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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 8 July 2009

**Proposed resolution under
the Race Discrimination Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Constitutional and Mainland Affairs will move at the Council meeting of 8 July 2009 under the Race Discrimination Ordinance relating to the Code of Practice on Employment. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for Constitutional and Mainland Affairs will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

RACE DISCRIMINATION ORDINANCE

RESOLUTION

CODE OF PRACTICE ON EMPLOYMENT UNDER THE RACE DISCRIMINATION ORDINANCE

RESOLVED that the Code of Practice on Employment under the Race Discrimination Ordinance, published in the Gazette as Government Notice No. 2733 of 2009 and laid on the table of the Legislative Council on 13 May 2009, be amended-

- (1) in paragraph 1.2.1, in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;
- (2) in paragraph 1.2.2, in the Chinese text, by deleting “作”;
- (3) in paragraph 1.4.3, by adding “and” after “international”;
- (4) in paragraph 2.1.1, in the Chinese text, by deleting “乎” and substituting “符”;
- (5) in paragraph 2.1.4 (3), in the Chinese text, by deleting “典籍、”;
- (6) by deleting paragraph 2.1.4(4) and substituting-

“2.2 Religion”

2.2.1 Religion in itself is not race. A group of people defined by reference to religion is not a racial group under the RDO¹⁷. The RDO does not apply to discrimination on the ground of religion¹⁸. But requirements or conditions having an impact on people’s religious practices may

indirectly discriminate against certain racial groups, and when this is so the RDO applies¹⁹ (see for example the blanket ban on beards in Illustration 9 below may indirectly discriminate against ethnic groups whose religious practice or custom is to wear beards).

2.3 Language

2.3.1 As language used by people is often associated with their race, treatment based on language may discriminate against certain racial groups or may amount to racial harassment. Since language issues may arise in different aspects of employment matters, they will be mentioned and dealt with in different parts of the Code below (see for examples paragraphs 3.8.1(2) to (4), 5.3.1(1)(d), 5.3.1(2), 5.3.4(3), 5.3.5(2), 5.3.12, 5.3.13(1), 5.3.14(8)(c), and 6.1.1(2)(v)).”;

- (7) by renumbering paragraphs 2.2, 2.2.1 and 2.2.2 as 2.4, 2.4.1 and 2.4.2 respectively;
- (8) in Illustration 1, by deleting “only” where it secondly appears and adding “only” after “employ”;
- (9) in paragraph 3.2.2, in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;
- (10) in paragraph 3.3.1 (3), by adding “in fact” after “has”;
- (11) in Illustrations 3 and 4, in the Chinese text, by deleting “國內” where it appears and substituting “內地” ;
- (12) in paragraph 3.4.1, by adding “This grace period ends on 10 July 2011.” after “5 employees³⁴.”; and in the Chinese text, by deleting “這段” and substituting “寬限” ;
- (13) in paragraph 3.4.2, by deleting “Employers of domestic helpers may not at any time discriminate against them after recruitment³⁸.”;
- (14) in paragraph 3.4.3, by deleting “The grace period will expire on 10 July 2011, by which time the provisions making discrimination under the RDO in employment

unlawful will apply to all employers.”;

(15) in paragraph 3.6, in the Chinese text, by adding “(《種族歧視條例》下有關僱傭範疇的條文)” after “第三部”;

(16) in paragraph 3.7.3, in the Chinese text, by deleting “不可種族歧視佣金是其全部或部分收入的保險經紀” and substituting “不可對以佣金為其全部或部分收入的保險經紀作出種族歧視”;

(17) in paragraph 3.8.1(2), by deleting “and may refuse enrolment for people who do not meet the requirement regardless of their race. Such language requirement” and substituting “which”;

(18) in paragraph 3.8.1(3), by deleting “Course information and material may be provided only in the language required for the course.”, and deleting “have equal opportunities to undergo vocational training, and providers are encouraged to do so.”, and after “groups” adding “to have equal opportunities to undergo vocational training. Providers are encouraged to do so by, for example, providing lecture notes and other course materials in English so that people who can read English and speak Cantonese (but not read Chinese) may participate in a course taught in Cantonese.”;

(19) by adding after paragraph 3.8.1(3)-

“(4) Providers are also encouraged to ensure that language requirements for training course are commensurate with the contents of the courses, so that people from different racial groups are not deterred by unnecessary language requirement. For example, where the language requirement for a course is only the ability to speak Cantonese, it is unnecessary to require students to be able to read and write Chinese.”;

(20) in paragraph 3.8.2(1), by adding “Agencies also may not help or aid employers to discriminate on the ground of race⁴⁵, for example, by arranging underpayment for workers from certain racial groups.” after “their services.”;

(21) in paragraph 4.1.1, in the Chinese text, by deleting “僱員和工作人員” where it appears and substituting “員工”;

(22) in paragraph 4.1.2(1), by deleting “and implement the policy of the good

employment practice and procedures described in Chapter 5 of the Code.” and substituting “a policy of racial equality and implement such a policy through good employment practice and procedures. Chapter 5 of the Code provides recommendations on the contents of a racial equality policy and on good employment practice and procedures for employers’ and reference and adoption as appropriate according to the scale and structure of their organizations and available resources.”;

(23) in paragraph 4.1.2(2) after “hours⁴⁸.”, by adding “Whether an event occurring outside normal working hours or workplace comes within the course of employment depends very much on the specific circumstances of each case. It is recommended that employers take reasonably practical steps to prevent discrimination and harassment by adopting good employment practice and procedures as described in Chapter 5 of the Code.”;

(24) in paragraph 4.1.3, by deleting “employment” and adding “in the workplace” after “procedures”;

(25) in paragraphs 4.2, 4.2.1 to 4.2.3, in the Chinese text, by deleting “僱員和工作人員” where it appears and substituting “員工”;

(26) in paragraph 4.2.3 after “race.”, by adding “Employees and workers can be proactive in helping to eliminate racial discrimination by becoming familiar with the subject, so that they do not inadvertently discriminate against someone or inadvertently aid their employers to do so. Whenever appropriate, employees and workers could also encourage their employers to formulate anti-discrimination policies and to implement preventive measures. Employees and workers are encouraged to be supportive of friends or colleagues who intend, in good faith, to lodge a complaint about discrimination, or have lodged such complaint.”, and deleting “They are recommended to:-

- (1) Observe the requirement of the RDO and follow the recommendations of the Code;
- (2) Become familiar with and follow the employer’s equality policy;
- (3) Respect the racial identity of fellow workers and refrain from infringing their rights to work free of discrimination and harassment on the ground of race;
- (4) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination and harassment on the ground of

race;

(5) Take part in training related to equal opportunities.”;

(27) After paragraph 4.2.3, by adding-

“ 4.2.4 Employees and workers have a clear role to play in helping to create a climate at work in which racial harassment is unacceptable. They can contribute to preventing racial harassment through awareness and sensitivity towards the issue and by ensuring that standards of conduct for themselves and for colleagues do not cause offence.

4.2.5 All employees and workers have responsibilities as well as rights in respect of the work environment that is created. Racial harassment, particularly in its less severe forms, can be part of the usual code of behaviour in a workplace. To change this may require each employee or worker to reconsider his or her own attitudes and conduct as well as those of his or her colleagues.

4.2.6 Employees and workers can do much to discourage racial harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffered such treatment and are considering making a complaint.

4.2.7 People often do not complain even when they have been racially harassed because they are afraid of co-workers' reaction. They do not want to run the risk of being accused by them of spoiling the work climate. Neither do they want to be told that they provoked the harassment themselves or that they cannot take a joke. When employees and workers show through their words and their actions that they find racial harassment unacceptable, this will provide substantial support to those who are harassed and make it easier for them to come forward to file a complaint.

4.2.8 Employees or workers who are themselves recipients of harassment should, where practicable, tell the harasser that the behaviour is clearly unwanted and unacceptable. Once the offender understands clearly that the behaviour is unwelcome, this may be enough to put an end to it. If the behaviour persists, employees or workers should inform

management and/or their employee representative through the appropriate channels and request assistance in stopping the harassment, whether through informal or formal channels.

4.2.9 When telling the harasser that the behaviour is unwanted, if the employee or worker does not want to confront the harasser alone, he or she may want to ask a co-worker or a friend to be present. An alternative to confronting the harasser in person is to write to him or her and keep a copy of the correspondence.

4.2.10 Where an employee or worker feels uncomfortable or unsafe in confronting the harasser directly, the employee or worker may choose to inform management and/or an employee representative in the first instance and request for steps to be taken to deal with the matter.

4.2.11 If the harassment continues, however, the employee or worker should, if possible, seek advice on what to do next. The employee at all times has the option of seeking external assistance, such as lodging a complaint with the EOC or bringing legal proceedings in the District Court (see Chapter 7 of the Code).

4.2.12 It is important for an employee subjected to racial harassment to keep a record of the incident(s) so as to be able to recall exactly what has happened.

4.2.13 Employees and workers are also encouraged to come forward with complaints as soon as possible after the alleged incidents as a lapse in time may, in certain circumstances, weaken a complainant's case.

4.2.14 Overall, employees and workers are recommended to:-

(1) Observe the requirement of the RDO and follow the recommendations of the Code;

(2) Become familiar with and follow the employer's equality policy;

(3) Respect the racial identity of fellow workers and refrain from infringing their rights to work free of discrimination and

harassment on the ground of race;

(4) Cooperate with measures taken by the management to promote equal opportunities and prevent discrimination, harassment and vilification on the ground of race;

(5) Take part in training related to equal opportunities.”;

(28) in paragraph 5.2.2(1) after “race”, by adding “(see paragraph 6.1.1(1) of the Code for the definition of direct discrimination under the RDO)”;

(29) in paragraph 5.2.2(2) after “objective” where it secondly appears, by adding “(see paragraph 6.1.1(2) of the Code for the definition of indirect discrimination under the RDO)”;

and in the Chinese text, by deleting “不公平” and substituting “差異甚大的”;

(30) in paragraph 5.2.3, in the Chinese text, by adding “(守則第 5.3 段)” after “推行⁵³”;

(31) After paragraph 5.3.1(2), by adding -

“(3) The application of consistent selection criteria is good management practice as it helps organizations to make faster decisions because the criteria for decisions are clear; and to make better decisions because the criteria directly relate to work performance; and they form the basis for effective job evaluation. Consistent selection criteria should also be applied in respect of other employment decisions such as promotion, transfer, or training. These criteria should be accessible by all job applicants, employees and workers.”;

(32) in paragraph 5.3.2 (1), in the Chinese text, by deleting “一個人”, “他/她的” and “其是否有能力”, and adding “的能力” after “工作” where it secondly appears;

(33) in paragraph 5.3.4 (3), in the Chinese text, by deleting “理想” and substituting “良好”; by deleting “可” after “介紹所” where it secondly appears and adding “可” after “實際” where it thirdly appears;

(34) After paragraph 5.3.5(2), by adding -

“(3) Keep record of the shortlisting process, including the shortlisting criteria and marking system, for not less than 24 months⁵⁷;”

and renumbering paragraphs 5.3.5(3) and 5.3.5(4) as 5.3.5(4) and 5.3.5(5) respectively;

(35) in paragraph 5.3.6(2) by deleting “may” where it firstly appears and adding “should only” after “information” where it firstly appears;

(36) in paragraph 5.3.7, by deleting “It” where it firstly appears and substituting “An interviewer who seeks evidence of skills and abilities and who relies on facts rather than generalized hunches will be less likely to be biased. In line with good management practice, it”;

(37) After paragraph 5.3.7(1), by adding -

“(2) Accommodate people from different racial groups who may find it difficult to attend interviews at certain times, for example, Jewish people who have to observe Sabbath on Saturdays;”;

and renumbering paragraph 5.3.7(2) as 5.3.7(3);

(38) by adding after 5.3.7(3) as renumbered in (37) above-

“(4) It is a good practice to record, immediately after the interview, the assessment that each interviewer has formed on the applicant’s ability to match the consistent selection criteria. This will not only ensure a logical assessment of the applicant’s strengths and weaknesses but will also serve as a valuable explanation and defence against any unfounded suggestion of race bias;”;

and renumbering paragraph 5.3.7(3) as 5.3.7(5) and adding “not less than” after “for” and deleting “, or if this is not practicable, at least not less than 12 months”;

(39) in paragraph 5.3.9 after “applicant.”, by adding “Instructing employment agencies or services that there should be no discrimination in the recruitment process will help the employers to show that they have discharged their responsibilities under the law and that the agencies and services do not have

authority from them to discriminate.”;

(40) in paragraph 5.3.10(1), by deleting “their practices, rules” and substituting “the terms and conditions of employment, the assignment of work and duties, the practices, rules, terms policies, conditions”, and adding “This applies to commissions, bonuses, allowances, pensions, health insurance plans, annual leave, merit or performance pay, or any other fringe benefits available to employees and workers. If there is any differential treatment, ensure that it is not connected with the race of the employees.” after “direct discrimination).”;

(41) in paragraph 5.3.10(2), by deleting “Employers should consult staff, trade unions and other workplace representatives on practical ways in which they can accommodate workers’ needs.” and adding “Employers and employees should respect each others’ culture and customs, and employers should consult staff, trade unions and other workplace representatives on practical ways in which accommodation may be made in respect of employees’ needs.” after “working arrangements⁶¹.”; and in the Chinese text, by deleting “不公平” and substituting “差異甚大的”;

(42) in paragraph 5.3.10(4) after “to do them.”, by adding “Examples of “like work” are: Chinese and Indian tellers working in the same bank; a Pakistani person working in an employment agency supplying clients with temporary staff and a Chinese person supplying permanent staff in the same agency; and foremen and line supervisors working in different sections of a production line.”;

(43) in paragraph 5.3.10 (5) after “warrant equal pay.”, by adding “Race discrimination in pay may occur when different races are segregated into different jobs, for example, jobs having a higher status and are more highly rewarded are done mainly by Chinese people when compared to jobs done mainly by people from other racial groups. Such differences can be reinforced by discriminatory recruitment, selection and promotion procedures which restrict the range of work person of different races can perform.”;

(44) After paragraph 5.3.10(5), by adding-

“(6) Where part-time workers do not enjoy pay or benefits in pro-rata with full-time workers, employers should review the arrangements to ensure that such arrangements are justifiable without regard to race.”;

and renumbering paragraphs 5.3.10(6), 5.3.10(7) and 5.3.10(8) as 5.3.10(7), 5.3.10(8) and 5.3.10(9) respectively;

(45) by adding after 5.3.10(9) as renumbered in (44) above-

“(10) In addition, such considerations should:-

- (a) actually exist (e.g. the person belonging to one race has more experience than the person belonging to another race);
- (b) be genuinely the cause of the difference in pay (i.e. the employer should have a pay system which applies to all races alike and consistently rewards experience, where appropriate);
- (c) account for the whole of the pay gap (i.e. the extra payment is not an excessive reward for the additional experience); and
- (d) have the effect which the employer sets out to achieve, e.g. there is evidence that, as a result of the specific employee’s experience, he/she does the work better than the other colleague, who belongs to another race.”;

(46) in paragraph 5.3.12(1), in the Chinese text, by deleting “甄” and substituting “篩”;

(47) in paragraph 5.3.12(2), in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;

(48) in paragraph 5.3.13(5) by adding “not less than” after “for” and deleting “, or if this is not practicable, at least not less than 12 months”;

(49) in paragraph 5.3.13(6) after “discriminatory”, by adding a full stop and “Employees of certain racial groups may be concentrated in sections from which transfer are traditionally restricted without real justification”;

(50) in paragraph 5.3.13(7)(b), in the Chinese text, by deleting “不同程度” and substituting “差異甚大”;

(51) in paragraph 5.3.14, by deleting “Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected. It is recommended that employers:-” and substituting-

“(1) Employees and workers of all racial groups are entitled to be free from harassment on the ground of race. Employers must ensure that the working environment is one in which the racial identity of all employees is respected.

(2) An absence of complaints about racial harassment does not necessarily mean an absence of racial harassment. It may mean that the recipients of racial harassment think that there is no point in complaining because nothing will be done about it, or because it will be trivialized or the complainant will be subjected to ridicule, or because they fear reprisals.

(3) Implementing the preventive and procedural measures outlined here should facilitate a favourable climate at work.

(4) Both the policy and complaints procedures should be introduced after consultation or negotiation with the employee representatives. Strategies to create and maintain a working environment in which the dignity of employees and workers is respected are most likely to be effective where they are jointly agreed.

(5) Employers should also make clear that employees and workers have a duty and responsibility towards creating such an environment and in ensuring that racial harassment does not occur.”;

and renumbering paragraph 5.3.14(1) as 5.3.14(6) and deleting “Make” and substituting “Employers should make”; and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(2) as 5.3.14(7) and deleting “Provide a work environment that is” and substituting “The statement should make it clear that the work environment is to be” and deleting the semicolon and substituting a full

stop; and in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;

and renumbering paragraph 5.3.14(3) as 5.3.14(8) and deleting “Explain that harassment⁶⁶ on the ground of race is” and substituting “The statement should also explain that harassment on the ground of race is unlawful⁶⁷ and”;

and in paragraph 5.3.14(8)(g) as renumbered above, deleting the semicolon and substituting a full stop;

and adding after 5.3.14(8) as renumbered above-

“(9) Information should be given about internal complaint procedures, assuring employees and workers that confidentiality will be observed.

(10)The contact details should be given of officers who are responsible for dealing with complaints, providing information and advice; and there should be a note about disciplinary action for harassers and that the complainant may lodge a complaint with the EOC or bring legal proceedings in the District Court.”

and renumbering paragraph 5.3.14(4) as 5.3.14(11) and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(5) as 5.3.14(12) and deleting the semicolon and substituting a full stop;

and renumbering paragraph 5.3.14(6) as 5.3.14(13);

and adding after 5.3.14(13) as renumbered above-

“(14)A co-ordinator, preferably with special training, should be designated to establish and administer both informal and formal complaints procedures.

(15)Effective and regular promotion of the policy is important to a successful programme against racial harassment in that:-

- (a) it warns that certain offensive conduct is unlawful;
 - (b) it sends out a clear message that management will act against such behaviour;
 - (c) it ensures that all persons in the organization know what to do if they encounter racial harassment and know that any complaint will be handled effectively and properly; and
 - (d) it assures staff that they are unlikely to be disadvantaged by racial harassment or be victimized by making a complaint.
- (16) In order to promote the policy, information may be disseminated through:-
- (a) speaking at staff meetings;
 - (b) distribution and re-circulation of policy statements;
 - (c) posting notices; and
 - (d) conducting training and refresher courses.
- (17) The co-ordinator or any other staff member involved in the complaints handling procedures should receive adequate training to enable sensitive treatment of cases in relation to racial harassment, for example:-
- (a) what is racial harassment: definitions and examples; the role of power in harassment situations; the reasons why some individuals harass; recognize harassment situations, e.g. who are the workers at risk;
 - (b) prevention of racial harassment: recognize the role of publicity, how to use publicity and available resources effectively; informal monitoring of the workplace; recognize symptoms of harassment; and alert staff of possible acts of racial

harassment; and

(c) dealing with harassment: skills on responding to enquiries and maintaining privacy and confidentiality; non-judgmental listening skills; informing enquiries of alternative ways of handling harassment other than by making a formal complaint; knowledge of outside bodies that can be approached for assistance or to whom complaints can be made, e.g. the EOC.

(18) Regardless of whether an informal or formal complaints procedures is in use, it is good practice for employers to monitor and review complaints of racial harassment and how they have been resolved, in order to ensure that the procedures are working effectively.”;

(52) in paragraph 5.3.15(1), in the Chinese text, by deleting “被” and substituting “獲”; adding a comma after “升職”, deleting the bracket after “解僱”;

(53) in paragraph 5.3.15(6) by adding “not less than” after “for” and deleting “, or if this is not practicable, at least not less than 12 months”;

(54) in paragraph 5.3.16 by adding the following sub-paragraph after “It is recommended that employers:-”-

“(1) Ensure that employees and workers are not dismissed, made redundant, or given unfavourable treatment on the ground of race or irrelevant race-related factors such as language, appearance or attire;”

and renumbering paragraphs 5.3.16(1) to 5.3.16(4) as 5.3.16(2) to 5.3.16(5) respectively;

and in paragraph 5.3.16 (3) as renumbered above, in the Chinese text, by deleting “不公平” and substituting “差異甚大”;

and renumbering paragraph 5.3.16(5) as 5.3.16(6) and adding “not less than” after “for” and deleting “, or if this is not practicable, at least not less than 12 months”;

and renumbering paragraph 5.3.16(6) as 5.3.16(7);

(55) in paragraph 5.3.17(4), in the Chinese text, by deleting “僱員和工作人員” and substituting “員工” and by deleting “不公平” and substituting “差異甚大”;

(56) in paragraph 5.3.17(5), in the Chinese text, by deleting “不公平” and substituting “差異甚大”;

(57) in paragraph 6.1.1(1)(a), in the Chinese text, by deleting “作為” where it appears and substituting “行為”;

(58) in paragraph 6.1.1(1)(c), in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;

(59) in Illustration 9, by deleting “, for example, because” and substituting “as”, and deleting “be” and substituting “have been”;

(60) in Illustration 10, by deleting “10” and substituting “9”; and in the Chinese text, by adding “例子 9” after “上文”;

(61) in paragraph 6.1.1(2)(v), by adding “Each case depends on its own facts and Illustration 13 below is for reference only.” after “the job.”;

(62) in paragraph 6.1.3(4), by adding “(except where the allegation is false and not made in good faith)” after “RDO”;

(63) in paragraph 6.2.2, in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;

(64) in paragraph 6.3.1 (11), in the Chinese text, by adding “。” after “人士¹⁰⁴”;

(65) in paragraph 6.3.3, by adding “For good practice on prevention of racial harassment, please see paragraph 5.3.14 of the Code.” before “For”, and by deleting “paragraph 5.3.14(3)” and substituting “paragraph 5.3.14(8)”;

(66) in paragraph 6.4.3, by deleting “or” and substituting “and”;

- (67) in paragraph 6.7.2, in the Chinese text, by deleting the fourth comma;
- (68) in paragraph 6.7.4(3)(b), in the Chinese text, by adding “非” after “就”, and adding “的僱員” after “人員”;
- (69) in paragraph 6.7.4(3)(b)(i), in the Chinese text, by deleting “主要對有關僱主委任或” and substituting “本地僱用條款是指僱主”, and by deleting “適用” and substituting “採用”;
- (70) in paragraph 6.7.4(3)(b)(ii), in the Chinese text, by deleting “主要對有關僱主委任或” and substituting “海外僱用條款是指僱主”, by deleting “並”, and by deleting “的人”, and by deleting “適用” and substituting “採用”;
- (71) in paragraph 7.1.1, in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;
- (72) in paragraph 7.1.3, in the Chinese text, by deleting “僱員和工作人員” and substituting “員工”;
- (73) in paragraph 7.2.10, by adding “If the parties do not wish to resolve disputes through settlement and wish to obtain a binding decision from the District Court, they may resort to legal proceedings directly.” after “publications by the EOC.”; in the Chinese text, by deleting “遲” and substituting “呈”;
- (74) in paragraph 7.3.2, by adding “the EOC’s strategic concerns such as” after “reflects”, and deleting “or the EOC’s strategic concerns.” and substituting “indicated through the EOC’s complaint handling experience.”;
- (75) in paragraph 7.4.1(4), by adding “or appropriate legal action” after “investigation”;
- (76) in paragraph 7.4.1(5), by adding “through public education and publicity initiatives” after “racial harmony”;
- (77) in paragraphs 3.4 and 3.5 of the sample policy on racial equality, by adding “and management staff” after “Workers” where it appears;

- (78) in paragraph 3.9 of the sample policy on racial equality, by deleting “Requirements” and substituting “Terms and conditions of employment, rules and practices, requirements”, and adding “with a view to take steps to promote equality and prevent discrimination in consultation with employees, workers and management staff” after “results”;
- (79) in paragraph 3.10(2)(g) of the sample policy on racial equality, in the Chinese text, by deleting “地” before “挑剔”;
- (80) in paragraph 3.11 of the sample policy on racial equality, in the Chinese text, by adding “「機構名稱」” before “將”;
- (81) in footnote 1, in the Chinese text, by adding “(第 602 章)” after “《種族歧視條例》”;
- (82) in footnote 26, in the Chinese text, by deleting the full stop where it firstly appears and substituting a semicolon; and deleting the full stop where it secondly appears;
- (83) by deleting footnote 38;
- (84) by renumbering footnotes 39 to 45 as 38 to 44;
- (85) by adding footnote 45 “RDO section 48”;
- (86) by deleting footnote 53 in the Chinese text;
- (87) by renumbering footnote 54 to 53 in the Chinese text;
- (88) in paragraph 5.3.1 (2), in the Chinese text, by adding footnote 54 “參閱守則第 5.3.12 和 6.1.1(2)(v)段” after “要求” ;
- (89) by adding footnote 57 “Under the RDO, the time limit for lodging a complaint with the EOC is 12 months (RDO section 78(4)(c)) and for taking legal action in the District Court is 24 months (RDO section 80), keeping records properly will help to deal with disputes.”;
- (90) by renumbering footnotes 57 to 112 as 58 to 113;

(91) in footnote 61 as renumbered above, in the Chinese text, by deleting the full stop.

**Speech by the Secretary for Constitutional and Mainland Affairs
(8 July 2009)**

**Motion to amend the Code of Practice on Employment under
the Race Discrimination Ordinance**

Mr. President,

I move that the Code of Practice on Employment under the Race Discrimination Ordinance (G.N. 2733), which was introduced into this Council on 6 May 2009, be amended as set out in the proposed Resolution.

2. The Race Discrimination Ordinance (RDO) was enacted in July 2008. In October 2008, we brought into force sections relevant to empowering the Equal Opportunities Commission (EOC) to exercise its functions under the Ordinance, including preparation of the relevant code of practice and undertaking relevant publicity efforts. Due to the complexity of the issues relating to race discrimination, we have adopted the approach to bring into force the remaining sections of the Ordinance at the same time when the Code of Practice on Employment and related rules and regulations come into operation. This would allow the public, in particular employers and employees, to have a better understanding of the Ordinance when it is implemented.

3. The Code of Practice was issued by the EOC and gazetted on 8 May 2009, after undertaking wide public consultation from October 2008 to January 2009 and taking into account the views received.

4. The EOC has made further amendments to the Code in response to comments received during the scrutiny by the Subcommittee which was formed to scrutinize the Code as well as two Rules made by the EOC, namely the Race Discrimination (Formal Investigations) Rules and the Race Discrimination (Investigation and Conciliation) Rules.

5. These amendments to the Code, which I move today, include elaborations on a number of sections including those on treatments based on race related factors such as religion or language, clarification of the responsibilities of employers, principals as well as employees, and prevention of harassment on the ground of race.

6. If the proposed resolution is approved, the Code will come into operation on the date the resolution is published in the Gazette, i.e. 10 July 2009. We plan to bring into force, on the same day, the remaining sections of the RDO, as well as the two Rules made by the EOC, and the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation which has earlier been approved by this Council. This will be done by means of a commencement notice to be gazetted on 10 July 2009 to appoint the date of commencement of the relevant instruments.

7. I would like to take this opportunity to thank the Hon Paul Tse and members of the Subcommittees for their efforts in scrutinizing the Code and the relevant instruments. They have provided many valuable comments and suggestions, including the suggestion to promote the RDO and the Code to foreign domestic helpers and their employers. We appreciate the concerns of Members in this regard. The EOC, the Labour Department and the Immigration Department will step up their publicity efforts on the RDO and the Code, including distributing pamphlets on the RDO at their counters, particularly those relevant to employment of foreign domestic helpers, and linkage to information on RDO at their web pages relevant to employment of foreign domestic helpers. EOC will also arrange for distribution of the information to foreign domestic workers via consulates in Hong Kong and via our Mobile Information Service operated by a non-government organisation at the Airport. The EOC would of course continue to promote the RDO and the Code to all sectors of the community.

8. Mr. President, we have come a long way since the Race Discrimination Bill was introduced in December 2006. During the 34 meetings of the Bills Committee to scrutinize the bill and 10 meetings of the Subcommittees to scrutinize the subsidiary legislation and the Code, Members and all parties concerned have provided very valuable input. We will see the new legislation and related instruments coming into operation in a few days. This is an important milestone in our efforts to promote racial equality. I would like to thank all of you for your contribution and look forward to Members' continued support in this meaningful work.

9. Mr. President, I beg to move.