

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1991/06-07

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on  
Race Discrimination Bill**

**Minutes of meeting  
held on Thursday, 19 April 2007, at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)  
Dr Hon LUI Ming-wah, SBS, JP  
Hon CHEUNG Man-kwong  
Hon CHAN Yuen-han, JP  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Jeffrey LAM Kin-fung, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon TAM Heung-man

**Members absent** : Hon LEE Cheuk-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon James TO Kun-sun  
Hon Bernard CHAN, GBS, JP  
Dr Hon YEUNG Sum  
Hon CHOY So-yuk, JP  
Hon LI Fung-ying, BBS, JP  
Hon Albert CHAN Wai-yip  
Hon Daniel LAM Wai-keung, SBS, JP

- Public Officers attending** : Mr Donald TONG  
Deputy Secretary for Home Affairs(1)
- Mr Victor NG  
Principal Assistant Secretary for Home Affairs (4)
- Miss Betty CHEUNG  
Senior Government Counsel
- Miss Shandy LIU  
Senior Government Counsel
- Ms LAI Yuen-man  
Senior Government Counsel (Ag.)
- Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)2
- Staff in attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6
- Ms Joanne MAK  
Senior Council Secretary (2)2
- Miss Kiwi NG  
Legislative Assistant (2)2

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Action

- I. Confirmation of minutes**  
[LC Paper No. CB(2)1592/06-07]
- The minutes of the meeting on 28 February 2007 were confirmed.
- II. Meeting with the Administration**  
(LC Paper No. CB(2)1594/06-07(01) - The Administration's response to issues raised by deputations/individuals at the meeting on 3 March 2007
- LC Paper No. CB(2)1594/06-07(02) - Major issues raised by deputations/individuals

Action

LC Paper No. LS48/06-07 - Table of comparison of the provisions of the Race Discrimination Bill with those of the Race Relations Act 1976 of the United Kingdom

LC Paper No. CB(2)1594/06-07(03) - List of issues raised by members (as at 17 April 2007)

LC Paper No. CB(3)176/06-07 - The Bill

Ref : HAB/CR/1/19/102 - Legislative Council Brief)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. Members briefly discussed the progress of scrutiny of the Bill and the way forward. They in general considered that, after the Bills Committee had discussed the major issues with the Administration and if there were fundamental differences between the Administration's and their positions, the Bills Committee might need to decide whether and how it should proceed with the scrutiny work.

Discussion of the Administration's response to issues raised by deputations /individuals at the meeting on 3 March 2007 [LC Paper No. CB(2)1594/06-07(01)]

4. The Bills Committee completed discussion on "Application to Government (Clause 3)" and item (a) under "Application to new arrivals from the Mainland".

Admin

5. The Administration agreed to provide a paper setting out the justifications for granting a broad exemption for the performance of functions and powers of the Government under Clause 3 and the legal effect of the proposed provision. The Administration was also asked to address in the paper the following concerns and requests -

Admin

(a) overseas legislation, such as the Race Relations Act (RRA) 1976 of the United Kingdom (UK), relevant legislation in Australia, and the Charter of Rights in Canada, had not granted such a broad exemption as proposed in Clause 3;

(b) a member of the public who had been discriminated against by the Government in performing certain Government functions, e.g. law enforcement, could not make complaints to the Equal Opportunities Commission (EOC) and could only sue the Government to seek remedy by instituting civil proceedings under the Hong Kong Bill of Rights Ordinance (HKBORO);

Action

- (c) it was doubtful whether the Government could adequately fulfill its international obligations in the elimination of racial discrimination if Clause 3 as presently worded was included in the Bill;
- (d) the Administration should provide information on the background in the UK leading to adding section 19B to RRA in 2000;
- (e) the remit of EOC should be expanded so that it could act on complaints lodged under HKBORO, and
- (f) the concerns raised by Professor Carole Petersen about Clause 3 in her article entitled "How Many Clauses Does it Take to Define Discrimination? A Comparison of the Racial Discrimination Bill with Existing Legislation" delivered at the Conference organised by the Centre for Comparative and Public Law, University of Hong Kong on 31 March 2007.

ALA6

6. The legal adviser to the Bills Committee was requested to provide in response to the paper to be provided by the Administration a paper on the legal effect of Clause 3 as currently worded and that of the relevant provisions of RRA, including in particular section 19B of the Act.

Clerk

7. The Clerk was requested to provide the article of Professor Carole Petersen for the reference of members and the Administration.

**III. Any other business**

Cancellation of a meeting

8. Members agreed to cancel the meeting scheduled for Thursday, 3 May 2007 at 2:30 pm to avoid clashing with the Chief Executive's Question and Answer Session scheduled for 3:00 pm to 4:30 pm on the same day.

Date of next meeting

9. Members noted that the next meeting would be held on Monday, 23 April 2007 at 8:30 am.

10. There being no other business, the meeting ended at 10:33 am.

Action

Council Business Division 2  
Legislative Council Secretariat  
28 May 2007

**Proceedings of the meeting of Bills Committee on  
Race Discrimination Bill  
on Thursday, 19 April 2007, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 002110	Chairman Ms Emily LAU Mr Howard YOUNG Mr Ronny TONG	<ul style="list-style-type: none"> <li>- Brief discussion on the progress of scrutiny of the Bill and the way forward</li> <li>- Confirmation of minutes of meeting</li> </ul>	
002111 - 003026	Chairman Admin ALA6	<p>Introduction of the Administration's paper by Deputy Secretary for Home Affairs (1) [LC Paper No. CB(2)1594/06-07(01)]</p> <p><u>"Application to Government (Clause 3)"</u></p> <p>ALA6's advice that (a) the obligations of the Government in relation to prohibition of racial discrimination as specified under the Hong Kong Bill of Rights Ordinance (HKBORO) were limited to fundamental human rights listed in the Ordinance, and not necessarily covered the day-to-day performance of functions and duties by the Government; and (b) the Race Relations Act (RRA) 1976 of the United Kingdom (UK) had been amended in 2000 to include new provisions, in particular section 19B which extended the application of RRA to the performance of functions and duties by public authorities and section 76 which concerned the making of appointments by government.</p>	<b>The Clerk to circulate the article of Professor Carole Peterson</b> (para. 7 of the minutes)
003027 - 004324	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's enquiry of why Clause 3 was only found in this Bill but not in the other three existing anti-discrimination ordinances.	

Time marker	Speaker	Subject	Action required
		<p>The Administration's response that Clause 3 was included for clarity's sake. The Bill, when enacted, would apply to the Government in the same way as it applied to the private sector. Its further reiteration that the proposed legislation mainly aimed to extend the scope of protection so as to prohibit racial discrimination in the specified areas by persons and organisations in the private sector. Further expansion of scope beyond the areas of activities specified in the Bill could cause uncertainties and risk abuse.</p> <p>The Administration's assurance that the Bill would cover areas such as provision of public medical services and education, even though law enforcement, correctional service, and immigration control, were not covered. Bearing in mind the objective of the Bill was to prohibit the discriminatory acts by individuals/organisations in the private sector and the existence of other mechanisms to deal with discriminatory acts (if any) by Government officers, it was not the Administration's intention to provide additional mechanisms under the Bill for handling public complaints about law enforcement officers' performance of duties.</p>	
004325 - 005803	Chairman Mr Ronny TONG Admin	<p>Mr Ronny TONG's query about the rationale of excluding the performance of functions of the Government from the coverage of the Bill for the purpose of avoiding abuses as this contradicted the principle of the rule of law.</p> <p>Mr Ronny TONG's view that it was not appropriate to provide for such broad exemption for the Government under Clause 3.</p>	<p><b>The Administration to provide a paper on the justifications for Clause 3</b> (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>The Administration's view that mechanisms (e.g. the Independent Police Complaints Council, Ombudsman) were already in place for handling public complaints about law enforcement officers including police officers, and its explanation that, unlike the case under HKBORO, direct discrimination would be unlawful under the Bill, regardless of whether there were sound justifications.</p>	
005804 - 011303	<p>Chairman Ms Emily LAU Admin ALA6</p>	<p>Ms Emily LAU's enquiry about whether the Administration had made reference to overseas legislation and experience.</p> <p>The Administration's response that <u>before</u> section 19B was added to RRA 1976 in 2000, the application of the Act was also limited to acts done by the government that was of a kind similar to an act done by a private person. Under relevant legislation in Australia and Canada, no provisions were made to explicitly provide that those legislation bound the government acts that were not similar to private acts.</p> <p>ALA6 disputed the view of the Administration and advised that individuals' rights against racial discrimination by the Government in Canada were already protected under their Charter of Rights.</p> <p>ALA6's suggestion that a way forward could adopt the approach of RRA and amendments added to the effect that the Bill would apply to the Government insofar as the performance of functions and duties by public authorities and the making of appointments by the Government were concerned.</p>	<p><b>The Administration to explain for the different scope of binding effect of this Bill and that of overseas legislation</b> (para. 5(a) of minutes)</p>



Time marker	Speaker	Subject	Action required
011304 - 013650	<p>Chairman Dr Fernando CHEUNG Admin Mr Ronny TONG Ms Emily LAU</p>	<p>Dr Fernando CHEUNG's view that a member of the public who suffered from racial discrimination by the Government would face the financial burden of paying expensive legal cost if he could only seek remedy by instituting civil proceedings under HKBORO.</p> <p>Dr CHEUNG's concern that there might be difficulties in defining whether an act done by the Government was an act "that was of a kind similar to an act done by a private person".</p> <p>The Administration's undertaking to clarify with examples what kinds of acts done by the Government would be regarded as acts that were of a kind similar to those done by a private person.</p> <p>Dr Fernando CHEUNG's enquiry about whether a member of ethnic minority who considered that a school place allocation system constituted racial discrimination could sue the Government under this Bill.</p> <p>The Administration's response in the affirmative, making reference to Clauses 26, 43 and 48 and the High Court judgment in <i>EOC v Director of Education</i>.</p> <p>The Chairman's concern that Clause 3 would have the legal effect of exempting any act of the Government in the performance of its powers/functions which had contravened provisions of the Bill.</p> <p>The Administration's response that all Government acts that fell within the areas of activities covered by the Bill (e.g., employment, education) were covered by the Bill and that these were of a kind similar to an act done by a private person.</p>	<p><b>The Administration to address Dr CHEUNG's concerns and provide background information</b> (para. 5(b)&amp;(d) of minutes)</p>

Time marker	Speaker	Subject	Action required
013651 - 014303	Chairman Ms Audrey EU Admin	<p>Ms Audrey EU's suggestion of expanding the remit of the Equal Opportunities Commission (EOC) so that it would be empowered to act on complaints lodged under HKBORO.</p> <p>The Administration's response that it had no intention to introduce such a significant change to the remit of EOC.</p>	
014304 - 014603	Chairman Miss TAM Heung-man Admin	<p>Miss TAM Heung-man's view that EOC should be consulted on Ms Audrey EU's suggestion.</p> <p>The Administration's response that EOC should focus its efforts on making the best preparations for the implementation of the Bill after it was enacted.</p>	<p><b>The Administration to provide response to Ms EU's suggestion and to Professor Petersen's article</b> (para. 5(c), (e) and (f) of minutes) <b>ALA6 to provide a paper on the legal effect of Clause 3</b> (para. 6 of minutes)</p>
014604 - 020155	Chairman Miss CHAN Yuen-han Admin Mr Ronny TONG	<p><u>Item (a) under "Application to new arrivals from the Mainland"</u></p> <p>Miss CHAN Yuen-han's enquiries of whether people belonging to the various ethnic groups in the People's Republic of China (PRC) would be protected from discrimination under the Bill, and about its applicability to new arrivals who were of mixed race, e.g. from the race of Han and another ethnic group of PRC.</p> <p>The Administration's explanation that (a) as most new arrivals were of the same ethnic origin (i.e. Hans) as the local Chinese, they did not constitute a separate racial group under the definition of "race" in the Bill; and (b) the enacted Bill would apply equally to all Hong Kong residents, including new arrivals and tourists in Hong Kong, in all the activities falling within the scope of the Bill.</p>	

Time marker	Speaker	Subject	Action required
		<p>The Chairman's view that some people might have a preconception against new arrivals from the Mainland which was formed because of the accent and culture of these new arrivals, irrespective of their length of residence in Hong Kong.</p> <p>The Administration's response that as a person's accent and culture could be changed in time, these should not constitute discriminatory grounds to be covered by this Bill.</p> <p>Mr Ronny TONG's and the Chairman's view that Clause 8(3) clearly reflected the Administration's policy intent not to protect new arrivals from the Mainland by legislation, as the legal effect of which would exclude any racial discrimination against these new arrivals on the grounds of "ethnic origin" from the scope of the Bill.</p> <p>The Administration's reiteration that it would follow the ICERD definition of "race" bearing in mind the objective of this Bill was to make racial discriminatory acts unlawful and it would not be appropriate to turn "length of residence in Hong Kong" as a ground of race or treat "new arrivals from the Mainland" into a special ethnic group for the purpose of the Bill.</p>	
020156 - 020339	Chairman Clerk	Cancellation of meeting scheduled for 3 May 2007 and date of next meeting.	