

Bills Committee on Race Discrimination Bill

Summary of views received from deputations/individuals on specific clauses of the Bill

(as at 6 February 2008)

<p>Deputation/Individual [LC Paper no. of submission]</p>	<p>Comments/Proposed amendments</p>
<p>Clause 1 Short title and commencement</p>	
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>A date should be fixed in the Bill for the commencement of the Ordinance.</p>
<p>Clause 2 Interpretation</p>	
<p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p>	<p>The definition of "club" requires that the association must "sell or supply liquor for consumption on its premises". This definition excludes effectively clubs or associations catering for a membership that, e.g. share the Muslim faith, and cannot be what is intended.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>The Bill should deal with discrimination on the ground of language, and "languages" should be defined as Chinese and English.</p>
<p>Clause 3 Application to Government</p>	
<p>The Hong Kong Bar Association [CB(2)1461/06-07(01)] Hong Kong SKH Lady Macle hose Centre [CB(2)759/07-08(01)]</p>	<p>(a) Clause 3 should be re-drafted as "This Ordinance binds the Government" and there are views that the provision should apply expressly to all Government policies, actions, measures, functions, enforcement and business too. (b) The Civic Party further suggests that the term "Government" should be defined to include "public authorities".</p>

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<p>Hong Kong Christian Service [CB(2)759/07-08(02)]</p> <p>Dr James KEEZHANGATTE [CB(2)775/07-08(02)]</p> <p>Hong Kong Christian Council [CB(2)775/07-08(03)]</p> <p>Christian Action [CB(2)783/07-08(01)]</p> <p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Colours in Peace [CB(2)798/07-08(05)]</p>	<p>(c) The Bar Association also questions whether Clause 3 would have the effect of excluding the application of the Bill to acts performed by the Judiciary.</p>
<p>Equal Opportunities Commission (EOC) [CB(2)759/07-08(03)]</p> <p>Mr Y K CHONG [CB(2)759/07-08(04)]</p> <p>Dr Kelly LOPER [Oral presentation at the meeting on 10 January 2008]</p>	<p>SDO, DDO and FSDO have specific provisions (i.e. sections 21 and 28 in SDO, sections 21 and 36 in DDO, and sections 17 and 28 in FSDO) stating clearly that it is unlawful for the Government to discriminate "in the performance of its functions or the exercise of its powers". If the scope of the Bill is not intended to be narrower than that of the three anti-discrimination ordinances¹, apart from specifying "This Ordinance binds the Government", the Bill should include a provision similar to section 21 of SDO - "it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers".</p>

¹ three anti-discrimination ordinances: Sex Discrimination Ordinance (SDO) (Cap.480), Disability Discrimination Ordinance (DDO) (Cap.487), and Family Status Discrimination Ordinance (FSDO) (Cap.527)

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Mr Patrick YU [CB(2)783/07-08(06) revised]	Re-drafting Clause 3 as "This Ordinance binds the Government" cannot tackle the root of the problem that the Administration is limiting the application of the Bill to only the functional areas of the Administration.
Clause 4 Racial discrimination	
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	The drafting of Clause 4(2), which sets out the criteria for determining "justifiability", deviates from the drafting approach for relevant provisions of the three anti-discrimination ordinances.
EOC [CB(2)1168/06-07(05)] [CB(2)759/07-08(03)] Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)] Mr Y K CHONG [CB(2)1226/06-07(04)] [CB(2)759/07-08(04)] Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)] Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]	(a) EOC and the Civic Party suggest that "requirement or condition" in Clause 4(1)(b) should be replaced by the expression "provision, criterion or practice". (b) EOC is concerned that Clause 4(5) may lead to a conclusion that a requirement or condition is justifiable as long as the alternatives involve additional expenditure. (c) Civic Party and Mr Y K CHONG suggest that Clauses 4(2)(b) and 4(5) should be deleted. Mr CHONG further suggests that, as Clause 4(2)(b) makes it very difficult to prove a case of indirect discrimination, the test should be "failure to consider alternatives" and reference should be made to section 4 of DDO. (d) The Civic Party also suggests that the definition of indirect discrimination should be based on the one in DDO, i.e. introducing unjustifiable hardship, similar to section 4 of DDO, and Clause 4(1)(b) should be amended to provide that race discrimination is constituted if a person only waives a person but not another person from meeting a requirement or condition merely on the ground of race. (e) The Association for the Advancement of Feminism considers that DDO provides for a more precise and simpler definition of indirect discrimination.

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The Hong Kong Bar Association [CB(2)1461/06-07(01)] Dr Kelley LOPER [Oral presentation at the meeting on 10 January 2008]	Clause 4(1)(b) prescribes a test of "disproportionate impact" for indirect discrimination. Clauses 4(2) to 4(5) provide for two alternative tests to determine "justifiability". The second test on the "reasonable practicability" of the alleged discriminator does not appear to be in line with English jurisprudence and runs the risk of amounting to a less stringent test than the alternative test, i.e. proportionality test. Clauses 4(2) to 4(5) are suggested to be deleted.
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>(a) Clause 4(2) defines "justifiable" in a very restrictive manner. A requirement or condition is regarded as justifiable if -</p> <ul style="list-style-type: none"> - the condition serves a legitimate objective and bears a rational and proportionate connection to the objective; or - it is not reasonably practicable for the person who allegedly discriminates not to apply the restriction or condition. <p>The provision could create doubt as to whether or not a requirement or condition is justifiable and such "justifiable" requirement is not contained in the three anti-discrimination ordinances.</p> <p>(b) Certain financial/investment services (e.g. offering of Initial Public Offers of shares) may not be available to certain nationals by reason of the laws/regulations of their home countries. Clause 4(4)(d) should be amended to provide for appropriate exceptions for banks.</p>
Clause 5 Discrimination on the ground of race of near relative	
EOC [CB(2)1168/06-07(05)]	<p>(a) The concept of "near relative" as defined under Clause 2 is too narrow as compared with that of an "associate" under DDO², and the latter term should be adopted for the Bill.</p>

² "associate" in relation to a person as defined by section 2 of DDO, includes -
 (a) a spouse of the person;
 (b) another person who is living with the person on a genuine domestic basis;
 (c) a relative of the person;
 (d) a carer of the person; and
 (e) another person who is in a business, sporting or recreational relationship with the person.

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Mr Y K CHONG [CB(2)1226/06-07(04)] The Law Society of Hong Kong [CB(2)1325/06-07(01)] Hong Kong Unison Limited [CB(2)775/07-08(01)]	(b) The scope of Clause 5 should be broadened similar to section 6(c) of DDO that "a person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if on the ground of the disability of an associate of that other person he treats him less favourably than he treats or would treat a person without such a disability".
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	"Near relative" is defined widely to include a person's wife/husband/parent/child/grandparent/grandchild/brother/sister/stepchildren/illegitimate children. It may be difficult for a person to know whether he is inadvertently discriminating as he may not necessarily know the racial background of all the persons who come within the definition.
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	Clause 5 should be amended to provide that race discrimination is constituted if a person treats another more favourably on the ground of having an ethnic near relative than others who have no such near relative.
Clause 8 Meaning of "race", "on the ground of race", "racial group" and comparison of cases of persons or different racial groups	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	The scope of the Bill is unduly narrow in excluding discrimination on the ground of (former) immigrant status and other grounds specified in Clauses 8(2) and 8(3)(b)-(d).
Civic Party [CB(2)1243/06-07(02)]	The term "national origin" in Clause 8(1)(a) should be defined to include "origin from any territory outside the Hong Kong Special Administrative Region" in meaning to protect overseas Chinese in Hong Kong.
Alliance of Returning Chinese from Overseas Against Discrimination [CB(2)783/07-08(02)]	The definition of "race" is too restrictive which will exclude discrimination on the grounds of language/country of origin/immigrant status, and the definition of "race" should be expanded to include new arrivals.

<p style="text-align: center;">Deputation/Individual [LC Paper no. of submission]</p>	<p style="text-align: center;">Comments/Proposed amendments</p>
<p>Hong Kong Human Rights Commission, New Immigrants' Mutual Aid Association, Society for Community Organization and Voices of the Rights of Asylum Seekers and Refugees [No. CB(2)798/07-08(01)]</p> <p>New Immigrants' Mutual Aid Association [LC Paper No. CB(2)798/07-08(02)]</p> <p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Association for the Advancement of Feminism [B(2)901/07-08(01) & (02)]</p>	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Mr Patrick YU [CB(2)783/07-08(06)]</p>	<p>(a) Mr Y K CHONG and Mr Patrick YU consider that the scope of the Bill should be extended to cover the following grounds of discrimination: language/place of origin outside Hong Kong/nationality/residency (Hong Kong resident status)/status of being, or having been an immigrant.</p> <p>(b) Clause 8(1) should be amended to bring in the concept of perceived or imputed race, and the phrase "actual or perceived" should be added before the words "race, colour, decent, national or ethnic origin" in Clause 8(1)(a).</p> <p>(c) Mr CHONG further suggests that Clause 8(3)(b)-(d) should be deleted.</p>

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	<p>(d) Mr Patrick YU also suggests to include the following new provisions after Clause 8(1)(e) to cover new arrivals from the Mainland and to delete the original Clause 8(3)(b)(i) and Clause 8(3)(c) -</p> <p><u>Clause 8(2)</u> In this Ordinance "racial grounds" includes the grounds of belonging to new arrivals from the Mainland, that is to say the community of people commonly so-called who are Chinese origin and is not a Hong Kong permanent resident or has not the right of abode in Hong Kong. It also includes the length of residence in Hong Kong of a person or that a person is regarded as a member of the group of persons who have been granted one way permit by the relevant Mainland authorities to come to Hong Kong, and have recently come to settle in Hong Kong from the Mainland.</p> <p><u>Clause 8(3)</u> In this Ordinance "racial group" includes the new arrivals from the Mainland.</p>
<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>(a) The definition of "race" in Clause 8(1)(a) is extremely wide, covering not only race and colour but also descent or national or ethnic origin. The definition does not provide for how persons of mixed blood or origin should be dealt with.</p> <p>(b) Clause 8(1)(c) deals with discrimination on the ground of descent based on social stratification. Whether such a form of discrimination should be covered by the Bill should be discussed. In practice, it might be difficult to determine a person's descent.</p>
<p>Clause 10 Discrimination against applicants and employees</p>	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and</p>	<p>The three-year transitional period under Clause 10(8) for small employers should be reduced to not more than one year.</p>

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<p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) & CB(2)798/07-08(01)]</p> <p>The Democratic Party [CB(2)1226/06-07(03)]</p> <p>International Social Service - Hong Kong Branch [Oral presentation at the meeting on 3 March 2007]</p>	
<p>Christian Action [CB(2)783/07-08(01)]</p>	<p>The three-year transitional period for small companies should be reduced to 18 months.</p>
<p>The New Territories General Chamber of Commerce (NTGCC) [Oral presentation at the meeting on 3 March 2007]</p>	<p>The exemption should be granted permanently, instead of only three years.</p>
<p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p>	<p>(a) The exception for small companies/employers in Clause 10(3) and 10(8) is unwarranted. It is unclear whether domestic helpers are to be counted as employees of small employers for the purpose of the temporary exception under Clause 10(3).</p> <p>(b) Clause 10(10) is highly undesirable as it empowers the Government to extend the above exception to the detriment of those intended to be protected by the legislation.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>The benefits stated in Clause 10(5) should be amended to incorporate housing benefits, travel allowances, salary increase (without promotion), pension benefits and right to take sabbatical.</p>

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Clause 11 Exception for genuine occupational qualification	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]</p>	<p>(a) Clauses 11(2)(c) to (e) should be deleted or defined more clearly to prevent abuse.</p> <p>(b) "Reasons of authenticity" has a wide application. Proper checks and balances should be built into the clause by stipulating conditions of application of the exception in order to prevent abuses and not to legitimize existing racial discriminatory practices in employment.</p>
Clause 12 Exception for employment intended to provide training in skills to be exercised outside Hong Kong	
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>It is not clear why ordinary residents are excluded as training opportunities should be open to all regardless of one's racial background.</p>
Clause 13 Exception for employment of person with special skills, knowledge or experience	
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>(a) Clause 13(1)(c)(ii) is unclear and employers will have difficulty relying on the exemption until the relevant case law has been laid down. The exemption "any other relevant circumstances" is also too wide and specific examples should be provided by adopting the drafting format of "including...but not limited to ...".</p> <p>(b) The words "as the court may consider appropriate" should be added after "...race of the person)" in Clause 13(1)(c)(ii).</p>

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The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>(a) Clause 13 only allows preferential terms to be offered to persons who possess special skills, knowledge or experience if they are recruited or transferred from a place outside Hong Kong. It is queried why there is a need to specify that the persons have to be recruited or transferred from a place outside Hong Kong if it is established that the persons possess skills not readily available in Hong Kong.</p> <p>(b) The expression "special skills, knowledge or experience" can be extremely broad. It should be defined more clearly.</p> <p>(c) Under Clause 13(1)(c)(i), the terms of employment of the person concerned must have regard to the prevailing terms offered to persons with the relevant skills, knowledge or experience outside Hong Kong. This is inappropriate as salaries in Hong Kong are normally higher than those paid abroad and employers would need to induce a person to move to Hong Kong with a higher salary.</p>
Clause 14 Exception for existing employment on local and overseas terms of employment (and Schedule 2 Employee in existing employment)	
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>Many employers determine an individual's entitlement to expatriate terms or local terms by reference to various factors which may not be related to the individual's permanent residency status. Paragraph 11 of Schedule 2 should be replaced by -</p> <p>"local terms of employment" (本地僱用條款) 和 "overseas terms of employment" (海外僱用條款)-</p> <p>(a) in relation to any employee (other than a public officer), means respectively -</p> <p>(i) such conditions or terms of service as are not "overseas terms of employment";</p> <p>(ii) such conditions or terms of service as are generally known as "expatriate terms" due to their being related in whole or in part to the residency or nationality status of the employee..."</p>

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The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	Paragraph 2(b) of Schedule 2 requires that there should not be a break in the service of the employee; otherwise, the existing employment would cease to be grandfathered. There should be some flexibility to allow for a break not exceeding six months to cover leave arrangements.
Clause 15 Discrimination against contract workers	
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	Concerns raised by the Association of Banks on Clause 13 also apply.
Clause 16 Meaning of employment at establishment in Hong Kong	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The meaning of "an establishment in Hong Kong" should be defined in such a way that Hong Kong residents working outside Hong Kong for companies registered in Hong Kong will also be protected.
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	<p>(a) Clause 16 is less generous in scope than the corresponding provisions of the Race Relations Act (RRA) of the United Kingdom (UK). The Administration should explain why the latest provisions in RRA are not adopted in the Bill, given the increasing number of the Hong Kong Special Administrative Region permanent residents being stationed outside Hong Kong by their employers.</p> <p>(b) Clause 16(2) should be re-drafted to indicate whether employment on a Hong Kong registered ship, aircraft or dynamically supported craft is or is not subject to protection of the Bill when enacted.</p>
Clause 17 Partnerships	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 17(1) seeks to outlaw race discrimination in relation to partnerships but its protection is limited to a firm consisting of not less than six partners. The same limitation existed in section

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	<p>10(1) of RRA but it was removed in 2003. Clause 17(7) provides for the removal of this limitation by the Chief Executive in Council. The Administration should explain the circumstances in which this power may be exercised.</p>
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Society for Community Organization, New Immigrants Mutual Aid Association, Hong Kong Human Rights Commission and Voices of the Rights of Asylum Seekers and Refugees [CB(2)1226/06-07(02)(revised)]</p>	<p>The Administration should provide justification for restricting application of this provision to partnerships of not less than six and consider removing this restriction.</p>
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>It is unclear why partnerships of less than six can be exempted from the Bill as it may give rise to a situation that firms of different numbers of partners would be subject to different legislative requirements.</p>
<p>Clause 18 Trade unions, etc.</p>	
<p>The Federation of Hong Kong & Colon Labour Unions [CB(2)1168/06-07(06)]</p>	<p>As cases of race discrimination in trade unions are rare, the words "trade unions" should be deleted from Clause 18 to avoid unnecessary disputes.</p>
<p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p>	<p>Clause 18(5) seeks to provide for an exception for organizations of workers/employers/both workers and employers established prior to the enactment of the Bill. The provision, if enacted, will undermine the effectiveness of Clause 18.</p>

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Clause 19 Qualifying bodies	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The Administration should consider if it is a case of over-legislation to include Clause 19(2) and Schedule 3.
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	Clause 19 may prevent a highly qualified professional from being conferred the relevant qualification in Hong Kong simply because of the person's failure to meet requirements of proficiency in either Chinese or English.
Clause 20 Persons concerned with provision of vocational training	
Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)] Hong Kong Unison Limited [CB(2)1226/06-07(01)] Mr Y K CHONG [CB(2)1226/06-07(04)] Hong Kong Christian Service [CB(2)1226/06-07(06)] [CB(2)759/07-08(02)] Civic Party [CB(2)1243/06-07(02)] Hong Kong Christian Institute [CB(2)798/07-08(04)]	(a) The exemption under Clause 20(2) will allow educational institutions to continue ignoring the demands of the ethnic minorities in vocational training and should be removed. (b) The Civic Party further suggests that Clause 20(2)(a) should be deleted whereas Hong Kong Unison Limited further suggests that both Clauses 20(2)(a) and (b) should be deleted in order to tackle the problem of language barrier suffered by ethnic minorities in vocational training.

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The Hong Kong Bar Association [CB(2)1461/06-07(01)]	There is no provision in RRA equivalent to Clause 20(2) which seeks to stipulate that the Bill is not to be construed as requiring a person concerned with the provision of vocational training or education to modify for persons of any racial group its arrangements regarding holidays or medium of instruction or to make different arrangements on those matters for persons of any racial group. It is concerned that the argument that it is not reasonably practicable for the arrangements will not satisfy a proportionality test.
Clause 21 Employment agencies	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 21(4) aims to provide a defence to an employment agency which relies on a statement by the employer to the effect that the employer could lawfully refuse to offer employment to the person in question. The lack of a requirement under Clause 21(4)(a) of providing such a statement in writing is likely to create difficulties in enforcement.
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	(a) Employment agencies should be imposed a statutory obligation to report on cases of alleged practices of racial discrimination in employment matters by employers, and the Labour Department should be regarded as an employment agency under the Bill. (b) A provision should be made to outlaw any requirement for job applicants to disclose their ethnicity or nationality in any applications.
Clause 23 Employment, etc. for religion	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	“Organized religion” in the clause should be defined, and a list of organized religions intended to be covered by the clause should be incorporated.

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Clause 24 Employees, etc.	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	It is unclear whether university placement, summer jobs and voluntary work would be protected under the clause.
Clause 26 Discrimination by responsible bodies for educational establishments	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	There is no provision in RRA equivalent to Clause 26(2) which stipulates that the Bill is not to be construed as requiring a responsible body for an educational establishment to modify for persons of any racial group its arrangements regarding holidays or medium of instruction or to make different arrangements on those matters for persons of any racial group. It is concerned that an argument that it is not reasonably practicable to make the arrangements will not satisfy a proportionality test.
Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)] The Democratic Party [CB(2)1226/06-07(03)] Mr Y K CHONG [CB(2)1226/06-07(04)] Hong Kong Unison Limited [CB(2)1226/06-07(01)] The Hong Kong Christian Service [CB(2)1226/06-07(06)] [CB(2)759/07-08(02)]	Clause 26(2) should be deleted since language discrimination is a form of indirect discrimination and this provision may legitimize existing discriminatory arrangements.

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<p>Hong Kong Unison Limited [CB(2)775/07-08(01)]</p> <p>Hong Kong Christian Institute [CB(2)798/07-08(04)]</p> <p>Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]</p>	
<p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>Clause 26(2)(a) should be deleted to protect equal rights of ethnic minorities in education.</p>
<p>Dr Keezhangatte James Joseph [CB(2)1243/06-07(01)]</p>	<p>Provisions should be made to permit affirmative action to be taken under Clause 26 on education.</p>
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>Clause 26(2) provides a blanket shield for the Administration and other educational bodies which will be exempted from any requirement that reasonable arrangements should be put in place to provide adequate support for ethnic minority students. It is suggested that the Administration should also review section 24(4) of DDO which provides for an exception for an educational establishment if its provision of services/facilities for students with a disability would impose unjustifiable hardship on the establishment.</p>
<p>Clause 27 Discrimination in provision of goods, facilities or services</p>	
<p>Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p>	<p>As Clause 27 will permit racial discrimination to take place, its scope of application needs to be restricted.</p>

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Clause 28 Discrimination in disposal or management of premises	
The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 28(3) provides for an exception on disposal of premises by their owner-occupiers, unless the service of an estate agent is used or an advertisement is published in connection with the disposal. Its equivalent provision in RRA is section 21, which was amended in 2003 to remove the exclusion in relation to discrimination on grounds of race/ethnic/national origins. The Administration should justify why such an amendment has not been adopted for Clause 28.
Clause 30 Exceptions for small dwellings	
Mr Y K CHONG [CB(2)1226/06-07(04)] The Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 30 provides for an exception for letting and assignment of "small dwellings". Its equivalent provision in RRA is section 22, which was amended in 2003 to remove the exclusion of discrimination on grounds of race/ethnic/national origins. The Administration should justify why such an amendment has not been adopted for Clause 30.
Clause 31 Exceptions for voluntary bodies	
Civic Party [CB(2)1243/06-07(02)] [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	This exception clause may encourage groups like White Supremacy, neo-Nazi groups and anti-Japanese groups to be formed in Hong Kong. A "voluntary body" should be properly defined in the Bill.
Clause 32 Exceptions for cemeteries	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	As mixed marriages are common in Hong Kong, it is concerned whether this clause may disallow a person from being buried together with his/her spouse of a different race.

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Clause 33 Further exceptions	
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	Paragraph 19 of the Explanatory Memorandum states that "Clauses 27(1) and 28 do not extend to discrimination covered by the employment or education provisions of the Bill (Clause 33(2) as read with Schedule 4)". It is necessary to clarify how the specific provisions of Clause 33(2) and Schedule 4 should be read in the context of the Explanatory Memorandum.
Clause 34 Discrimination in eligibility to stand for election, etc.	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The Administration should consider if it is a case of over-legislation to include Clause 34(2).
Clause 37 Exception from section 36 for certain clubs	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	The Government should clarify the intended parties which can enjoy this exception.
Clause 39 Other harassment	
Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]	Protection against racial harassment should be extended to service providers, and not just to service users, under Clause 39(1).
Mr Y K CHONG [CB(2)1226/06-07(04)]	(a) Clauses 39(3) and (4) should be amended to protect tenants and sub-tenants occupying the same premises from racial harassment. (b) The definition of a "club" under Clause 39(10) is too narrow and should be broadened by deleting paragraph (b) from its definition under Clause 2.

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
Clause 46 Offence of serious vilification	
A member of the public [CB(2)2792/06-07(01)]	<p>Clause 46 should be amended to the effect that a person commits an offence if the person, by any activity in public, incites hatred towards, serious contempt for, or ridicule of, another person on the ground of the race of that person.</p> <p>Wording of suggested amendment put forward is "任何人如因另一人的種族而藉公開活動煽動或嘲諷對該人的仇恨、嚴重的鄙視，即屬違法。"</p>
Clause 49 Special measures	
Civic Party [CB(2)783/07-08(04)]	"Special needs" under the clause should be defined and objective test should be provided to prevent abuse of the clause.
Clause 50 Charities	
Hong Kong Bar Association [CB(2)1461/06-07(01)]	Clause 50 provides for the exception for certain provisions in charitable instruments from the scope of the Bill. Its equivalent provision in RRA is section 34. Since the exemption was removed from RRA in 2003, the Administration should justify why a similar amendment has not been made to Clause 50.
Clause 51 Discriminatory training by certain bodies	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	It is not clear why ordinary residents are excluded as training opportunities should be open to all regardless one's racial background.

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
Clause 54 Nationality law, etc. not affected	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The provision is too broad and unnecessary because of the existence of Clause 8(3)(d).
Clause 55 Immigration legislation	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) & CB(2)798/07-08(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Coalition For Migrants Rights, Indonesian Migrant Workers Union, Far East Overseas Nepalese Association, Filipinos Domestic Helper General Union, Alliance of Progressive Labor, Hong Kong, the Hong Kong Coalition of Indonesian Migrants Workers Organization [CB(2)1226/06-07(05)]</p> <p>The Hong Kong Bar Association [CB(2)1461/06-07(01)]</p>	<p>The exemption for immigration legislation should be removed in order to protect the rights of asylum seekers and not to legitimize existing discriminatory arrangements against foreign domestic helpers e.g. two-week rule.</p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]	
Clause 56 Acts done under statutory authority not affected by Parts 3, 4 and 5	
Mr Y K CHONG [CB(2)1226/06-07(04)] The Hong Kong Bar Association [CB(2)1461/06-07(01)]	This clause which seeks to exempt acts done for the purpose of complying with an existing statutory requirement from being rendered unlawful is opposed.
The Hong Kong Association of Banks [CB(2)1668/06-07(01)]	<p>(a) The scope of exceptions should be widened to cater to the needs of established banking practices. Clause 56 refers to an "existing statutory provision", which means compliance with non-statutory requirements such as the Hong Kong Monetary Authority's guidelines and sanctions issued by overseas regulatory authorities will fall outside the scope of protection of the Clause.</p> <p>(b) Unlike section 41 of RRA, Clause 56 of the Bill applies to existing statutory provision (i.e. excludes future legislation). Hence, the scope of protection provided by Clause 56 will not apply to any new ordinance enacted after the Bill becomes enacted. The scope of Clause 56 should be expanded to include future legislation and non-statutory requirements that banks are expected to comply with in the prevention of money laundering and terrorist financing activities.</p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
Clause 57 Application to New Territories land	
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>The rights of inhabitants in the New Territories are protected by Article 40 of the Basic Law. The indigenous inhabitants of the New Territories should not be granted exemption from the coverage of the Bill as it will widen their rights.</p>
Clause 58 Exception for languages	
<p>Society for Community Organization, New Immigrants' Mutual Aid Association, Voices of the Rights of Asylum Seekers and Refugees and Hong Kong Human Rights Commission [CB(2)1168/06-07(01), CB(2)1226/06-07(02)(revised) & CB(2)798/07-08(01)]</p> <p>Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)]</p> <p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)] [CB(2)759/07-08(04)]</p> <p>The Coalition For Migrants Rights, Indonesian Migrant Workers Union, Far East Overseas Nepalese</p>	<p>(a) The exception for use, or failure to use, particular languages in regard to provision of goods and services, etc. should not be provided for, particularly in these essential areas like medical and care services, educational and vocational training, welfare services, judiciary services, legal aid, housing, immigration, labour and the Police, in order to safeguard the rights of ethnic minorities.</p> <p>(b) Mr Y K CHONG further considers that the Administration should clarify the meaning of "in any circumstances relevant for the purpose of the section" in Clause 58(1).</p> <p>(c) Dr Kelley LOPER further points out that as Clause 4 already provides for the test of justifiability, Clause 58 is unnecessary.</p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
<p>Association, Filipinos Domestic Helper General Union, Alliance of Progressive Labor, Hong Kong, the Hong Kong Coalition of Indonesian Migrants Workers Organization [CB(2)1226/06-07(05)]</p> <p>The Hong Kong Christian Service [CB(2)1226/06-07(06)]</p> <p>Christian Action [CB(2)783/07-08(01)]</p> <p>Pakistan Islamic Welfare Union Inc (HK) Limited [CB(2)783/07-08(03)]</p> <p>Hong Kong SKH Lady Macle hose Centre [CB(2)759/07-08(01)]</p> <p>Hong Kong Christian Service [CB(2)759/07-08(02)]</p> <p>Hong Kong Unison Limited [CB(2)775/07-08(01)]</p> <p>Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]</p> <p>Mr Patrick YU [CB(2)783/07-08(06) revised]</p>	

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
<p>Colours in Peace [CB(2)798/07-08(05)]</p> <p>Hong Kong Women Christian Council [CB(2)798/07-08(07)]</p> <p>YMCA of Hong Kong (Cheung Sha Wan Centre) [CB(2)798/07-08(08)]</p> <p>Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]</p> <p>Dr Kelley LOPER [Oral presentation at the meeting on 10 January 2008]</p>	
<p>The Law Society of Hong Kong [CB(2)1325/06-07(01)]</p>	<p>Clause 58 should be amended by adopting the wording "...would impose unjustifiable hardship", in line with similar wording of section 26(2) of DDO.</p>
<p>The Hong Kong Association of Banks [CB(2)1668/06-07(01)]</p>	<p>This exception for use, or failure to use, particular languages should also cover Clause 10 and other provisions relating to employment.</p>
<p>The Hong Kong Federation of Insurers [CB(2)1168/06-07(07)]</p> <p>Tsim Sha Tsui District Kai Fong Welfare Association [CB(2)1168/06-07(08)]</p> <p>Yau Tsim Mong Committee on Promotion of Hong Kong Economy</p>	<p>(a) The Bill should not impose mandatory requirement for all service providers including educational establishments to conduct their activities and business in all languages or any specified language.</p> <p>(b) Provision of the exemption under Clause 58 is supported.</p>

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
<p>[CB(2)1168/06-07(09)]</p> <p>Equal Opportunities Officer/University of Hong Kong [CB(2)1168/06-07(10)]</p> <p>The Association of Hong Kong Chinese Middle Schools [CB(2)1168/06-07(11)]</p> <p>Vocational Training Council [CB(2)1202/06-07(03)]</p> <p>Hong Kong Swatow Merchants Association Limited [CB(2)1266/06-07(01)]</p>	
<p>EOC [CB(2)759/07-08(03)]</p>	<p>If an express provision is made to oblige public service providers, say, medical and vocational training, to accommodate the specific language needs of users, it should be subject to a defence of unjustifiable hardship. It will be useful if the Bill can specify the intended obligations of service providers by way of a list of examples. It is also desirable to provide for a non-exhaustive list of factors relevant to the defence of unjustifiable hardship, which may include -</p> <ul style="list-style-type: none"> ● nature of the service; ● language profile of the customers or users; ● number of the people likely to require the service in a particular language; ● resources required in making the accommodation required; and ● resources available to the operators.

Deputation/Individual [LC Paper no. of submission]	Comments/Proposed amendments
Part 7 Commission	
The Law Society of Hong Kong [CB(2)1325/06-07(01)]	<p>(a) As the dual role of EOC as investigator and conciliator may result in respondents feeling pressured to agree to settlements, provisions to provide for the setting up of a panel of independent conciliators/mediators should be incorporated into the Bill.</p> <p>(b) The existing protection against usual costs orders in relation to complaints to EOC is unjustified. EOC should avoid giving the impression that complainants receive preferential treatment over respondents in discrimination cases.</p>
Mr Y K CHONG [CB(2)1226/06-07(04)]	Clauses 60 and 79 on "Functions and powers of Commission" and "Assistance by way of conciliation" should be amended to enhance the functions and powers of EOC, such as by including the power to sue and to enable EOC to bring civil proceedings against those who have committed discriminatory practices without going through the process of formal investigation.
Clause 83 Rules	
Schedule 5 Other matters not affected by this Ordinance	
Mr Y K CHONG [CB(2)1226/06-07(04)]	The Administration should explain the rationale of having an exemption for the portable comprehensive social security assistance scheme policy and the effect if this schedule is deleted?

Council Business Division 2
Legislative Council Secretariat
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