

L.N. 95 of 2009**RACE DISCRIMINATION (INVESTIGATION AND
CONCILIATION) 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 78 of the Race Discrimination Ordinance (29 of 2008).

2. Interpretation

(1) In these Rules—

“class member” (申訴委託人), in relation to a representative complaint, means any person on whose behalf that complaint is lodged;

“conference” (會議) means a conference held for the purposes of section 78 of the Ordinance;

“representative complaint” (代表申訴) means a representative complaint referred to in section 78(2) of the Ordinance.

(2) Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers under section 78 of the Ordinance, 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. Representative complaints

(1) A representative complaint alleging that another person has done an unlawful act may be lodged by—

(a) a person aggrieved by the act, on behalf of that person and another person or other persons also aggrieved by the act;

(b) 2 or more persons aggrieved by the act, on behalf of themselves and another person or other persons also aggrieved by the act;
or

(c) a person on behalf of another person or other persons aggrieved by the act.

(2) A representative complaint may be lodged only with the consent of the class members and, where there is more than one class member, only—

(a) if the class members have complaints against the same person;

- (b) if all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) if all the complaints give rise to a substantial common issue of law or fact.
- (3) A representative complaint must—
- (a) describe or otherwise identify and state the number of class members;
 - (b) specify the nature of the complaints made on behalf of the class members; and
 - (c) specify the questions of law and fact that are common to the complaints of the class members.

4. Determination of representative complaints

(1) The Commission may determine that any complaint lodged with it should not be a representative complaint.

(2) The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons—

- (a) the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
- (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
- (c) the complaint was not brought in good faith as a representative complaint; or
- (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

5. Commission may require information

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.

(2) A person who, without reasonable excuse, refuses or fails to comply with a notice served on the person under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

6. Restriction on disclosure of information

(1) The information furnished to the Commission by a person (“the informant”) in response to a notice served on the informant under section 5 must not 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) with the informant’s consent;
- (b) 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;
- (c) in a report under section 8(4);
- (d) 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
- (e) subject to section 78(6) of the Ordinance, for the purposes of any court proceedings.

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

7. Directions to attend conference

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing direct any person referred to in subsection (2) to attend a conference at a time and place specified in the notice.

(2) The persons the Commission may, under subsection (1), direct to attend a conference are—

- (a) any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or
- (b) any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.

(3) The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).

(4) Where a body of persons, whether corporate or unincorporate, is directed to attend a conference under subsection (1), an officer or employee of that body may attend on behalf of that body.

(5) A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

8. Procedure at conference

- (1) A conference is to be held in private.
- (2) The person presiding at a conference may determine its order of proceedings and the manner of conducting it.
- (3) Unless the person presiding at a conference consents—
 - (a) an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Disability Discrimination Ordinance (Cap. 487) which is applicable to the particular case);
 - (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.
- (4) Where the person presiding at a conference—
 - (a) is of the opinion that a matter cannot be settled by conciliation;
 - (b) has endeavoured to settle a matter by conciliation but has not been successful; or
 - (c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,the person must refer the matter to the Commission together with a report relating to any investigation made into the matter.
- (5) A report for the purposes of subsection (4) must not include or describe anything said or done in the course of the conference.

Raymond TANG
Chairperson,
Equal Opportunities Commission

30 April 2009

Explanatory Note

The Race Discrimination Ordinance (29 of 2008) provides that the Equal Opportunities Commission (“the Commission”) may, for the purposes of section 78, prescribe the persons who may lodge a representative complaint and the matters to be taken into account by the Commission in determining a complaint should not be a representative complaint, require persons to furnish information, restrict the disclosure of information so furnished, direct persons to attend conferences and regulate the procedure of such conferences.

2. Accordingly, the Commission in these Rules—

- (a) in section 3 specifies the persons who may lodge a representative complaint;
- (b) in section 4 specifies the matters to be taken into account in determining a complaint should not be a representative complaint;
- (c) in section 5 specifies the manner in which persons may be required to furnish information;
- (d) in section 6 specifies the manner in which disclosure of information is restricted;
- (e) in section 7 specifies the manner in which persons may be directed to attend a conference;
- (f) in section 8 specifies the procedure to be followed at a conference.