

政制及內地事務局
政府總部

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YOUR REF : LS/R/10/08-09

19 March 2009

Ms Clara Tam
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Fax No.: 2877 5029)

Dear Ms Tam,

**Proposed Regulation under Section 83 of
the Race Discrimination Ordinance**

I refer to your letter dated 17 March 2009 regarding the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (RD(PEOC)R).

The proposed RD(PEOC)R is modeled on previous regulations made under respective discrimination ordinances to allow the Equal Opportunities Commission (EOC) to bring proceedings under the Race Discrimination Ordinance (RDO) in its own name where a victim of racial discrimination, harassment and vilification may bring proceedings under Section 70 of the RDO but has not done so. The circumstances in which the EOC may bring such proceedings under the RD(PEOC)R are essentially the same as those under the other anti-discrimination ordinances, namely –

- (a) the case raises a question of principle;
- (b) it is in the interests of justice to do so; and
- (c) it appears to the EOC that the claim is well founded.

In particular, although the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (DD(PEOC)R) adopted a more elaborated drafting (i.e. the EOC has reasons to believe that an unlawful act under the Disability Discrimination Ordinance was committed, as noted in para. 4(a) of your letter), the same purpose is served in (c) above under the RD(PEOC)R and other similar existing regulations.

As we explained during the meeting of the Constitutional Affairs Panel in February, there are some procedural requirements under the DD(PEOC)R (as mentioned in paragraphs 4(b) and (c) of your letter) that are not present in other similar regulations, including the RD(PEOC)R. We consider that, whereas Section 83(1)(a) of the RDO already contains the provision that the person who may bring proceedings under Section 70 has not done so, it may not be necessary to provide further procedural requirements in the case of the RD(PEOC)R.

Yours sincerely,



(Arthur HO)

for Secretary for Constitutional and Mainland Affairs