

L.N. 94 of 2009**RACE DISCRIMINATION (FORMAL INVESTIGATIONS) RULES**

(Made by the Equal Opportunities Commission under section 82 of the Race Discrimination Ordinance (29 of 2008))

1. Commencement

These Rules come into operation on the day appointed for the commencement of section 65 of the Race Discrimination Ordinance (29 of 2008).

2. Interpretation

Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers relating to a formal investigation, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Service of notices

In these Rules, a reference to a person being served with a notice is a reference to service on that person being effected—

- (a) by delivering it to that person personally;
- (b) by sending it by ordinary post to that person's last known residence or place of business;
- (c) where the person is a body (whether corporate or unincorporate), by delivering it to the secretary or an officer of the body at its registered office or principal office or by sending it by ordinary post to that secretary or such an officer at that office; or
- (d) where the person is acting by a solicitor, by delivering it at, or by sending it by ordinary post to, the solicitor's address for service.

4. Notice of holding of formal investigation

Where, under section 65 of the Ordinance, the Commission is required to give notice of the holding of a formal investigation—

- (a) to any person named in the terms of reference for the investigation; or
- (b) where the terms of reference are revised, to any person named in the revised terms of reference,

the notice served on such person must set out the terms of reference.

5. Requirement to furnish or give information or produce documents

Where, under section 66(1) of the Ordinance, the Commission requires a person to furnish written information or give oral information or produce documents, the notice served on the person must be in the form set out in Schedule 1 or in a form to the like effect with such modifications or variations as the circumstances may require.

6. Enforcement notice

An enforcement notice served on a person for the purposes of section 71(2) of the Ordinance must be in the form set out in Schedule 2 or in a form to the like effect with such modifications or variations as the circumstances may require.

SCHEDULE 1

[s. 5]

NOTICE TO FURNISH WRITTEN INFORMATION OR GIVE ORAL INFORMATION AND PRODUCE DOCUMENTS

(Under section 66(1) of the Race Discrimination Ordinance
(29 of 2008))

To A.B. of []

For the purposes of the formal investigation being conducted by the Equal Opportunities Commission (“the Commission”) the terms of reference of which [were given to you in a notice dated] / [are set out in the Schedule to this Notice], you are required, under section 66(1) of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”)—

(a) [to furnish the following information (*description of information to follow*)—]

(b) [to attend at (*insert time*) on (*insert date*) at (*insert place*) and [give oral information about] / [give oral evidence about, and produce all documents in your possession or control relating to] [the following

matters] [the matter of] (*specify the matters or matter*)—]

2. The information described in paragraph 1(a) must be furnished (*specify the time or times at which, and the manner and form in which, the information is to be furnished*).

Dated this day of 20.....

This Notice was issued by [the Commission] [(*name delegate*) to whom the Commission has under section 67 of the Sex Discrimination Ordinance (Cap. 480) delegated its functions or powers under section 66(1) of the Ordinance].

[Service of this Notice was authorized in writing under section 66(2)(a) of the Ordinance.]

[Having regard to the terms of the reference of the investigation and section 66(2)(b)/section 73 of the Ordinance, service of this Notice does not require the consent of the Chief Secretary for Administration.]

[Commission]

[Delegate]

SCHEDULE

TERMS OF REFERENCE OF INVESTIGATION

SCHEDULE 2

[s. 6]

ENFORCEMENT NOTICE

(Under section 71 of the Race Discrimination Ordinance (29 of 2008))

To A.B. of []

In the course of a formal investigation the Equal Opportunities Commission (“the Commission”) has become satisfied that you were

committing/had committed an act/acts to which section 71(2) of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) applies, namely (*insert particulars of acts*)—

2. You are therefore required, without prejudice to your other duties under the Ordinance or any other Ordinance, under section 71(2) of the Ordinance, not to commit any act which is [an unlawful discriminatory act under (*insert reference to relevant Part or provision of the Ordinance*)] [an unlawful act of harassment under (*insert reference to relevant Part or provision of the Ordinance*)] [a contravention of section 41 of the Ordinance] [a contravention of section 42/43/44/45 of the Ordinance by reference to Part 3/Part 4 of the Ordinance].

3. If compliance with the above requirement involves changes in any of your practices or other arrangements, you are further required under section 71(2) of the Ordinance to inform the Commission [in the manner specified in this Notice] that you have effected those changes and what those changes are [and to take the following steps for the purpose of making that information available to other persons concerned, namely (*specify steps to be taken*)].

[You are further required under section 71(3) of the Ordinance to furnish to the Commission [in the manner specified in this Notice] with the following information, in order for it to verify that this Notice has been complied with (*description of information to follow*)—]

[The information to be furnished by you to the Commission under this Notice must be furnished as follows (*specify the time or times at which, and the manner and form in which, the information, or information of a particular description, is to be furnished*)—]

Dated this day of 20.....

[Commission]

[Delegate]

Raymond TANG
Chairperson,
Equal Opportunities Commission

30 April 2009

Explanatory Note

The Race Discrimination Ordinance (29 of 2008) provides that a notice of the holding of a formal investigation under section 65, notice for requiring information under section 66 and an enforcement notice under section 71 must be given in a form and the manner prescribed by the Equal Opportunities Commission (“the Commission”).

2. Accordingly, the Commission in these Rules—

- (a) in section 3 specifies the manner of service of those notices;
- (b) in section 4 specifies the manner in which notice of investigation is to be given to certain persons in cases in which general notice of the investigation is not given;
- (c) in section 5 prescribes the form of a notice requiring a person to furnish or give information or produce documents;
- (d) in section 6 prescribes the form of an enforcement notice.