a translation, interpretation or transcription into the language.

59. Other matters not affected

(1) No provision or Part of this Ordinance specified in column 2 of Schedule 5 renders unlawful any discrimination specified opposite thereto in column 3 of that Schedule.

- (2) Nothing in Part 3, 4 or 5 renders unlawful any act done by any person –
- (a) in connection with any discrimination which is not unlawful by virtue of the operation of subsection (1); and
 - (b) to the extent that it is done for the purposes of that discrimination.

PART 7

COMMISSION

Commission

60. Functions and powers of Commission

- (1) The Commission shall –
- (a) work towards the elimination of discrimination;
 - (b) promote equality of opportunity and harmony between persons of different racial groups generally;
 - (c) work towards the elimination of harassment and vilification;
 - (d) in the case of any act alleged to be unlawful by virtue of this Ordinance, encourage persons who are concerned with the matter to which act relates to effect a settlement of the matter by conciliation, whether under section 79 or otherwise;
 - (e) keep under review the working of this Ordinance and when required to do so by the Chief Executive, or when it otherwise thinks fit, draw up and submit to the Chief Executive proposals for amending this Ordinance; and
 - (f) perform such other functions as are imposed on it under this Ordinance or any other enactment.

(2) The Commission may do all such things as are necessary for, or incidental or conducive to, the better performance of its functions.

(3) Without limiting subsection (1), the Commission may in particular –

- (a) with the prior approval of the Chief Executive, become a member of or affiliate to any international body concerned (whether in whole or in part) with the elimination of discrimination; or
- (b) exercise such powers as are conferred on it under this Ordinance.

61. Review of Schedule 5

(1) Without limiting section 60(1), the Commission, pursuant to its powers under paragraphs (a) and (b) of that section, shall keep Schedule 5 under review.

(2) Whenever the Commission thinks it necessary, it shall draw up and submit to the Chief Executive proposals for amending Schedule 5.

62. Restrictions on delegation by Commission

The Commission may not under section 67(1) of the Sex Discrimination Ordinance (Cap. 480) delegate any of its functions or powers under –

- (a) section 83;
- (b) any provisions of any regulations made under section 84 which are specified in the regulations as provisions which are not subject to section 67 of the Sex Discrimination Ordinance (Cap. 480); or
- (c) any provisions of any rules made under section 83 which are specified in the rules as provisions which are not subject to that section 67.

63. Protection of members of Commission, etc.

(1) No person to whom this subsection applies, acting in good faith, is personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commission under this Ordinance.

(2) The protection conferred by subsection (1) on any person to whom that subsection applies in respect of any act or default shall not in any way affect the liability of the Commission for that act or default.

(3) The persons to whom subsection (1) applies are –

- (a) any member of the Commission or a committee;
- (b) any employee of the Commission; or
- (c) any conciliator.

Codes of practice

64. Codes of practice

(1) The Commission may issue codes of practice containing such practical guidance as it thinks fit for the purposes of –

- (a) the elimination of discrimination;
- (b) the promotion of equality of opportunity and harmony between persons of different racial groups; or
- (c) the elimination of harassment and vilification.

(2) When the Commission proposes to issue a code of practice, it shall prepare and publish (otherwise than in the Gazette) the code; it shall consider any representations made to it about the code and may modify the code accordingly.

(3) In the course of preparing any code of practice for eventual publication under subsection (2), the Commission shall consult such associations, organizations, associations of organizations or bodies as appear to the Commission to be appropriate including any associations, organizations,

associations of organizations or bodies specified by the Secretary for Home Affairs by notice published in the Gazette.

(4) If the Commission determines to proceed with a code of practice published under subsection (2), it shall cause the code to be –

- (a) published in the Gazette; and
- (b) laid on the table of the Legislative Council at the next sitting after its publication in the Gazette.

(5) The Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which a code of practice is laid on the table of that Council (“the relevant period”), provide that the code of practice shall be amended in any manner consistent with this section.

(6) If the relevant period would but for this section expire after the end of a session or a dissolution of the Legislative Council, but on or before the day of its second sitting in the next session, the period for amending the code is deemed to be extended and expire on the day after that second sitting.

(7) The Legislative Council may, before the expiration of the relevant period, by resolution extend the period for amending the code of practice to the first sitting of that Council held not earlier than the twenty-first day after the day of such expiration.

(8) Where the relevant period is extended under subsection (6), the Legislative Council may, before the expiration of the extended period, by resolution extend that extended period to the first sitting of that Council held not earlier than the twenty-first day after the day of the second sitting in the next session referred to in that subsection.

(9) A resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing of the resolution or within such further period as the Chief Executive may allow in a particular case.

(10) A code of practice shall come into operation –

- (a) if on the expiration of the relevant period or that period as extended under subsection (6), (7) or (8), the Legislative Council has not passed a resolution amending the code of practice, on the expiration of the relevant period or that period as so extended (as the case may be); and
- (b) if the Legislative Council passes a resolution amending the code of practice, at midnight on the day before the day on which the resolution is published in the Gazette.

(11) A code of practice may contain such transitional provisions or savings as appear to the Commission to be necessary or expedient in connection with the matters which are the subject of the code.

(12) The Commission may from time to time revise the whole or any part of a code of practice and issue the revised code, and subsections (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) apply (with appropriate modifications) to a revised code.

(13) Without limiting subsection (1), a code of practice may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Ordinance.

(14) A failure on the part of any person to observe any provision of a code of practice shall not of itself render the person liable to any proceedings; but in any proceedings under this Ordinance before any court any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(15) In this section, “sitting” (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included in the order paper.

Investigations

65. Power to conduct formal investigations

Without limiting section 60, the Commission may if it thinks fit, and if required by the Chief Secretary for Administration, shall, conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.

66. Terms of reference

(1) The Commission shall not embark on a formal investigation unless the requirements of this section have been complied with.

(2) The terms of reference for the formal investigation are to be drawn up by the Commission or, where the Chief Secretary for Administration requires the Commission to conduct the investigation, by the Chief Secretary for Administration after consulting the Commission.

(3) The Commission shall give general notice of the holding of the formal investigation unless the terms of reference confine it to activities of persons named in them, but in such a case the Commission shall in the prescribed manner give those persons notice of the holding of the investigation.

(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of the investigation proposes to investigate any act made unlawful by this Ordinance which it believes a person so named may have done, the Commission shall –

- (a) inform that person of its belief and its proposal to investigate the act; and
- (b) offer that person an opportunity of making oral or written representations with regard to it (or both oral and written representations as that person thinks fit).

(5) A person who avails himself of an opportunity to make oral representations under subsection (4)(b) may be represented –

- (a) by counsel or a solicitor; or

- (b) by some other person of the person's choice, not being a person to whom the Commission objects on the ground that he or she is unsuitable.

(6) The Commission may or, if the Commission was required by the Chief Secretary for Administration to conduct the formal investigation, the Chief Secretary for Administration after consulting the Commission may, from time to time, revise the terms of reference.

(7) Subsections (1), (3), (4) and (5) apply to the revised investigation and terms of reference as they apply to the original.

67. Power to obtain information

(1) For the purposes of a formal investigation, the Commission, by a notice in the prescribed form served on a person in the prescribed manner, may –

- (a) require the person to furnish such written information as may be described in the notice;
- (b) specify the time at which, and the manner and form in which, the information is to be furnished; and
- (c) require the person to attend at the time and place specified in the notice and give oral information about, and produce all documents in the person's possession or control relating to, any matter specified in the notice.

(2) Except as provided in section 74, a notice may be served under subsection (1) only where –

- (a) service of the notice has been authorized in writing by or on behalf of the Chief Secretary for Administration; or
- (b) the terms of reference of the formal investigation –
 - (i) state that the Commission believes that a person named in them may have done or may be doing all or any of the acts described in subsection (3); and
 - (ii) confine the investigation to those acts.

(3) The acts referred to in subsection (2)(b)(i) are acts of the following descriptions –

- (a) unlawful discriminatory acts;
- (b) unlawful acts of harassment;
- (c) contraventions of section 41, 42, 43, 44 or 45.

(4) A notice under subsection (1) may not require a person –

- (a) to give information, or produce any documents, which the person could not be compelled to give in evidence, or produce, in civil proceedings before the Court of First Instance; or
- (b) to attend at any place unless the necessary expenses of the person's journey to and from that place are paid or tendered to him or her.

(5) If –

- (a) a person fails to comply with a notice served on that person under subsection (1); or
- (b) the Commission has reasonable cause to believe that that person intends not to comply with it,

the Commission may apply to the District Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order; and section 66A of the District Court Ordinance (Cap. 336) applies to failure without reasonable excuse to comply with any such order as it applies in the cases there provided.

(6) A person who –

- (a) wilfully alters, suppresses, conceals or destroys a document which he or she has been required by a notice or order under this section to produce; or
- (b) in complying with such a notice or order, knowingly or recklessly makes any statement which in a material respect is false or misleading,

commits an offence.

(7) A person who commits an offence under subsection (6) is liable on conviction to a fine at level 4.

68. Recommendations and reports on formal investigations

(1) If in the light of its findings in a formal investigation it appears to the Commission necessary or expedient, whether during the course of the investigation or after its conclusion –

- (a) to make to any persons, with a view to promoting equality of opportunity and harmony between persons of different racial groups who are affected by any of their activities, recommendations for changes in their policies or procedures, or as to any other matters; or
- (b) to make to the Chief Secretary for Administration any recommendations, whether for changes in the law or otherwise,

the Commission shall make those recommendations accordingly.

(2) The Commission shall prepare a report of its findings in any formal investigation conducted by it.

(3) If the formal investigation is one required by the Chief Secretary for Administration, the following applies –

- (a) the Commission shall deliver the report to the Chief Secretary for Administration;
- (b) the Chief Secretary for Administration shall cause the report to be published in such manner as he or she thinks fit; and
- (c) unless required by the Chief Secretary for Administration, the Commission shall not publish the report.

(4) If the formal investigation is not one required by the Chief Secretary for Administration, the Commission shall publish the report or make it available for inspection in accordance with subsection (5).

(5) Where under subsection (4) a report is to be made available for inspection, any person shall be entitled, on payment of a reasonable fee, if any, as may be determined by the Commission –

(a) to inspect the report during ordinary office hours and take copies of the whole report or any part of it; or

(b) to obtain from the Commission a copy, certified by the Commission to be correct, of the report.

(6) The Commission may, if it thinks fit, determine that the right conferred by subsection (5)(a) is exercisable in relation to a copy of the report, instead of, or in addition to, the original.

(7) The Commission shall give general notice of the place or places where, and the times when, the report or a copy of it may be inspected.

69. Restrictions on disclosure of information

(1) No information given to the Commission by any person (“the informant”) in connection with a formal investigation shall be disclosed by the Commission, any member of the Commission or a committee, any employee of the Commission, any conciliator, or any person who has been such a member, employee or conciliator, except –

(a) on the order of any court;

(b) with the informant’s consent;

(c) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;

- (d) in a report of the investigation published by the Commission or made available for inspection under section 68(5);
- (e) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (f) for the purpose of any civil proceedings under this Ordinance to which the Commission is a party, or any criminal proceedings.

(2) Any person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

(3) In preparing any report for publication or for inspection, the Commission shall exclude, so far as it is consistent with its functions and the object of the report, any matter which relates to the private affairs of any individual or business interests of any person where the publication of that matter might, in the opinion of the Commission, prejudicially affect that individual or person.

PART 8

ENFORCEMENT

General

70. Restrictions on proceedings for contravention of Ordinance

(1) Except as otherwise provided by this Ordinance, no proceedings, whether civil or criminal, lie against any person in respect of an act by reason that the act is unlawful by virtue of a provision of this Ordinance.

(2) Subsection (1) does not preclude the making of an order of certiorari, mandamus or prohibition.

71. Claims in respect of discrimination, harassment and vilification

(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) is by virtue of section 47 or 48 to be treated as having committed such an act of discrimination against the claimant;
- (c) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4; or
- (d) has committed an act which is unlawful by virtue of section 45,

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

(2) Subsection (1) does not apply to a claim under section 19(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) are to be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 70(1), would be obtainable in the Court of First Instance.

(4) Without limiting the power conferred by subsection (3), the District Court may –

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this Ordinance and order that the respondent shall not repeat or continue such unlawful conduct or act;

- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent shall pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court has jurisdiction to hear and determine any proceedings under subsection (1) and has all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) In respect of an unlawful act of discrimination falling within section 4(1)(b), no award of damages is to be made if the respondent proves that the requirement or condition concerned was not applied with the intention of treating the claimant unfavourably on the ground of the race of the claimant.

(7) For the avoidance of doubt, it is declared that damages in respect of an unlawful act of discrimination or harassment, or an act which is unlawful by virtue of section 45, may include compensation for injury to feelings whether or not they include compensation under any other head.

Enforcement notices

72. Issue of enforcement notices

- (1) This section applies to any act which is –
- (a) an unlawful discriminatory act;
 - (b) an unlawful act of harassment;
 - (c) a contravention of section 41; or
 - (d) a contravention of section 42, 43, 44 or 45,

and so applies whether or not the proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any acts to which this section applies, the Commission may in the prescribed manner serve on the person a notice in the prescribed form requiring the person –

- (a) not to commit any such acts (which may include discontinuing or changing any of the person's practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof); and
- (b) where compliance with paragraph (a) involves changes in any of the person's practices or other arrangements –
 - (i) to inform the Commission that he or she has effected changes and what those changes are; and
 - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) An enforcement notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) An enforcement notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice must not be later than 5 years after the notice has become final.

(5) Section 67(4) applies to requirements under subsections (2)(b), (3) and (4) contained in an enforcement notice which has become final as it applies to requirements in a notice served under section 67(1).

73. Appeal against enforcement notice

(1) Not later than 45 days after an enforcement notice is served on any person, he or she may appeal to the District Court against any requirement in the notice.

(2) Where the District Court considers a requirement in respect of which an appeal is brought under subsection (1) to be unreasonable because it is based on an incorrect finding of fact or for any other reason, the Court shall quash the requirement.

(3) On quashing a requirement under subsection (2), the District Court may direct that the enforcement notice shall be treated as if, in place of the requirement quashed, it had contained a requirement in terms specified in the direction.

(4) Subsection (1) does not apply to a requirement treated as included in an enforcement notice by virtue of a direction under subsection (3).

74. Investigation as to compliance with enforcement notice

(1) If –

(a) the terms of reference of a formal investigation state that its purpose is to determine whether any requirements of an enforcement notice are being or have been carried out, but section 67(2)(b) does not apply; and

- (b) section 66(3) is complied with in relation to the investigation on a date (“commencement date”) not later than the expiration of the period of 5 years beginning when the enforcement notice became final,

the Commission may within the relevant period serve notices under section 67(1) for the purposes of the investigation without needing to obtain the consent of the Chief Secretary for Administration.

(2) In subsection (1), “relevant period” (有關期間) means the period beginning on the commencement date and ending on the later of the following dates –

- (a) the date on which the period of 5 years referred to in subsection (1)(b) expires;
- (b) the date 2 years after the commencement date.

75. Register of enforcement notices

(1) The Commission shall establish and maintain a register (“the register”) of enforcement notices which have become final.

(2) A person is entitled, on payment of a reasonable fee, if any, as may be determined by the Commission –

- (a) to inspect the register during ordinary office hours and take copies of any entry; or
- (b) to obtain from the Commission a copy, certified by the Commission to be correct, of any entry in the register.

(3) The Commission may, if it thinks fit, determine that the right conferred by subsection (2)(a) is exercisable in relation to a copy of the register, instead of, or in addition to, the original.

(4) The Commission shall give general notice of the place or places where, and the times when, the register or a copy of it may be inspected.

Other enforcement by Commission

76. Persistent discrimination, harassment or vilification

If, during the period of 5 years beginning on the date on which either of the following became final in the case of any person, namely –

- (a) an enforcement notice served on the person;
- (b) a finding by the District Court that the person has done –
 - (i) an unlawful discriminatory act;
 - (ii) an unlawful act of harassment; or
 - (iii) an act contravening section 45,

it appears to the Commission that unless restrained the person is likely to do one or more acts falling within paragraph (b), or contravening section 41, the Commission may apply to the District Court for an injunction restraining the person from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

77. Enforcement of sections 42, 43 and 44

(1) Proceedings in respect of a contravention of section 42, 43 or 44 may be brought only by the Commission and in accordance with this section.

- (2) The proceedings must be –
 - (a) an application for a decision whether the alleged contravention occurred; or
 - (b) an application under subsection (4),

or both.

(3) An application under subsection (2)(a) must be made to the District Court.

- (4) If it appears to the Commission –
 - (a) that a person has done an act which by virtue of section 42, 43 or 44 was unlawful; and

- (b) that unless restrained the person is likely to do further acts which by virtue of that section are unlawful,

the Commission may apply to the District Court for an injunction restraining the person from doing so; and the District Court, if satisfied that the application is well-founded, may grant the injunction in the terms applied for or in more limited terms.

(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 42, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of that person.

Help for persons suffering discrimination, harassment or vilification

78. Help for aggrieved persons in obtaining information, etc.

(1) With a view to helping a person (“the person aggrieved”) who considers he or she may have been discriminated against or harassed in contravention of this Ordinance, or the subject of an unlawful act under section 45 –

- (a) to decide whether to institute proceedings; and
- (b) if the person does so, to formulate and present his or her case in the most effective manner,

the Commission may prescribe –

- (c) forms by which the person aggrieved may question the respondent on the respondent’s reasons for doing any

relevant act, or on any other matter which is or may be relevant; and

- (d) forms by which the respondent may if he or she so wishes reply to any questions.

(2) Where the person aggrieved questions the respondent (whether or not in accordance with a form referred to in subsection (1)) –

- (a) the question, and any reply by the respondent (whether or not in accordance with such a form) is, subject to subsections (3), (4) and (5), admissible as evidence in the proceedings; and
- (b) if it appears to the District Court that the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that the respondent's reply is evasive or equivocal, the Court may draw any inference from that fact it considers it just and equitable to draw, including an inference that the respondent committed an unlawful act.

(3) The Commission may –

- (a) prescribe the period within which questions must be served in order to be admissible under subsection (2)(a); and
- (b) prescribe the manner in which a question, and any reply by the respondent, may be served.

(4) Rules under the District Court Ordinance (Cap. 336) may enable the District Court entertaining a claim under section 71 to determine, before the date fixed for the hearing of the claim, whether a question or reply is admissible under this section or not.

(5) This section is without prejudice to any other enactment or rule of law regulating interlocutory and preliminary matters in proceedings before the

District Court, and has effect subject to any enactment or rule of law regulating the admissibility of evidence in such proceedings.

(6) In this section, “respondent” (答辯人) includes a prospective respondent.

79. Assistance by way of conciliation

(1) A person may lodge with the Commission a complaint in writing alleging that another person has done an act which is unlawful by virtue of a provision of this Ordinance.

(2) A representative complaint may be lodged under subsection (1) in accordance with rules made under section 83.

(3) Subject to subsection (4), where a complaint is lodged under subsection (1), the Commission shall –

- (a) conduct an investigation into the act the subject of the complaint; and
- (b) endeavour, by conciliation, to effect a settlement of the matter to which the act relates.

(4) The Commission may decide not to conduct, or to discontinue, an investigation into an act the subject of a complaint lodged under subsection (1) if –

- (a) it is satisfied that the act is not unlawful by reason of a provision of this Ordinance;
- (b) it is of the opinion that the person aggrieved by the act does not desire (or, in a case to which subsection (2) applies, none of the persons aggrieved by the act desires) that the investigation be conducted or continued;
- (c) a period of more than 12 months has elapsed beginning when the act was done;

- (d) in a case to which subsection (2) applies, it determines, in accordance with rules made under section 83, that the complaint should not be a representative complaint; or
- (e) it is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

(5) Where the Commission decides not to conduct, or to discontinue, an investigation into an act the subject of a complaint lodged under subsection (1), it shall by notice served on the person who lodged the complaint advise the person of –

- (a) that decision; and
- (b) the reason for that decision.

(6) Evidence of anything said or done by any person in the course of conciliation under this section (including anything said or done at any conference held for the purposes of such conciliation) is not admissible in evidence in any proceedings under this Ordinance except with the consent of that person.

(7) For the avoidance of doubt, it is declared that subsection (6) does not apply where –

- (a) a complaint is lodged under subsection (1); and
- (b) a settlement has been effected of the matter to which the act the subject of the complaint relates.

80. Assistance other than by way of conciliation

(1) Where –

- (a) a complaint has been lodged under section 79(1); but
- (b) for whatever reason, there has not been a settlement of the matter to which the act the subject of the complaint relates,

then any person who may institute proceedings under this Ordinance in respect of that act may make an application to the Commission for assistance in respect of those proceedings.

(2) The Commission shall consider an application under subsection (1) and may grant it if it thinks fit to do so, in particular where –

- (a) the case raises a question of principle; or
- (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.

(3) Assistance by the Commission under this section may include –

- (a) giving advice;
- (b) arranging for the giving of advice or assistance by a solicitor or counsel;
- (c) arranging for representation by any person including all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings, or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;
- (d) any other form of assistance which the Commission may consider appropriate,

but paragraph (c) does not affect the law and practice regulating the descriptions of persons who may appear in, conduct, defend and address a court in, any proceedings except to the extent permitted under rules made in accordance with section 73E of the District Court Ordinance (Cap. 336).

(4) In so far as expenses are incurred by the Commission in providing the applicant with assistance under this section the recovery of those expenses (as taxed or assessed in such manner as may be prescribed by relevant rules) constitutes a first charge for the benefit of the Commission –

- (a) on any costs or expenses which (whether by virtue of a judgment or order of the District Court or an agreement or otherwise) are payable to the applicant by any other person

in respect of the matter in connection with which the assistance is given; and

- (b) so far as relates to any costs or expenses, on his or her rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(5) The charge conferred by subsection (4) is subject to any charge under the Legal Aid Ordinance (Cap. 91) and to any provision in that Ordinance for payment of any sum into the Supplementary Legal Aid Fund established under that Ordinance.

(6) In this section –
 “relevant rules” (有關規則) means any rules made under the District Court Ordinance (Cap. 336);
 “respondent” (答辯人) includes a prospective respondent.

Period within which proceedings to be brought

81. Period within which proceedings to be brought

(1) The District Court shall not consider a claim under section 71 unless proceedings in respect of the claim are instituted within the period of 24 months beginning –

- (a) when the act complained of was done; or
- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 68,

whichever is the later.

(2) The District Court –

- (a) shall not consider an application under section 77(2)(a) unless it is made within the period of 24 months beginning when the act to which it relates was done; and

- (b) shall not consider an application under section 77(4) unless it is made within the period of 5 years so beginning.

(3) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 79(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 79 was concluded, as certified in writing by the Commission, shall be disregarded.

(4) Notwithstanding subsections (1) and (2), the District Court may consider any claim or application which is out of time, if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(5) For the purposes of subsection (4), the circumstances of the case include, in relation to any claim –

- (a) whether the act to which the claim relates was the subject of a complaint lodged under section 79(1); and
- (b) if so, the period that elapsed between when the act was done and when that complaint was so lodged.

(6) For the purposes of this section –

- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person concerned decided upon it.

(7) In the absence of evidence to the contrary, a person shall be taken for the purposes of this section to decide upon an omission, that is deciding upon omitting to do an act (“relevant act”) –

- (a) when the person does an act inconsistent with doing the relevant act; or
- (b) if the person has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the relevant act if it were to be done.

(8) The Chief Executive in Council may, by notice published in the Gazette, amend subsection (1) by substituting a longer period for the period specified in that subsection.

(9) In this section, “relevant report” (有關報告), in relation to an act referred to in subsection (1), means a report –

- (a) published or made available for inspection under section 68; and
- (b) from which it can reasonably be construed (whether or not the report mentions the act or the report was in any way prepared in consequence of the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part 3, 4 or 5.

PART 9

MISCELLANEOUS

82. Validity and revision of contracts

- (1) A term of a contract is void where –
 - (a) its inclusion renders the making of the contract unlawful by virtue of this Ordinance;
 - (b) it is included in furtherance of an act rendered unlawful by this Ordinance; or
 - (c) it provides for the doing of an act which would be rendered unlawful by this Ordinance.

(2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.

(3) A term in a contract which purports to exclude or limit any provision of this Ordinance is unenforceable by any person in whose favour the term would operate apart from this subsection.

(4) Subsection (3) does not apply to a contract settling a claim to which section 71 applies.

(5) On the application of any person interested in a contract to which subsection (2) applies, the District Court may make such order as it thinks just for removing or modifying any term made unenforceable by that subsection; but such an order shall not be made unless all persons affected –

- (a) have been given notice of the application (except where under rules made under the District Court Ordinance (Cap. 336) notice may be dispensed with); and
- (b) have been afforded an opportunity to make representations to the Court.

(6) An order under subsection (5) may include provision as respects any period before making the order.

83. Rules

(1) The Commission may make rules –

- (a) prescribing the persons, or persons belonging to a class of persons, who may lodge a representative complaint under section 79(1);
- (b) prescribing the bodies and positions for the purposes of section 34;

- (c) prescribing the matters to be taken into account by the Commission for the purposes of a determination under section 79(4)(d);
 - (d) to enable the Commission to require such persons, or persons belonging to such class of persons, as are specified in the rules to furnish information to the Commission for the purposes of section 79;
 - (e) restricting the disclosure of any information referred to in paragraph (d) furnished to the Commission;
 - (f) to enable the Commission to direct persons to attend any conference held for the purposes of section 79;
 - (g) regulating the procedure of any conference held for the purposes of section 79;
 - (h) prescribing any other thing that is required or permitted to be prescribed under this Ordinance.
- (2) Any rules made under subsection (1) may –
- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
 - (b) be made so as to apply only in such circumstances as are prescribed by the rules;
 - (c) specify forms for the purposes of the rules;
 - (d) be made generally for the better or more effectual carrying out of the provisions of this Ordinance, including incidental, consequential, evidential and supplemental provisions.

(3) Any rules made under this section may prescribe offences in respect of contraventions of the rules, and may provide for the imposition of a fine not exceeding level 4 and of imprisonment for a period not exceeding 2 years.

84. Regulations to empower Commission to bring certain proceedings

- (1) The Secretary for Home Affairs may make regulations –
 - (a) where any person may bring proceedings under section 71 but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;
 - (b) specifying which of the remedies referred to in section 71(3) shall be obtainable by the Commission in any such proceedings;
 - (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.

(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 60(1).

85. Amendment of Schedules 1, 2, 3, 4 and 5

The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 1, 2, 3, 4 or 5 but any notice to amend Schedule 2, 3, 4 or 5 shall be subject to the approval of the Legislative Council.

Consequential and Related Amendments

Labour Tribunal Ordinance

86. Jurisdiction of tribunal

Section 7 of the Labour Tribunal Ordinance (Cap. 25) is amended by adding –

“(6) Subsection (2) shall not operate to prevent the transfer of any claim to the tribunal in accordance with any rules made under section 73E of the District Court Ordinance (Cap. 336).”.

87. Declining jurisdiction

Section 10 is amended by adding –

“(6) This section shall not apply to any claim transferred to the tribunal in accordance with any rules made under section 73E of the District Court Ordinance (Cap. 336).”.

Employment Ordinance

88. Exclusion

Section 32Q of the Employment Ordinance (Cap. 57) is amended –

(a) in paragraph (c), by repealing the full stop and substituting “; or” ;

(b) by adding –

“(d) discrimination against a person on the ground of the race of the person or his or her near relative within the meaning of the Race Discrimination Ordinance (of 2006).”.

Chinese Temples Ordinance

89. General Chinese Charities Fund

Section 9(1)(b) of the Chinese Temples Ordinance (Cap. 153) is amended by repealing “Chinese”.

District Court Ordinance

90. Section added

The District Court Ordinance (Cap. 336) is amended by adding immediately after section 73D –

**“73E. Rules in relation to jurisdiction under
Race Discrimination Ordinance**

(1) The Rules Committee may make rules regulating the practice of the Court in the exercise of its jurisdiction under the Race Discrimination Ordinance (of 2006) and the forms of proceedings therein.

(2) The power to make rules under subsection (1) –

(a) shall extend to –

- (i) all matters of procedure or practice; and
- (ii) matters relating to or concerning the effect or operation in law of any procedure or practice in any case within the cognizance of the Court as to which rules of the High Court have been or might be made for cases within the cognizance of the High Court; and

(b) shall include the power to make rules –

- (i) as to proceedings by or against the Government;

- (ii) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;
- (iii) to make special provision for any proceedings in the Court where regulations made under section 84 of the Race Discrimination Ordinance (of 2006) apply to the proceedings.

(3) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Race Discrimination Ordinance (of 2006) shall bear its own costs unless the Court otherwise orders on the ground that –

- (a) the proceedings were brought maliciously or frivolously; or
- (b) there are special circumstances which warrant an award of costs.

(4) Without prejudice to the generality of the provisions of subsections (1) and (2), the power to make rules under this section shall extend to –

- (a) prescribing the place or places which shall be the venue or venues for proceedings to which this section relates;
- (b) requiring the judge or judges sitting at such venue or venues to give priority, to such extent as may be specified in the rules, to hearing and disposing of proceedings to which this section relates;
- (c) empowering any such judge at any stage of any proceedings, of his or her own motion, to order that any claim be transferred to the tribunal within

the meaning of the Labour Tribunal Ordinance (Cap. 25) where the claim is –

- (i) beyond the jurisdiction of the Court; and
- (ii) within the jurisdiction of that tribunal.

(5) The Court in the exercise of its jurisdiction under the Race Discrimination Ordinance (of 2006) –

- (a) shall not be bound by the rules of evidence; and
- (b) may inform itself of any matter in such manner as it sees fit, with due regard to –
 - (i) the rights of the parties to the proceedings therein to a fair hearing;
 - (ii) the need to determine the substantial merits of the case; and
 - (iii) the need to achieve a prompt hearing of the matters at issue between the parties.

(6) Subject to subsection (5), any rules made in accordance with the provisions of this section may be made so as to modify, with respect to proceedings in the Court, any rule of law or practice as to the proof of any matter or as to the reception or admissibility of any matter in evidence.

(7) No rule made in accordance with the provisions of this section shall apply to any proceedings by or against the Government except in so far as it expressly purports so to do.

(8) It is hereby declared that –

- (a) subject to paragraph (c), this section –
 - (i) shall not of itself operate to prevent the making of any rules –
 - (A) under the provisions of any other section of this Ordinance; and

- (B) which relate, whether in whole or in part, to the jurisdiction conferred on the Court by virtue of the Race Discrimination Ordinance (of 2006); and
 - (ii) shall not of itself operate to prevent any rules made under the provisions of any other section of this Ordinance from applying to and in relation to such jurisdiction;
- (b) where there is any conflict or inconsistency between –
 - (i) any rules made under subsection (2)(b); and
 - (ii) any rule of law and practice regulating the description of persons who may appear in, conduct, defend and address the Court in, any proceedings therein,
 then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that rule of law and practice;
- (c) where there is any conflict or inconsistency between any rules made under the provisions of this section and any rules made under the provisions of another section of this Ordinance, then those first-mentioned rules shall to the extent of that conflict or inconsistency, as the case may be, prevail over those second-mentioned rules.

(9) For the avoidance of doubt, it is hereby declared that no rule made in accordance with this section shall empower the Court to hear

and determine any proceedings involving any claim beyond its jurisdiction.”.

District Court Equal Opportunities Rules

91. Interpretation

Rule 2 of the District Court Equal Opportunities Rules (Cap. 336 sub. leg. G) is amended, in the definition of “relevant Ordinance” –

- (a) in paragraph (b), by repealing “or”;
- (b) in paragraph (c), by adding “or” at the end;
- (c) by adding –
- “(d) the Race Discrimination Ordinance (of 2006);”.

92. Application of other rules

Rule 4 is amended by repealing “73C(8) and 73D(8)” and substituting “73C(8), 73D(8) and 73E(8)”.

Sex Discrimination Ordinance

93. Interpretation

(1) Section 2(5)(b) of the Sex Discrimination Ordinance (Cap. 480) is amended by repealing everything after “sexual nature which” and substituting “renders sexually hostile or intimidating the environment in which she works, studies or undergoes training, or carries out related or incidental activities.”.

(2) Section 2(6) is repealed.

Chinese Permanent Cemeteries Ordinance

94. Powers of the Board

Section 7(2) of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) is amended by repealing “persons of the Chinese race in Hong Kong” and substituting “Hong Kong residents”.

SCHEDULE 1

[ss. 2(1) & 85]

EDUCATIONAL ESTABLISHMENTS AND
THEIR RESPONSIBLE BODIES

Item	Educational establishment	Responsible body
1.	The University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053)	The University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053)
2.	The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109)	The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109)
3.	The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075)	The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075)
4.	Any Post Secondary College registered under the Post Secondary Colleges Ordinance (Cap. 320)	The Board of Governors (or the Board of Trustees where no Board of Governors exists) or the College Council, according to which of them has the function concerned

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|---|--|
| 5. The Vocational Training Council established by the Vocational Training Council Ordinance (Cap. 1130) | The Vocational Training Council established by the Vocational Training Council Ordinance (Cap. 1130) |
| 6. The Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126) | The Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126) |
| 7. The City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132) | The City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132) |
| 8. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135) | The Council or the Academic Board, within the meaning of section 2 of The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135), according to which of them has the function concerned |
| 9. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141) | The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141) |

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|-----|--|--|
| 10. | The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145) | The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145) |
| 11. | The Lingnan University established by the Lingnan University Ordinance (Cap. 1165) | The Lingnan University established by the Lingnan University Ordinance (Cap. 1165) |
| 12. | The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444) | The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444) |
| 13. | Any school which is registered or provisionally registered under the Education Ordinance (Cap. 279) | The management committee, incorporated management committee or school management company (as the case may be), within the meaning of section 3(1) of the Education Ordinance (Cap. 279), of the school |
| 14. | Any school, within the meaning of section 3(1) of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government | The Permanent Secretary for Education and Manpower |

- | | | |
|-----|--|--|
| 15. | The Construction Industry Training Authority established by the Industrial Training (Construction Industry) Ordinance (Cap. 317) | The Construction Industry Training Authority established by the Industrial Training (Construction Industry) Ordinance (Cap. 317) |
| 16. | The Clothing Industry Training Authority established by the Industrial Training (Clothing Industry) Ordinance (Cap. 318) | The Clothing Industry Training Authority established by the Industrial Training (Clothing Industry) Ordinance (Cap. 318) |
| 17. | The Construction Industry Council established by the Construction Industry Council Ordinance (12 of 2006) | The Construction Industry Council established by the Construction Industry Council Ordinance (12 of 2006) |

SCHEDULE 2

[ss. 14 & 85]

EMPLOYEE IN EXISTING EMPLOYMENT

1. An employee specified in section 2, 3, 4, 5 or 6 is an employee in an existing employment for the purposes of section 14 of this Ordinance.

2. An employee specified in this section is an employee (other than a public officer or specified English teacher) of an employer where –
 - (a) the employee –
 - (i) began his or her employment with the employer pursuant to an offer of employment made to him or her before the commencement date; and

- (ii) continues to be employed by the employer without a break in service since he or she began service pursuant to the offer; or
 - (b) the employee is employed by the employer following one or more transfers of employment, all being transfers within the same group of companies within the meaning of section 13(3)(b) of this Ordinance, where the employment immediately preceding the first transfer was pursuant to an offer of employment made to him or her before the commencement date and there is no break in the employee's service since he or she began his or her employment pursuant to the offer.
3. An employee specified in this section is a judicial officer –
- (a) who –
 - (i) began serving as a judicial officer pursuant to an offer of employment made to him or her before 27 November 1997; and
 - (ii) continues to serve as such officer without a break in service since he or she began service pursuant to the offer; or
 - (b) who –
 - (i) began serving as a public officer (other than a judicial officer) pursuant to an offer of employment made to him or her before 1 January 1999;
 - (ii) had continued to serve as a public officer without a break in service since he or she began service pursuant to the offer and until he or she began serving as a judicial officer; and

- (iii) continues to serve as a judicial officer without a break in service since beginning serving as such.

4. An employee specified in this section is an ICAC officer –

- (a) who –
 - (i) began serving as an ICAC officer pursuant to an offer of employment made to him or her before 1 January 1999; and
 - (ii) continues to serve as such officer without a break in service since he or she began service pursuant to the offer; or
- (b) who –
 - (i) began serving as a public officer (other than an ICAC officer) pursuant to an offer of employment made to him or her before 1 January 1999;
 - (ii) had continued to serve as a public officer without a break in service since he or she began service pursuant to the offer and until he or she began serving as an ICAC officer; and
 - (iii) continues to serve as an ICAC officer without a break in service since beginning serving as such.

5. An employee specified in this section is a public officer (other than a judicial officer or an ICAC officer) who –

- (a) began serving as such officer pursuant to an offer of employment made to him or her before 1 January 1999; and
- (b) continues to serve as such officer without a break in service since he or she began service pursuant to the offer.

6. An employee specified in this section is a specified English teacher who –

- (a) began his or her employment as such pursuant to an offer of employment made to him or her before the commencement date; and
- (b) continues to be employed as such without a break in service since he or she began service pursuant to the offer.

7. An employee (other than a public officer or specified English teacher) who is an employee specified in section 2 remains to be an employee so specified, whether or not the employment of the employee by the employer concerned, or (where section 2(b) applies) by any of the employers within the group of companies concerned, was or is pursuant to any extension, any renewal or re-engagement after termination and whether or not the employee was or has been promoted.

8. A judicial officer, an ICAC officer or any other public officer, who is an employee specified in section 3, 4 or 5 remains to be an employee so specified, whether or not the service of the officer was or is pursuant to any extension, any renewal or re-engagement after termination and whether or not the officer was or has been promoted.

9. A specified English teacher who is an employee specified in section 6 remains to be an employee so specified whether or not the service of the specified English teacher was or is pursuant to –

- (a) any extension, any renewal or re-engagement after termination; or
- (b) any transfer from one primary or secondary school to another, or from a primary or secondary school to the

Native-speaking English Teacher Section of the Education and Manpower Bureau or vice versa.

10. Provisions of this Schedule apply irrespective of whether or not an employee is or has become a Hong Kong permanent resident.

11. For the purposes of this Ordinance –

“ICAC officer” (廉署人員) means a public officer who is an officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap. 204);

“judicial officer” (司法人員) means a judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92);

“local terms of employment” (本地僱用條款) and “overseas terms of employment” (海外僱用條款) –

- (a) in relation to any employee (other than a public officer), mean respectively –
 - (i) such conditions or terms of service as apply, from time to time, primarily to the appointment or employment by the employer concerned of a person who is a Hong Kong permanent resident; and
 - (ii) such conditions or terms of service as apply, from time to time, primarily to the appointment or employment by the employer concerned of a person who is not a Hong Kong permanent resident;
- (b) in relation to a judicial officer, an ICAC officer or any other public officer, respectively mean the local conditions

or terms of service and overseas conditions or terms of service within the meaning of such regulations, administrative rules, circulars and circular memoranda as apply, from time to time, generally to the appointment or employment of judicial officers, ICAC officers or other public officers (as the case may be);

“public officer” (公職人員) does not include a specified English teacher who is employed –

- (a) in a primary or secondary school entirely maintained and controlled by the Government; or
- (b) in the Native-speaking English Teacher Section of the Education and Manpower Bureau;

“specified English teacher” (指明英語教師) means a teacher –

- (a) who is a native-speaker of English or possesses native-speaker English competency;
- (b) who is normally first recruited from a place outside Hong Kong; and
- (c) who –
 - (i) is employed in a secondary school under the Enhanced Native-speaking English Teacher Scheme administered by the Education and Manpower Bureau;
 - (ii) is employed in a primary school under the Native-speaking English Teacher Scheme administered by that Bureau; or
 - (iii) is employed as an Advisory Teacher or a Regional Native-speaking English Teacher Coordinator in the Native-speaking English Teacher Section of that Bureau.

SCHEDULE 3

[ss. 19(2) & 85]

AUTHORIZATION OR QUALIFICATION SPECIFIED FOR THE
PURPOSES OF SECTION 19(2)

Any authorization or qualification conferred for the purposes of –

- (a) the Professional Accountants Ordinance (Cap. 50);
- (b) the Pharmacy and Poisons Ordinance (Cap. 138);
- (c) the Dentists Registration Ordinance (Cap. 156);
- (d) the Legal Practitioners Ordinance (Cap. 159);
- (e) the Medical Registration Ordinance (Cap. 161);
- (f) the Midwives Registration Ordinance (Cap. 162);
- (g) the Nurses Registration Ordinance (Cap. 164);
- (h) the Supplementary Medical Professions Ordinance (Cap. 359);
- (i) the Chiropractors Registration Ordinance (Cap. 428);
- (j) the Civil Aviation Ordinance (Cap. 448); or
- (k) the Chinese Medicine Ordinance (Cap. 549).

SCHEDULE 4

[ss. 33(2) & 85]

DISCRIMINATION TO WHICH SECTIONS 27(1) AND 28
OF THIS ORDINANCE DO NOT APPLY

Item	Provision creating illegality	Exception
1.	Part 3 and section 26	Sections 10(3), (4) and (7), 11(1)(b), 12, 13, 14, 15(4) and (5) and 21(3).

SCHEDULE 5

[ss. 59(1), 61 & 85]

OTHER MATTERS NOT AFFECTED
BY THIS ORDINANCE

Item	Provision creating illegality	Matter
1.	Part 4	Any discrimination between persons of different racial groups arising from that policy of the Government known as the portable comprehensive social security assistance scheme under which eligibility for certain assistance is extended only to persons who take up permanent residence in certain places outside Hong Kong.

Explanatory Memorandum

The main objects of this Bill are –

- (a) to render discrimination, harassment and vilification, on the ground of race, unlawful, and to prohibit serious vilification of persons on that ground;
- (b) to extend the jurisdiction of the Equal Opportunities Commission (“the Commission”) to include such unlawful acts, to confer on the Commission the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races;
- (c) to extend unlawful sexual harassment under the Sex Discrimination Ordinance (Cap. 480) to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating.

2. The Bill is substantially based on existing anti-discrimination legislation in Hong Kong (namely, the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487) and the Family Status Discrimination Ordinance (Cap. 527)).

Preliminary

3. Clause 2 defines the terms used in the Bill. The term “discrimination” means an discrimination falling within clause 4, 5 or 6. The definition of “near relatives” should also be noted. Clause 3 provides that the Bill as enacted applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.

Discrimination and harassment to which the Bill applies

4. Clauses 4 and 5 cover discrimination. Direct discrimination on the ground of the race of a person is covered by clause 4(1)(a) and unjustifiable indirect discrimination by clause 4(1)(b). Clause 4(2) to (4) sets out the criteria for determining “justifiability” and some of the circumstances that may be taken into account. Segregation constitutes less favourable treatment under clause 4(6).

5. Discrimination on the ground of the race of a person’s near relative is covered by clause 5. Clause 6 covers discrimination by way of the victimization of a person who, for example, asserts rights under the Bill. Clause 7 defines what constitutes harassment of a person, which may be on the ground of the race of the person or the person’s near relative. Clause 8(1) to (4) defines the concepts “race”, “on the ground of race” and “racial group”. Clause 8(5) and (6) requires the comparison of cases under clause 4(1) or 5 (that is, to establish whether or not discrimination has occurred) to be such that the relevant circumstances in the one case are the same, or not materially different, in the other. Clause 9 provides that where an act is done for 2 or more reasons and one of those reasons includes race, then the act should be regarded as being done on the ground of race.

Discrimination and harassment in employment field

6. Clause 10 contains general provisions, in relation to employment at an establishment in Hong Kong, making it unlawful for an employer to discriminate between applicants for jobs or between employees in respect of the treatment the employer accords to them, in particular, in relation to promotion, transfer or training. However, excluded from clause 10 is the provision of benefits, facilities and services to the public (this is dealt with in the provisions of Part 4). Also excluded are employees performing domestic duties at the residence of the employer or his or her near relatives. Within the first 3 years of enactment of the new law, clause 10 will not apply to an employer with not more than 5 employees. An existing provision made in relation to death or retirement is exempted to a limited extent.

7. Clause 11 provides for exceptions to clause 10 where being of a particular racial group is a genuine occupational qualification for a job. It may be so for reasons of authenticity in a dramatic performance or other entertainment, or in the production of a work of art or visual images, or in a place providing food or drink for consumption in a particular setting. Alternatively, the qualification is needed for providing most effectively personal services promoting the welfare of a racial group, or personal services of a nature or in circumstances requiring familiarity with their language, culture and customs or sensitivity to their needs.

8. Clauses 12, 13 and 14 provide for further exceptions to clause 10. Clause 12 relates to a person not ordinarily resident in Hong Kong who is employed for the purposes of providing the person with training in skills to be exercised wholly outside Hong Kong. Clause 13 relates to an act done for the benefit of a person with special skills, knowledge or experience not readily available in Hong Kong who is recruited or transferred from a place outside Hong Kong for employment in Hong Kong that requires those skills, knowledge or experience, if the act is reasonable having regard to prevailing international market conditions and other relevant circumstances. Clause 14 and Schedule 2 relate to existing employment on local and overseas terms of employment.

9. Clause 15 relates to discrimination by a person who does not employ his or her workers but obtains their services under a contract with a third party.

10. Clause 16 defines what employment at an establishment in Hong Kong means for the purposes of the Bill. It should be noted that employment on board a ship registered in Hong Kong, or employment on certain aircraft or dynamically supported craft registered in Hong Kong, shall be treated as employment at an establishment in Hong Kong unless the employee concerned does his or her work wholly outside Hong Kong (clause 16(2)).

11. Clause 17 makes it unlawful for partnerships consisting of not less than 6 partners to discriminate against persons seeking partnership or against existing partners.

12. Clause 18 makes it unlawful for a workers' organization, employers' organization, organization of both workers and employers or professional or trade organization to discriminate in respect of the admission of members or in the treatment accorded to members.

13. Clause 19 makes it unlawful for an authority or body to discriminate in conferring any authorization or qualification which is needed by a person who engages in a particular profession or trade. This does not affect any reasonable requirement for proficiency in either Chinese or English, or in both, imposed for the conferment of an authorization or qualification, or a requirement for such proficiency imposed for the conferment of an authorization or qualification specified in Schedule 3. Where the authority or body is required by law to take account of a person's character, it must have regard to the person's previous conduct in relation to discrimination, harassment and vilification.

14. Clause 20 provides that discrimination on the part of certain bodies concerned with vocational training is unlawful. This does not require special arrangements to be made regarding holidays or medium of instruction. Clause 21 provides that it is unlawful for an employment agency

(see the definition of “employment agency” in clause 2(1)) to discriminate in relation to the employment services provided by the agency.

15. Clause 22 makes it unlawful to discriminate against a person who is a commission agent (who is defined in clause 2(1) as a person doing work for a principal and is remunerated wholly or partly by commission).

16. Clause 23(1) in effect disapplies Part 3 to employment for the purposes of an organized religion where such employment is limited to a particular racial group so as to comply with the doctrines of the religion concerned or to avoid offending the religious susceptibilities common to its followers. Clause 23(2) similarly disapplies clause 19 to an authorization or qualification for the purposes of an organized religion.

17. Clauses 24 and 25 make unlawful certain harassment in the employment field. For example, it is unlawful for a person to harass a person who is seeking to be, or who is, employed by that person (clause 24(1) and (2)) or for a person who operates an employment agency to harass a person in the course of offering to provide, or providing, any of the agency’s services to the person (clause 25(4)).

Discrimination and harassment in other fields

18. Clause 26 relates to discrimination in the education field by making it unlawful for the responsible body for an educational establishment (see the definitions of “educational establishment” and “responsible body” in clause 2(1) as read with Schedule 1) to discriminate in respect of admissions or the treatment of students. This does not require special arrangements to be made regarding holidays or medium of instruction.

19. Clauses 27 to 33 relate to discrimination in the provision of goods, facilities and services to the public or a section of the public or in the disposal or management of premises (including premises comprised in a tenancy) or the treatment of occupiers of premises. It is unlawful to discriminate in these matters either through not providing the goods, facilities, services or premises or through

providing the goods, facilities or services on different terms, at different qualities or in different manners (clauses 27, 28 and 29(1)). There are exceptions from clauses 27, 28 and 29(1) in the case of premises forming part of small dwellings which are shared by the landlord (or his or her near relative) and the lodger or tenant (clauses 29(2) and 30). Also excepted from clauses 27(1), 28 and 29(1) is the allocation of cemeteries, crematoria, columbaria and related goods, facilities and services (clause 32). There are exceptions from clauses 27(1) and 28 in the case of certain voluntary bodies which restrict membership by reference to race (clause 31); in the case of participants of arrangements under which they take into their homes persons requiring a special degree of care and attention (clause 33(1)). It should also be noted 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).

20. Clause 34 makes it unlawful to discriminate in respect of eligibility to vote for and to be elected or appointed to relevant positions or relevant bodies (see the definitions of “relevant body” and “relevant position” in clause 34(3)). Certain public offices are excepted.

21. Clause 35 makes it unlawful for a barrister or barrister’s clerk to discriminate against a person seeking pupillage or tenancy, or who is a pupil or tenant, in a set of barristers’ chambers.

22. Clause 36 makes it unlawful for a club, the committee of management of a club or a member of such a committee to discriminate against a person by refusing to accept the person’s application for membership or in the terms or conditions offered for admission and to discriminate against a member in the terms and conditions of membership or with reference to benefits, services or facilities provided to the member. Clause 37 disapplies clause 36 to a club the main object of which is to enable the benefits of membership to be enjoyed by persons of one or more particular racial groups.

23. Clauses 38 and 39 make unlawful certain harassment in fields other than the employment field. For example, it is unlawful for a person who is a

member of the responsible body for an educational establishment to harass a person who is seeking to be, or who is, a student of the establishment (clause 38(1)) or for a person concerned with the provision of goods, facilities or services to harass another person who seeks to obtain or use those goods, facilities or services or to whom the person provides those goods, services or facilities (clause 39(1)).

24. Clause 40 specifies to what extent (including in what circumstances) various provisions of Part 4 shall apply where there is an extra-territorial aspect to the goods, facilities or services to which those provisions relate. For example, clause 27(1) shall not apply to facilities by way of banking or insurance where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Hong Kong (clause 40(1)).

Other unlawful acts

25. Clause 41 covers cases where a person engages in practices which result, or may result, in certain unlawful discrimination. Proceedings under the Bill in respect of the practices concerned may only be brought by the Commission in accordance with clauses 72 to 76.

26. Clause 42 makes it unlawful to publish an advertisement which might reasonably be understood to indicate an intention to do an act unlawful under the provisions of Part 3 or 4 unless the act concerned would not, in fact, be unlawful. The publisher is not liable if he or she reasonably relies on a statement made by the advertiser that the publication of the advertisement concerned would not be unlawful. However, the advertiser who knowingly or recklessly makes such a statement which is false or misleading commits an offence.

27. Clause 43 makes it unlawful for a person to instruct or procure, or attempt to procure, another person to do any act which is unlawful by virtue of Part 3 or 4 if either he or she has authority over the other person or the other person normally complies with his or her wishes.

28. Clause 44 makes it unlawful to induce, or attempt to induce, a person to do any act which contravenes Part 3 or 4 either by holding out rewards or making threats.

29. Clauses 45 and 46 relate to the vilification or serious vilification respectively of a person on the ground of race, the latter clause providing for an offence punishable by fine and imprisonment.

30. Clauses 47 and 48 relate to cases of vicarious liability. An employer or principal is liable under the Bill for anything done by his or her employee or agent unless the employer or principal proves that he or she tried to prevent his or her employee from doing the act or it was outside the agent's authority (clause 47). A person (including an employee acting in the course of his or her employment and an agent acting within the scope of his or her authority) who aids another person to do an unlawful act is treated as himself or herself doing that unlawful act (clause 48).

Matters not affected by Parts 3 to 5

31. Under clause 49, special measures are not to be rendered unlawful if they are reasonably intended to ensure that persons of a particular racial group have equal opportunities with others or to meet their special needs.

32. Certain charities which provide benefits to persons of a particular racial group are protected against provisions of the Bill which might otherwise make the provision of such benefits unlawful (clause 50). Certain discriminatory training courses for work are not affected, provided specified conditions are satisfied (clauses 51 and 52). Where a person providing access to benefits, facilities or services does so by way of arrangements with a third party, a discriminatory act that is lawful if done by that person is also lawful if done by the third party (clause 53). The Bill does not affect any law concerning nationality, citizenship, resident status or naturalization or immigration legislation (clauses 54 and 55). There are savings for acts done pursuant to statutory authority (clause 56). The operation of the New

Territories Ordinance (Cap. 97) and the New Territories Leases (Extension) Ordinance (Cap. 150) is protected (clause 57). The use of, or failure to use, any language in circumstances relevant to specified provisions is not unlawful; but the Official Languages Ordinance (Cap. 5) is not affected (Clause 58). Clause 59 as read with Schedule 5 provides for other matters not affected by the Bill. Currently, Schedule 5 covers the portable comprehensive social security assistance scheme under which eligibility for certain assistance is extended only to persons who take up permanent residence in certain places outside Hong Kong.

Equal Opportunities Commission

33. Clause 60 sets out the functions and powers of the Commission in respect of matters under the Bill. Those functions include working towards the elimination of discrimination, harassment and vilification; promoting equality of opportunity and harmony between different racial groups generally; encouraging persons who are concerned with any act alleged to be unlawful by virtue of the Bill to effect a settlement of any dispute by conciliation. (Clause 79 is of particular relevance here). Those powers include becoming a member of or affiliate to any international body concerned with the elimination of discrimination.

34. Clause 61 provides that, in carrying out its functions, the Commission shall keep Schedule 5 under review.

35. Clause 62 sets out the restrictions on the Commission's power to delegate any of its functions or powers.

36. Clause 63 provides protection for, inter alia, members of the Commission against personal liability in damages for any act done or default made in good faith in the performance of any functions or the exercise of any powers of the Commission.

37. Clause 64 provides for the issue of codes of practice by the Commission for the purposes of the elimination of discrimination, harassment and vilification

and the promotion of equality of opportunity and harmony between persons of different racial groups. Clause 64(14) specifies the circumstances in which a code shall be taken into account in proceedings under the Bill.

38. Clauses 65 to 69 relate to formal investigations by the Commission undertaken either on its own initiative or at the request of the Chief Secretary for Administration. For the purposes of a formal investigation, the Commission may require the production of information and documents subject, however, to the restriction that it may only exercise the power if it has the Chief Secretary for Administration's authority or the investigation is restricted by its terms of reference to the question whether a named person has discriminated or (as provided in clause 74) to the question whether an enforcement notice is being complied with. Further, a person is not to be required to give information, or produce documents, which the person could not be compelled to give in evidence, or produce, in civil proceedings (clause 67(4)). The Commission, in consequence of a formal investigation, may make such recommendations as appear appropriate and the Chief Secretary for Administration is required to publish the Commission's report of any investigation he or she has required (clause 68). There are restrictions on the disclosure of information given in connection with a formal investigation (clause 69).

Enforcement

39. Proceedings may not be brought in respect of any contravention of the Bill except such proceedings as are provided for in the Bill (clause 70). Proceedings are to be brought in the District Court and the remedies include damages, a declaration or an injunction (clause 71). But damages are not to be awarded in a case of indirect discrimination falling under clause 4(1)(b) if it was unintentional (clause 71(6)) or, by virtue of clause 77, in a case relating to discriminatory advertisements or instructions or pressure to discriminate.

40. Clauses 72 to 75 relate to enforcement notices which the Commission is empowered to issue if, in the course of a formal investigation, it is satisfied that a

person has contravened the Bill (clause 72). A person served with an enforcement notice may appeal to the District Court (clause 73). Special provision is made as to requirements to produce information and documents for the purposes of a formal investigation to determine whether an enforcement notice is being complied with (clause 74). A register of enforcement notices is to be kept and is to be available for inspection by the public (clause 75).

41. Clauses 76 and 77 relate to enforcement proceedings brought by the Commission. The Commission may apply to the District Court for an injunction to restrain a person from contravening the Bill if, during the preceding 5 years, the person has become subject to an enforcement notice or has been found by the District Court to have committed such a contravention (clause 76). Only the Commission may bring proceedings in respect of discriminatory advertisements or instructions or pressure to discriminate (clause 77).

42. Clauses 78, 79 and 80 relate to help for persons suffering discrimination, harassment or vilification. Forms may be prescribed for use in preliminary exchanges between the person aggrieved and the other party, and the District Court is to be entitled to draw such inferences from a failure to reply to a question, or an evasive reply, as appears equitable (clause 78). A person may lodge with the Commission a complaint alleging that an unlawful act has been committed contrary to the Bill and, subject to certain exceptions, the Commission is then bound to investigate the act and to endeavour, by conciliation, to effect a settlement of the matter to which the act relates (clause 79). If such conciliation has failed, the Commission may assist an aggrieved person in the preparation and conduct of his or her case (clause 80).

43. Clause 81 relates to limitation periods within which various proceedings under the Bill may be brought.

Miscellaneous

44. Clause 82 relates to the validity of discriminatory contracts and provides for their revision on application to the District Court. Clause 83 empowers the

Commission to make certain rules, in particular in relation to its conciliatory role under clause 79. Clause 84 empowers the Secretary for Home Affairs to make regulations empowering the Commission to bring proceedings in the place of a person who is entitled to bring proceedings under clause 71 but who has failed to do so and specifying the remedies that can be claimed. Clause 85 empowers the Chief Executive in Council to amend Schedules 1, 2, 3, 4 and 5. Clauses 86 to 94 provide for consequential and related amendments to other enactments. In particular, clause 90 empowers the District Court Rules Committee to make rules of court in respect of jurisdiction over matters under the Bill and clauses 86 and 87 amend the Labour Tribunal Ordinance (Cap. 25) in relation to proceedings which are transferred to the Labour Tribunal. Clause 93 makes related amendments to the Sex Discrimination Ordinance (Cap. 480), to extend unlawful sexual harassment to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating.

Explanatory note on the exception clauses in the Race Discrimination Bill

Clause No	Subject	Explanatory note
* 8(2) & (3)	Differential treatment on the ground of indigenous villager status, nationality and resident status not to be regarded racial discrimination.	These categories are specifically excluded for the avoidance of doubt. In line with Article 1 of the International Convention on the Elimination of Racial Discrimination (ICERD), the definition of “race” is confined to the “race, colour, descent, or national or ethnic origin” of the person.
10(3) & (8)	Exception for small employers with not more than five employees during the first three years of the enactment of the Bill.	<p>This is a sunset clause to smoothen transition and to minimise hardship for small employers during the initial years of implementation.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
10(4)	Exception for existing provision made in relation to death or retirement of employee	<p>Consistent with the principle of non-retrospectivity of legislation, this preserves the legality of existing arrangements (made before commencement of the relevant provision) in relation to death and retirement benefits for employees.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
10(7)	Exception for employers in regard to the offer of employment to domestic helpers	<p>This recognises the freedom of people to choose who may enter their houses and live with them. It should be noted that, once appointed, the domestic helper will enjoy the same protection against racial discrimination as any other person.</p> <p>Although not appearing in existing Hong Kong anti-discrimination legislation, similar provisions are found in the UK Race Relations Act 1976.</p>
11	Exception for genuine occupational qualification	<p>This is to enable the choice by employers in cases where the race of the employee is a genuine occupational qualification for the job, e.g. for authenticity in a dramatic production or for effective provision of personal services to members of a particular racial group.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
12	Employment for training in skills to be exercised outside Hong Kong	<p>This relates to a person not ordinarily resident in Hong Kong, who is employed for the purpose of being trained in skills to be exercised wholly outside Hong Kong. Insofar as discrimination in employment is concerned, we do not propose to cover these persons as they cannot be regarded as being employed for work locally.</p> <p>Although not appearing in existing Hong Kong anti-discrimination legislation, similar provision can be found in the UK Race Relations Act 1976.</p>
* 13	Overseas terms of employment	<p>It has never been the Government's intention for the Bill to restrict the offer of more favourable overseas terms to employees. There is also case law under the UK Race Relations Act 1976 which indicates that justifiable differential treatment between overseas employees and their locally based counterparts conceived on human resources policy grounds in order to attract employees who possess special skills and experience was not discrimination on the ground of race. However, to provide clarity and reduce potential litigation, and mindful of the concerns expressed by the business community, we have proposed an exception clause covering such "overseas terms" arrangements. It should be noted that this clause and</p>

Clause No	Subject	Explanatory note
		the conditions laid down therein are “defence” available to employers, and not prerequisites for firms to employ staff on overseas terms.
* 14	Existing differential treatment on local and overseas terms of employment	This is a “grandfathering” clause for existing employment made on local and overseas terms.
15(3)	Exception for genuine occupational qualification for contract workers	<p>This is an application of Clause 11 in the context of engagement of contract workers, for the same consideration of enabling choice by employers as stated.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
15(4)	Contract workers under training in skills to be exercised wholly outside Hong Kong	<p>This is an application of Clause 12 in the context of engagement of contract workers (i.e., to allow an act to be done for the benefit of a person not ordinarily resident in Hong Kong, who is engaged as a contract worker for the purpose of being trained in skills to be exercised wholly outside Hong Kong.)</p> <p>Although not appearing in existing Hong Kong anti-discrimination legislation, similar provisions are found in the UK Race Relations Act 1976.</p>
* 15(5)	Differential terms of employment for overseas contract workers	This is an application of Clause 13 in the context of engagement of contract workers.
17(3)	Exception for genuine occupational qualification in a partnership	<p>This is an application of Clause 11 in relation to partners in a partnership.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
17(4)	Exception for existing provision made in relation to death or retirement of partners in a partnership	<p>This is an application of Clause 10(4) in the context of partnerships.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
18(4)	Exception for existing provision made in relation to death or retirement of members of trade unions	<p>This is an application of Clause 10(4) in regard to members of trade unions.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
* 18(5)	Existing trade unions and employer organisations established for the benefit of persons of a particular racial group defined otherwise than by colour	<p>While we respect the freedom of association we do not condone the exclusion of membership on the ground of race for trade unions and employer associations which are established primarily to promote the interest of persons working in the same trade or profession. Existing trade unions and employer associations are nonetheless grandfathered.</p>

Clause No	Subject	Explanatory note
* 19(2)	Exception on requirement for language proficiency in the award of professional qualifications by prescribed qualifying bodies	<p>This allows authorities responsible for the award of job-related qualifications to impose a reasonable requirement for proficiency in Chinese or English, or both, which can be justified by the operational demands of the profession. Apart from the general exception for “reasonable” language requirements, the language requirements for qualifications listed in Schedule 3 are specifically protected for certainty’s sake.</p>
* 20(2)	No mandatory requirement for modification of arrangement for holidays or medium of instruction in vocational training	<p>This is consistent with our principle that while we encourage people to accommodate the needs of racial minorities or persons of a particular race, we do not require affirmative action. In the context of education and vocational training, we consider it is unlikely to be reasonably practicable for education and training institutes to modify their holidays and medium of instruction for particular racial groups. Clause 20(2) makes this clear.</p> <p>This provision is similar to that for educational establishments under Clause 26(2).</p>

Clause No	Subject	Explanatory note
21(3)	Discrimination by employment agency in cases where employer can lawfully refuse employment	<p>In general, it is unlawful for employment agencies to discriminate in the provision of their services. However, it should not be improper for them not to offer service to persons who are not qualified for the job by reason of their race, such as jobs for which race is a genuine occupational qualification as stipulated under Clause 11.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
22(3)	Exception for genuine occupational qualification of workers remunerated on commission	<p>This is an application of Clause 11 in the context of commission agents.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
23	Employment, authorisation and qualification for the purpose of an organised religion in compliance with its religious doctrine or to avoid offending the religious susceptibilities common to its followers	<p>This is to uphold the freedom of religion, especially in cases where the majority of followers belongs to a particular race or group of races.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
* 26(2)	No mandatory requirement for modification of arrangement for holidays or medium of instruction in educational establishments	<p>Government firmly upholds the right of children to education, irrespective of their race or ethnic origin. All children in Hong Kong have the right to nine years of free and universal basic education. However, it is unlikely to be reasonably practicable for the schools to modify their arrangements regarding holidays or medium of instruction in order to cater for students of any racial group. For reference, in a decision of the European Court of Human Rights where French-speaking residents in the Dutch-speaking part of Belgium wanted their children to be educated in French, it was held that the right to education does not include a right to be taught in the language of the parents, nor a right of access to a particular school. Clause 26(2) makes it clear that such modification is not required.</p>
28(3)	Exception on disposal of premises by owner occupiers	<p>This permits a person who owns and wholly occupies the premises to freely choose whom he wants to sell the property to, so long as he does not go through an estate agent or advertise the sale.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
29(2)	Exception on disposal of premises in the context of withholding licence or consent for assignment or sub-letting	<p>In general, the Bill makes unlawful the withholding of licence or consent for assignment or sub-letting on the ground of race. However, in recognition of people's freedom of choice to determine who may enter or live in their homes, this Clause permits a landlord to choose his tenant by reference to race if the landlord or his near relative lives in the flat 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 flat 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>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
30	Exception for letting and assignment of small dwelling	<p>This is an application of Clause 29(2) in the context of letting and assignment of premises. It permits a landlord in similar circumstances to choose his tenant by reference to race.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
31	Exception for voluntary bodies	<p>This is to safeguard the right to freedom of association by people. Hence, we propose that voluntary bodies should be free to determine its membership even if it is done by reference to race.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
* 32	Exception for cemeteries, crematoria and columbaria	<p>This is to recognize existing arrangements in Hong Kong where a cemetery or part of it may be allocated to persons of a particular race or religion.</p>
33	Exception for foster care and similar arrangement	<p>This relates to taking into homes of persons requiring a special degree of care and attention. We believe it reasonable that people should have freedom of choice in deciding whom they want to enter and live in their homes.</p> <p>The UK Race Relations Act 1976 contains similar provisions.</p>
* 34(2)	Exception in respect of nomination, selection, election and appointment to public bodies	<p>The exceptions are confined to public offices whose holders must not have the right of abode in a foreign country and meet other requirements as stipulated in the Basic Law.</p> <p>The UK Race Relations Act 1976 also contains exceptions for certain political offices.</p>

Clause No	Subject	Explanatory note
37	Exception for clubs established for the benefit of particular racial group defined otherwise than by colour	<p>This is to protect the right to freedom of association. Hence, for example, the Jewish Club will not be compelled to accept members of another race.</p> <p>The UK Race Relations Act 1976 contains similar provisions.</p>
45(2)	Exception for fair reports and acts done in good faith in public interest or for other justifiable causes	<p>This Clause clarifies the scope of application for the provision against vilification. Thus, in the interest of fairness and protection of freedom of expression, a fair report on an activity in public, the distribution of a publication which is subject to a defence of absolute privilege in proceedings for defamation or an activity reasonably done in good faith for academic, artistic, scientific or research purposes or other purposes in the public interest will not be inadvertently caught by the provision against vilification on the ground of race.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
49	Exception for special measures	<p>In the context of this provision, special measures refer to those acts and activities which are reasonably intended to promote equal opportunities or for the benefits of persons of particular race groups. It will be obviously against the spirit of the Bill if such activities were made unlawful solely because the benefits are targetted at particular less privileged racial groups to the exclusion of others. This proposal is also in line with Article 1(4) of ICERD.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
50	Exception for charities	<p>This is proposed for similar consideration as that of Clause 49. We believe that charitable benefactors should have freedom to choose where the benefits of their contribution should go to.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
51	Exception for provision of training targetted at minorities	<p>This is proposed for clarity, for similar consideration as that of Clause 49.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>

Clause No	Subject	Explanatory note
52	Exception for provision by employers and trade unions etc of access to training targetted at minorities	<p>This is an application of Clause 51 in the context of access to training provided by employers and trade unions etc.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
* 54	Exception for laws concerning nationality, citizenship, resident status or naturalisation	<p>This is for avoidance of doubt. Article 1(3) of ICERD specifically excludes legal provisions of States Parties concerning nationality, citizenship or naturalisation from the ambit of the Convention.</p>
55	Exception for immigration legislation	<p>This follows the principle in Article 1(2) of ICERD which states 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”.</p> <p>Existing anti-discrimination legislation in Hong Kong and the Hong Kong Bill of Rights contain similar provisions.</p>

Clause No	Subject	Explanatory note
56	Exception for acts done under statutory authority	<p>The Bill is a piece of ordinary legislation and does not purport to interfere with the operation of other statute.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
57	Exception for application to New Territories land under the New Territories Ordinance and the New Territories Leases (Extension) Ordinance	<p>This is to preserve the existing regulatory scheme on New Territories land, taking account of Basic Law provisions on New Territories matters, namely Articles 40 and 122.</p> <p>Existing anti-discrimination legislation in Hong Kong contains similar provisions.</p>
* 58	Exception for use, or failure to use, particular languages in regard to provision of goods, services and facilities, etc	<p>We appreciate the difficulties which are at times faced by some members of the ethnic minorities who do not use Chinese. However, language is not a ground of race. We also recognise that it would not be practicable for service providers to conduct their businesses in all languages or to provide translation into all different languages.</p>

Clause No	Subject	Explanatory note
59 & Schedule 5	Exception for portable comprehensive social security assistance scheme	<p>At present, the portable comprehensive social security assistance scheme permits recipients to take up permanent residence in specific provinces in the Mainland under prescribed conditions. We do not propose to subject such a scheme to the Bill.</p> <p>Existing anti-discrimination legislation in Hong Kong also provides for a mechanism of specifying matters not affected by that law by subsidiary legislation.</p>

* denotes new provisions neither found in existing anti-discrimination laws in Hong Kong nor in other common law jurisdictions.

Home Affairs Bureau
November 2006

IMPLICATIONS OF THE PROPOSAL

Financial and civil service implications

The proposed Bill is intended to apply to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person. The extra costs to be incurred to ensure compliance with the Bill, if any, are not expected to be significant and will be absorbed by respective bureaux/departments.

2. We intend to designate the Equal Opportunities Commission (the Commission) as the statutory agency to monitor, promote and enforce the eventual Ordinance. We will absorb, from within the operating expenditure envelope of the Secretary for Home Affairs, the resources which the Commission would require for the promotion of racial harmony and for handling complaints against racial discrimination. In addition, the Police may also require additional resources to carry out the investigation and prosecution work relating to criminal offences under the Bill, although this cannot be quantified at this stage. We will seek additional resources for the Police, if necessary, according to the established resource allocation procedure.

Economic implications

3. Unlike the existing non-legislative approach, the proposed legislation against racial discrimination might introduce a certain degree of rigidity to business operations in the economy. However, the additional compliance cost in overall terms thus entailed, though difficult to quantify, is unlikely to be large, given that ethnic minorities constitute only a very small proportion of the local population, and that exception provisions would be in place to cater for the legitimate needs of the business community. During the public consultation, none of our business sector respondents identified specific areas where significant additional costs could reasonably be anticipated.

Sustainability implications

4. The proposal would help foster a culture of mutual respect and tolerance in our society, and fulfil our international obligations of protecting the rights of ethnic minorities. It is conducive to the sustainability principle of fostering an equitable and progressive society.

Environmental implications

5. The proposal has no environmental implications.

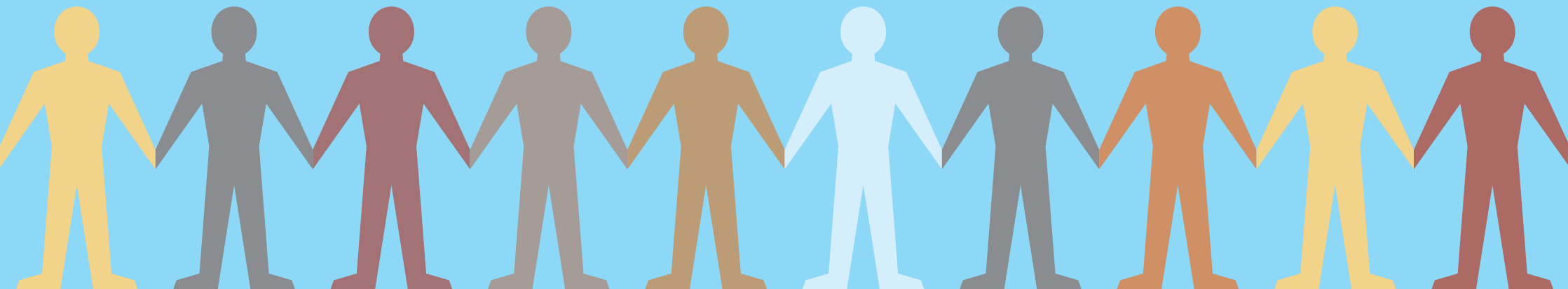
Home Affairs Bureau

29 November 2006

Joining Hands for Social Harmony

with **R**espect, **A**ffection, **C**are & **E**quality

An Introduction to
the Race Discrimination Bill



Introduction

The Government is committed to maintaining a fair and harmonious society in Hong Kong. The Basic Law and the Hong Kong Bill of Rights Ordinance safeguard the rights of individuals, including the right against racial discrimination. We also have obligation, under the International Convention on the Elimination of All Forms of Racial Discrimination, to prohibit and to eliminate racial discrimination.

Against this background, the Secretary for Home Affairs will introduce the Race Discrimination Bill into the Legislative Council on 13 December 2006. This Bill has been modelled, in large part, on the existing anti-discrimination legislations in Hong Kong, viz the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. We have also taken into account the views collected from the public consultation exercise conducted in September 2004 to February 2005. To facilitate public understanding, this booklet outlines the key features of the Bill and the principal considerations behind the proposals. It also provides, in simplified and ordinary layman language, answers to some likely questions which might be raised regarding the Bill.

This booklet is **not** a legal document. It serves only as a brief introduction of the proposed legislation which is subject to scrutiny and changes by the Legislative Council. The full text of the Race Discrimination Bill and the Legislative Council Brief on the Bill are available for download at the Home Affairs Bureau's website at www.hab.gov.hk.

The Government of the Hong Kong Special Administrative Region
Home Affairs Bureau

Main purpose

The Bill seeks to –

- make discrimination, harassment and vilification on the ground of race unlawful;
- prohibit serious vilification of persons on the ground of race; and
- extend the duties and responsibilities of the Equal Opportunities Commission to cover racial discrimination.

Our objective is to ensure that people, especially the vulnerable, are protected against racial discrimination, whether by other persons or by organisations. We aim at a scheme of protection and safeguards which balances the rights and freedoms of the different parties involved and at a piece of legislation which is reasonable in its justifications, practicable in implementation and acceptable to the people affected.

What is racial discrimination ?

In broad terms, racial discrimination occurs when, because of the race of the other person, one treats another person less favourably than he or she would treat others. Racial discrimination may take the form of direct or indirect discrimination. It also includes discrimination on the basis of the race of a near relative, discrimination by way of victimisation, racial harassment and racial vilification. We propose to make these conduct in prescribed circumstances unlawful. The details are further explained in the following paragraphs.

Definition of “race”

In line with the definition adopted under the International Convention on the Elimination of All Forms of Racial Discrimination, “race” is defined in the Bill as meaning the race, colour, descent or national or ethnic origin of a person. Other grounds, such as nationality, citizenship, resident status, length of stay or indigenous villager status of a person are **not** grounds of race under the Bill.

Language is not a ground of race. The Bill therefore imposes no obligation on any person to use any particular language in communication with others. However, there might be situations when the application of a language proficiency requirement could be regarded as indirect racial discrimination. *(See explanation and examples under “Indirect racial discrimination” below.)*

Direct racial discrimination

This occurs when a person treats another person **less favourably** than he or she would treat others of a different race in similar circumstances. An example of this is when a shopkeeper turns away a customer because the customer is non-Chinese, or when an employer rejects an application for job because, despite his eligibility, the applicant is a member of an ethnic minority.

Indirect racial discrimination

This is a less obvious form of discrimination. It occurs when a person imposes a requirement or condition which, although applicable to all and on the face of it has nothing to do with race, will put people of a racial group at a particular **disadvantage** because they cannot or are less likely to be able to meet it, and that the requirement or condition imposed cannot be shown to be justifiable by reasons not related to race. An example of this is where a company for no good reasons stipulates that no employees may wear a headgear, or when a company requires applicants for a cleaner job to pass a test in written Chinese when all that the job requires is the ability to understand simple oral instructions in Cantonese. In the former example, it would exclude Sikh men who wear a turban in accordance with their ethnic practice from employment with the company. In the latter, the requirement is unjustified and potential applicants of non-Chinese origin will also find it difficult to qualify.

Whether a requirement or condition is justifiable will be measured by two alternative tests. Following internationally accepted principles of rationality and proportionality, the first test is whether it serves a legitimate purpose and whether the requirement or condition bears a rational and proportionate relationship with the legitimate objective sought (ie it is not excessive). The second test is whether it is not reasonably practicable not to apply the requirement or condition.

Discrimination on the basis of the race of a near relative

The Bill not only protects people from being discriminated because of their own racial origin, but it also protects them from being discriminated on account of the race of his or her near relatives.

In the Bill, a “near relative” is defined as the wife or husband, a parent or a child, a grandparent or a grandchild, or a brother or sister of a person. Thus, as example, a person should not be denied admission to a business partnership because his wife is of a particular race, whether Chinese or otherwise.

Discrimination by way of victimisation

This occurs when a person is being treated less favourably because he or she has filed, or intends to file, race discrimination complaints and proceedings against another person. The Bill also protects those who give evidence or information in such complaints and proceedings.

Racial harassment

This occurs when a person, on account of another person's race or the race of that other person's near relative, acts in such a way that can reasonably be expected to offend, humiliate or intimidate the other person. Such unwelcome conduct may include any oral or written statement in racially offensive language.

It also applies to cases when a person acts in such a way as to make the environment of work, study or training hostile or intimidating for another person, again on the grounds of the latter's race or the race of his or her near relative. The Bill makes such conduct unlawful in order to ensure that all people, irrespective of their race, can work and study in a harmonious environment.

Racial vilification

This occurs when a person publicly incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the person's racial or ethnic background. Under the Bill, this could give rise to a civil claim. At a more serious level, the Bill prohibits racist incitement which threatens physical harm to persons or property or premises of persons and makes serious vilification a criminal offence.

Application of the Bill

The Bill applies to the following specified areas of activities in both the public and private sectors :

- (a) employment;
- (b) education;
- (c) provision of goods, facilities, services and premises;
- (d) election and appointment to public bodies;
- (e) pupillage and tenancy by, and instructions to, barristers; and
- (f) membership of and access to clubs.

■ *Why should the Bill be restricted in its application to the specified areas ?*

- While we seek to protect the rights of the individual against racial discrimination, we need also to respect the legitimate rights and freedoms of other people. It would not be right or reasonable for the law to demand equal treatment on the ground of race in every aspect of life including, for example, whom a person may want as friends or which restaurants he or she may patronise. The proposed coverage of the Bill is consistent with international practice and with the approach in other existing anti-discrimination ordinances in Hong Kong.

- *Given the variety of circumstances which may or may not constitute racial discrimination, will the passage of the Bill give rise to more accusations of racial discrimination and litigations? How can one be assured of not being inadvertently caught by the law for actions which have nothing to do with racial discrimination?*
- Based on the experience of the other three pieces of anti-discrimination ordinances, ie the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, and the Family Status Discrimination Ordinance, we believe that most of the complaints or allegations could be resolved through explanation and mediation. To avoid unnecessary litigations, the Bill has been drafted with special care to ensure both effectiveness and clarity. With that in mind, a number of exception clauses have been included in the Bill specifically for the avoidance of doubts. Moreover, to facilitate compliance, the Equal Opportunities Commission will, in consultation with the professions and parties concerned, draw up codes of practice which will provide guidance for people involved in each of the areas of activities covered by the Bill before the relevant legislative provisions are brought into effect.

Employment

Under the Bill, it is unlawful for employers to discriminate, on the ground of race, between job applicants or between employees in offers of employment, the terms of employment, promotion, transfer, training and dismissal.

Similar restrictions are proposed in the Bill against racial discrimination in employment related matters, including engagement of contract workers and commission agents, partnership arrangements, membership of trade unions or professional or trade organisations, conferment of job-related qualifications, as well as in provision of vocational training and employment agency services.

- *It is not unusual for companies to employ overseas staff on overseas terms which are more favourable than those offered to, for example, local Chinese. Will these be made unlawful under the Bill ?*
- Overseas terms offered to overseas recruits are permitted so long as the differential treatment is justified on grounds unrelated to race. We recognise that such overseas terms are normally conceived on human resources policy grounds in order to attract employees who possess special skills and experience which are not readily available in Hong Kong. Thus, for clarity of the law, an exception is included in the Bill for such arrangements. Existing employments made on overseas terms are also protected under a grandfathering clause.

■ *Does the Bill apply to all employees and workers ?*

- The Bill applies equally to all employees, irrespective of race and irrespective of whether they are on permanent employment, or are part-time or casual workers. It also covers persons engaged on commission and under outsourcing arrangements. Exception is, however, allowed in cases where the race of the employee is a genuine occupational qualification for the job (such as for authenticity in a dramatic production or for effective provision of personal services to members of a particular racial group). To minimise disruptions and hardship, small businesses employing not more than five employees are exempt during the first three years of the enactment of the Bill. Employers also have freedom to choose a domestic helper by reference to race but, once employed, the domestic helper is protected against racial discrimination in the same way as other persons. The Bill also does not affect employment for an organised religion, where the employment is limited to a particular racial group in compliance with its religious doctrines or to avoid offending the religious susceptibilities common to its followers.

- *Given the large number of ethnic minority persons working in Hong Kong as domestic helpers, how does the Bill protect them against racial discrimination although they are not permanent residents of Hong Kong ?*
- The Bill protects all persons in Hong Kong against racial discrimination, irrespective of their race or resident status. Hence, it also protects domestic workers in much the same way as it does for other persons working or living in Hong Kong, with only one exception which relates strictly to the choice of the employer at the point of recruitment. Given the nature of domestic work, we recognise the right of the employers to determine whom they may admit to their homes and to live with them. The Bill therefore proposes that employers may have the freedom to choose a domestic helper even if that choice were made, among other criteria, by reference to race. That said, it should be highlighted that, once appointed, a domestic helper will enjoy the same protection against racial discrimination as any other person in Hong Kong, not only in the specific area of employment but also in all the other areas of activities prescribed in the Bill.
- *Partnerships are, strictly speaking, not a form of employment. How does the Bill apply to such relationships ?*
- A firm is liable to acts of racial discrimination against its partners or prospective partners. In some professions and companies, persons appointed to senior managerial positions are offered partnerships in the company and not, for example, promoted as senior paid staff. The Bill makes it unlawful to discriminate on the ground of race both in relation to admission of a partner and in the treatment of existing partners. It applies to all partnership firms consisting of not less than six partners.

■ *How are trade unions and workers associations affected ?*

- Trade unions and workers associations should treat all members (and persons seeking membership) equally irrespective of their race. This principle applies to both the terms of membership and, for members, access to benefits (except for existing provision made regarding retirement or death of its members), facilities and services of the union or association. The relevant provisions of the Bill, however, do not apply to those which are established specifically for the benefits of a particular racial group which is not defined by reference to the colour of its members and were established before the enactment of the new legislation.

■ *How are employment agencies affected ?*

- Employment agencies should provide the same access and quality of service to all its clients, irrespective of race. In particular cases where the Bill permits differential treatment, eg as in the employer's choice of a domestic helper of a particular racial group, or in jobs where the race of the employee is a genuine occupational qualification, an employment agency may confine its services to applicants who meets the relevant race criterion.

■ *What is a "genuine occupational qualification" based on race ?*

- A genuine occupational qualification refers to a job specification which restricts the holder to persons of a particular race or races, either for reasons of authenticity (eg in a dramatic/artistic production) or for effective provision of personal services targetted at clients/customers of the racial group concerned (eg in circumstances where familiarity with the language, culture and customs is required). As in existing anti-discrimination ordinances, employers may choose the employees for such jobs based on the genuine occupational qualification (which in the present case concerns the applicant's race).

■ *How will the Bill affect employment relating to religion ?*

- We respect the freedom of religion. Hence, specific exception to the Bill is provided for employment, authorisation and qualifications for the purpose of an organised religion. This may be especially necessary for religions of which the majority of followers belong to one or more racial groups.

Education

The Bill proposes to make it unlawful for an educational establishment (a school, institute or university) to discriminate on the ground of race in respect of admissions or the treatment of students.

It is not mandatory, however, for the educational establishment concerned to have to modify its arrangements or make special arrangements regarding holidays or medium of instruction for persons of any race.

- *If schools are not required to make special arrangements on medium of instruction for ethnic minority children, would it not erode the children's opportunity and access to education and thus constitute racial discrimination ?*
- Government firmly upholds the right of children in education, irrespective of their race or ethnic origin. Thus all children in Hong Kong have the right of nine years of free and universal basic education. What the provision in the Bill means is that parents, for example, cannot demand the school which their children attend to teach or provide special classes in their own ethnic languages. In a case of the European Court of Human Rights, where the French-speaking residents in the Dutch-speaking part of Belgium wanted their children to be educated in French, it was held that the right to education does not include a right to be taught in the language of the parents, nor a right of access to a particular school.

- *Does this mean that a school may freely refuse admission of ethnic minority children ?*
- Certainly not. It is unlawful for an educational establishment to discriminate on the ground of race in respect of admissions or the treatment of students. In other words, where a child meets the qualifications required, he or she should be given equal opportunity for admission and, when admitted, should be given the same opportunities and benefits of education as other students in the same school.

Goods, facilities, services and premises

The Bill proposes to make it unlawful to discriminate either directly or indirectly in the provision of goods, facilities and services to the public, as well as in the disposal of premises and in the treatment of occupants.

“Facilities and services” include hotel accommodation; banking or insurance services; facilities for education; facilities for entertainment, recreation or refreshment; facilities for transport or travel; the services of any profession, trade or Government departments etc.

■ *Does this mean that a restaurant has to provide its menu in all different languages in order to comply with the non-discrimination principles ?*

□ No. Language is not a ground of race. Thus, in general, restaurant owners and operators would not be accused of racial discrimination if the menu in their restaurants are presented only in one language, eg Chinese. We appreciate the difficulties which are at times faced by some members of the ethnic minorities who do not use Chinese. On the other hand, we also recognise that it would not be reasonably practicable for service providers, either in the public or private sectors, to conduct their businesses in all languages, or to provide translations into different languages in their communication with clients/customers. We trust that service providers who target their service at specific ethnic groups will conduct their business in the appropriate language as is necessary and reasonably practicable.

■ *In renting out a flat, can a landlord stipulate that the premises would only be rented to tenants of a specified race or races ?*

□ That will depend on the circumstances. In recognition of people's freedom of choice to determine who may enter or live in their homes, the Bill contains a "small dwelling" exception, in line with the existing anti-discrimination ordinances. This means a landlord may choose his tenant by reference to race if the landlord or his near relative lives in the flat and will have to share facilities, such as the kitchen or washroom, with the tenant. This does not apply if neither the landlord nor his near relative lives in the flat 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. In addition, if a landlord wishes to rent out premises that the landlord occupies without engaging any agent and without advertising, such letting by word-of-mouth is not covered by the Bill. The same principles and regulation apply to assignment and sub-letting of premises.

■ *Can a shopkeeper refuse to sell a dress to persons of a particular ethnic group because it would tarnish the company image if the clothes were found worn on these persons ?*

□ No. This is obvious racial discrimination.

■ *Will a voluntary body established with the main object of providing benefits to persons of a particular racial group be rendered unlawful by this Bill on the ground of racial discrimination ?*

□ No, the Bill is not intended to restrict or prohibit the activities of such voluntary organisations. There is specific provision in the Bill clarifying this policy intention and to safeguard the right to freedom of association by people.

Election and appointment to public bodies

The Bill makes it unlawful to discriminate on the ground of race against a person in determining his eligibility to vote in the elections of or to be elected or appointed to a public body, public authority or a public sector advisory and statutory body.

Specific provisions are made in the Basic Law on the eligibility for certain public offices. The Bill does not affect such eligibility criteria.

■ *What are these exempted public offices ?*

- These are specified in the Bill and are limited to the offices of the Chief Executive, Members of the Executive Council, Principal Officials, Members of the Legislative Council, President of the Legislative Council, the Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court.

Discrimination by, or in relation to, barristers

The Bill makes it unlawful for a barrister or barrister's clerk to discriminate on the ground of race against a person seeking pupillage or tenancy, or who is a pupil or tenant, in barrister's chambers. It is also unlawful for any person to discriminate against a barrister on the ground of race in relation to the giving of instructions to the barrister and vice versa.

■ *Why are barristers singled out in this Bill ?*

- They are not being singled out. There is no dispute that the non-discrimination principles should apply in the giving or acceptance of instructions to a barrister or in the offer of pupillage or tenancy in barrister's chambers. But the various arrangements relating to the barristers' profession and practices may not strictly speaking come under employment, education or provision of services. Separate provisions will ensure that they are covered.

Discrimination by clubs

The Bill makes it unlawful for any club to discriminate, on the ground of race, in admission of members and access of members to the benefits, services and facilities of the club.

However, this provision does not apply to clubs whose main objectives are to enable the benefits of membership to be enjoyed by persons of a particular racial group or a number of different racial groups. This is to avoid unnecessary interference with other fundamental human rights including the freedom of association.

Other unlawful acts

These include –

- **discriminatory practices** (ie the application of a requirement or condition which constitutes or likely to result in racial discrimination, direct or indirect);
- **publication of discriminatory advertisement;**
- **instructing or pressuring another person to discriminate; and**
- **aiding an unlawful act of racial discrimination.**

Vicarious liability of the employer and principal

In line with the other existing anti-discrimination ordinances, an employer is legally responsible for discriminatory actions of his employees done in the course of employment. This includes doing what the worker is employed to do, such as interviewing a job applicant; or bullying or harassing a fellow worker. The employer has a defence if he can prove that he had taken reasonable practicable steps to prevent that particular discriminatory act or to prevent racial discrimination in general. Steps that may be taken include having a policy against racial discrimination, instructing staff on the policy and having proper complaints and enforcement mechanisms. The Equal Opportunities Commission is expected to issue a code of practice providing such practical guidance.

A principal is responsible for the acts of his agent (eg a person appointed under a power of attorney to sell a flat) when the agent is acting with the principal's authority.

Exceptions for special measures and charities for the benefit of racial minorities, etc

The Bill does not impose a mandatory obligation for special arrangement to be made in favour of any particular racial group other than refraining from applying an indirectly discriminatory requirement or conditions when it is reasonably practicable in the relevant circumstances not to apply it. At the same time, consistent with Government policy objective it encourages people to take measures to promote equal opportunities for people of different races. Hence the Bill provides exceptions for such benevolent measures. In other words, they are not regarded discriminatory although they are targetted at specific racial groups to the exclusion of others.

Specifically, these exceptions relate to -

- **special measures** that are intended to ensure that persons of a particular racial group have equal opportunities with other persons, or to provide persons of a particular racial group goods, benefits or access to services, facilities, programmes or opportunities, to meet their special needs;
- **charities and charitable acts** for the main purpose of providing benefits to specific racial or ethnic groups; and
- **provision of special training** for persons of a particular racial group to prepare them for jobs where there were no persons of the racial group concern doing that work, or number of such persons was comparatively small.

Other matters not affected by the Bill

These include –

- operation of laws concerning nationality, citizenship, resident status or naturalisation and immigration legislation;
- acts done under statutory authority;
- operation of the New Territories Ordinance and New Territories Leases (Extension) Ordinance; and
- the portable Comprehensive Social Security Assistance Scheme.

Legal consequences of contravention

In most cases, contravention of the provisions in the Bill would give rise to civil consequences. A person against whom an unlawful act under the Bill is committed has a civil claim and may bring proceedings in the District Court. Examples of remedies are damages, a declaration or an injunction.

Certain provisions in the Bill do carry criminal consequences. They include:

- the making of false or misleading statements to get another to commit discrimination or suppressing information that the Equal Opportunities Commission requires for the purpose of a formal investigation. This is punishable on conviction by a fine of up to \$25,000; and
- serious vilification, which involves threatening physical harm or inciting others to threaten physical harm toward persons of his target, or the property or premises of those persons, carries a maximum penalty of a fine of \$100,000 and imprisonment for 2 years upon conviction.

Powers and responsibilities of the Equal Opportunities Commission

The Equal Opportunities Commission (EOC) is responsible for implementing the three existing anti-discrimination legislations, namely the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Family Status Discrimination Ordinance. We propose to extend the powers and functions of the EOC to cover race discrimination.

These powers and functions include –

- working towards the elimination of all forms of racial discrimination;
- promoting equality of opportunities between persons of different racial or ethnic backgrounds;
- encouraging settlement between the parties in dispute;
- providing assistance in respect of legal proceedings;
- initiating formal investigation in the public interest;
- issuing codes of practice for elimination of discrimination and promotion of racial harmony; and
- enforcing the Race Discrimination Ordinance, when enacted, by issuing enforcement notices and bringing proceedings in respect of discriminatory practices and certain other unlawful acts.

Conclusion

The prosperity of Hong Kong is founded, among other things, on its cosmopolitan nature and contribution of its people from different background and ethnic origins. Racial harmony is an important cornerstone for harmony in society.

As Government, we are committed to safeguarding the rights of people against racial discrimination. The proposed Race Discrimination Bill is a major stride in our continuous endeavours and commitment in this regard.

We also firmly believe that legislation must go hand in hand with public education and support for better integration. In this connection, the Government has, over the years, launched various initiatives to promote racial harmony and to assist integration of the ethnic minorities in Hong Kong. We have, for example, established in 1997 an Equal Opportunities (Race) Funding Scheme to support community based projects, publications and campaigns to promote racial harmony. The Home Affairs Bureau has a Race Relations Unit which, among its many functions and responsibilities, operates a hotline for ethnic minority public service enquiries and help deal with complaints. It also organises talks and workshops in schools to promote public education on anti-racial discrimination. We maintain continuing dialogue with ethnic minority groups through our regular liaison and the Ethnic Minorities Forum, with invaluable support and advice from members of the Committee on the Promotion of Racial Harmony. We also sponsor local social welfare agencies in providing language classes at district level to facilitate integration of members of the ethnic minorities in our community. Much has been done and more will continue to be done.

As stated in the introduction, this booklet aims to outline the main features of the Race Discrimination Bill for general understanding of the Government's proposal. Readers are requested to refer to the text of the Bill if they are interested in more details.

Electronic copies of the Bill and this booklet are available at www.hab.gov.hk. Additional printed copies of this booklet may also be obtained from local District Offices of the Home Affairs Department.

The Government of the Hong Kong Special Administrative Region
Home Affairs Bureau

December 2006