

**Submission to the Bills Committee on
Race Discrimination Bill**

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Most people I talked to in Hong Kong, particularly the Ethnic Minority think that the *Race Discrimination Bill* (RDB) is meant to protect the rights of the Ethnic Minority in Hong Kong. I too held this view until I began to read carefully documents provided by the Administration. The stated position of the Administration explained in paper “Affirmative Action” (LC Paper No. CB(2)152/06-07(01)) paragraph 17 clearly stated that “the purpose of the Race Discrimination Bill is to ensure that **people in Hong Kong** are protected against racial discrimination on the ground of race and that they are to be treated equally irrespective of the race, colour, descent, or national or ethnic origin”.

By introducing Clause 49 “Special Measures” into RDB the Administration acknowledged that there is a problem of equal opportunities in Hong Kong where certain ethnic groups enjoy more opportunities and are better placed. Can Clause 49, “Special Measures” offer some solace to marginalised racial groups?

Here is a test case. As Hong Kong is moving into a knowledge-based economy where opportunities and social mobility is linked to education particularly higher education, is Clause 49 “Special Measures” applicable?

The Administration in the paper ‘Propriety of support measure for ethnic minorities’ (LC Paper No. CB(2)1152/06-07(03)) in paragraphs 6,7 and 8 pointed out that Clause 49 “Special Measures” would not encounter similar difficulties of Section 50 of the Disability Discrimination Ordinance in its inability to provide concessionary fares for persons with difficulties. The Administration pointed out in paragraph 8 that “...such difficulties should not arise in the case of EMB’s support measures for NCS students, which are designed to address a specific need and bear a direct relationship to the objective which is reasonable and justified.”

I wish I could trust the Administration on its word.

Sadly I cannot because in another paper “Paper prepared by the Legislative Council for the Secretariat for the meeting on 28 February 2007: Issues Relating to Education for Ethnic Minorities” (LC Paper No. CB(2)1157/06-07(01)) in paragraph 6, it is unequivocally stated that “while special measures that are reasonably intended to address the special needs of ethnic minorities are legitimate under Clause 49 of the Bill, if an act which favours ethnic minority has the effect of disfavouring those who are equally situated but are not members of the preferred ethnic groups, that act might constitute direct discrimination and would be unlawful under the Bill”.

Clause 49 Special Measures is an empty promise and is irrelevant.

The administration has learned through its research that under American Law affirmative action is not mandatory but permitted (see Para. 16.a LC Paper No. CB(2)1152/06-07(01). My submission then to the Bills Committee on Race Discrimination Bill is that it must consider introducing similar measures in RDB that permit affirmative action especially in Part 4, clause 26 items 1 and 2 dealing with education, so that ethnic minority groups with less opportunities now need not place their hope on empty promises.

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