

Legislative Council Bills Committee on Race Discrimination Bill

Definition of “race”

Purpose

At the meeting held on 16 January 2007, Members asked the Administration –

- (a) to explore whether the definition of “race” in the Bill is also used in other relevant overseas legislation; and
- (b) to examine whether the definition of “race” in other relevant overseas legislation is restricted to race only or other considerations are also included.

This paper presents for Members’ information our findings on the questions raised.

Definition of “race” in the proposed Race Discrimination Bill

2. As Members are aware, Clause 8(1)(a) of the Bill defines the meaning of “race”. It provides that –

“race”, in relation to a person, means the **race, colour, descent or national or ethnic origin** of the person.

This is identical to the definition adopted in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1(1) of ICERD states –

“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on **race, colour, descent, or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Racial discrimination legislation in other jurisdictions

3. According to the information available on the website of the United Nations High Commission on Human Rights, 79 countries have ratified

the ICERD. However, there is no information on whether these 79 countries have enacted specific domestic legislation to implement the Convention.

4. It may be noted that in certain jurisdictions an international convention once ratified would automatically become part of domestic law. In other countries, including for example the USA and Canada, protection against racial discrimination may be afforded through constitution of the state or other general human rights legislation, without enacting a specific race discrimination law.

Definition of “race” in overseas legislation

5. A definition of “race” or a reference to it can be found in the respective legislation of Australia, UK, Canada and New Zealand. The specific provisions are reproduced below.

6. In **Australia**, racial discrimination is prohibited under the Racial Discrimination Act 1975 (Australia). Section 9(1) of the Act states –

“It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on **race, colour, descent or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.”

Section 5 of that Act provides for “additional operation of the Act” in relation to immigrants in employment and other specified areas.

7. In the **United Kingdom**, the relevant provision is in section 1(1) of the Race Relations Act 1968, which states –

“For the purposes of this Act a person discriminates against another if on the ground of **colour, race or ethnic or national origins** he treats that other, in any situation to which section 2, 3, 4 or 5 below applies, less favourably than he treats or would treat other persons, and in this Act references to discrimination are references to discrimination on any of those grounds.”

8. The meaning of “racial grounds” and “racial groups” etc in the 1968 Act is expanded in section 3(1) of the Race Relations Act 1976, which states –

“In this Act, unless the context otherwise requires –

‘racial grounds’ means any of the following grounds, namely **colour, race, nationality or ethnic or national origins**;

‘racial group’ means a group of persons defined by reference to **colour, race, nationality or ethnic or national origins**, and references to a person’s racial group refer to any racial group into which he falls.”

Section 41(2) further provides for certain exemptions for Government measures that discriminate on the ground of nationality or residence status if they have statutory backing or are approved by a Minister.

9. Members may note that “nationality” is included in the Race Relation Act 1976. The distinction between “nationality” and “national origin” was set out by the House of Lords in Ealing LBC v CRE [1972] AC 342. In the judgement delivered, Lord Cross of Chelsea (p. 365 D - E) explained that “national origin” refers to a connection subsisting at the time of birth between an individual and one or more groups of people who are described as a “nation”. That is different from “nationality” which may change by naturalization.

10. In **Canada**, racial discrimination is prohibited, among other forms of discrimination, by the Canadian Human Rights Act. Section 3(1) of the Act contains a reference which is similar to the ICERD definition of “race”. That section states -

“For all purposes of this Act, the prohibited grounds of discrimination are **race, national or ethnic origin, colour**, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.”

11. In **New Zealand**, the Human Rights Act 1993 covers a wide range of discrimination including discrimination on the grounds of sex, marital status, colour, race, disability, age and political opinion. Section 21(1) of the Act enumerates 13 prohibited grounds of discrimination. The following relate to race –

“For the purposes of this Act, the prohibited grounds of discrimination are –

...

(e) **Colour;**

(f) **Race;**

(g) **Ethnic or national origins, which includes nationality or citizenship;**

...”

Section 153(3) of the Act provides for a specific exception for law, Government policy and administrative practices that distinguish between citizens and non-citizens.

Concluding observations

12. The ICERD definition of “race” appears to have been widely adopted internationally. In countries where the international convention has automatically become domestic law, it would be reasonable to conclude that they have adopted the ICERD definition in entirety.

13. In countries where specific racial discrimination legislation have been enacted (specifically Australia and the UK) and where reference is made in domestic human rights legislation (such as in Canada and New Zealand) the meaning of “race” adopted is also broadly in line with the ICERD definition. In particular, the definition adopted in the Australian Racial Discrimination Act is identical to that in Article 1(1) of ICERD. Similar definitions, with the exception of “descent” as a ground of race, are found in the UK, Canadian and New Zealand legislation. There is reference to “nationality” in the UK Race Relations Act 1976 and to “nationality or citizenship” in the New Zealand Human Rights Act 1993. The distinction between “nationality” and “national origin” in the UK legislation is explained in paragraph 10 above. It may be noted also that, given their purpose and coverage, the provisions in the more general human rights legislation in Canada and New Zealand also cannot be directly compared to the proposed Race Discrimination Bill for Hong Kong.

14. This paper is prepared in response to Members’ request recorded in paragraph 4 of the minutes of the last meeting held on 16 January 2007 and to item (b) of the “List of issues raised by members”. It is presented for Members’ information and for consideration at the Bills Committee meeting to be held on 29 January 2007.

Home Affairs Bureau
January 2007