

Bills Committee on Race Discrimination Bill

**Views received from deputations on options of draft amendments
set out in the paper entitled "Discussion drafts of Committee Stage amendments for Members' consideration"
[LC Paper No. LS14/07-08]**

A total of 28 organizations/individuals have submitted views on the Bill for the meeting held on 10 January 2008, 15 of them have commented specifically on the options of draft amendments. These comments are summarized in the following table -

Organization/Individual [LC Paper no. of submission]	Comments
Application to Government (Clause 3) [Appendix I to LC Paper No. LS14/07-08]	
<u>Comments on Option A -</u>	
Hong Kong Human Rights Commission [CB(2)798/07-08(01)]	<u>Option A is supported</u> (a comment made during oral representation).
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<u>Option A is supported</u> and the term "Government" should be defined to include "public authorities".
Mr Y K CHONG [CB(2)759/07-08(04)]	<u>Option A is supported</u> and "and public authorities" should be added after the "Government" in the proposed new Clause 3.

Organization/Individual [LC Paper no. of submission]	Comments
Hong Kong Christian Service [CB(2)759/07-08(02)]	<u>Option A is supported.</u>
Hong Kong Christian Institute [CB(2)798/07-08(04)]	<u>Option A is supported.</u>
Hong Kong Discrimination Policies Concern Network [CB(2)798/07-08(06)]	<u>Option A is supported.</u>
Hong Kong Women Christian Council [CB(2)798/07-08(07)]	<u>Option A is supported</u> and the role and duties of the Government should be specified as the executive organ and the main public service provider in the Bill.
Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]	<u>Option A is supported</u> and the Bill should apply to Government actions, policies, measures, functions, enforcement and businesses.
Hong Kong Unison Limited [CB(2)775/07-08(01)]	<u>Option A is supported.</u>
Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]	<u>Option A is supported.</u>
Equal Opportunities Commission (EOC) [CB(2)759/07-08(03)]	Option A is not adequate to cover all Government functions and activities. If the legislative intent is to bind the Government, apart from specifying "This Ordinance binds the Government" in the Bill, additional provisions similar to sections 21 and 38 of the Sex Discrimination Ordinance, sections 21 and 36 of the Disability Discrimination Ordinance and sections 17 and 28 of the Family Status Discrimination Ordinance should be incorporated.
Dr Kelley LOPER	Option A is not adequate to cover all Government functions and activities.

Organization/Individual [LC Paper no. of submission]	Comments
Mr Patrick YU [CB(2)783/07-08(06) revised]	Option A cannot tackle the problem that the applicability of the Bill will be limited to the functional areas of the Government. It can be subject to the argument that the law only applies to the Government so far as similar act done by a private party.
<u>Comments on Option B -</u>	
EOC [CB(2)759/07-08(03)]	Option B renders the Bill inapplicable to the whole range of Government functions and powers, and hence discrimination by the Government will fall outside the jurisdiction of EOC.
Mr Y K CHONG [CB(2)759/07-08(04)]	As Option B retains the existing Clause 3 of the Bill, the problems pertaining to Clause 3 still remain.
Mr Patrick YU [CB(2)783/07-08(06) revised]	Option B is the least desirable.
<u>Comments on Option C -</u>	
Dr Kelley LOPER	<u>Option C is preferred</u> as it will ensure appropriate applicability to Government.
Mr Patrick YU [CB(2)783/07-08(06) revised]	<u>Option C is supported.</u>
EOC [CB(2)759/07-08(03)]	Option C will widen the scope of the Bill to cover the exercise of public functions. "Public authority" used under this option may be regarded as wider in coverage than the term "Government" adopted in the three anti-discrimination ordinances. If this option is adopted, consideration may be given to including harassment in the proposed new Clause 34A. For Clause 34A(2)(b), the justification to exclude the Executive Council and other authorities exercising functions specified in the Basic Law is not clear.

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Mr Y K CHONG [CB(2)759/07-08(04)]	Option C is too complicated and does not clarify the law.
Racial discrimination (Clause 4) [Appendix II to LC Paper No. LS14/07-08]	
<u>Comments on Option A -</u>	
Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]	<u>Option A is supported</u> on the condition that Clause 4(2) to (5) is deleted.
Mr Y K CHONG [CB(2)759/07-08(04)]	<u>Option A is supported</u> on the condition that Clause 4(2) to (5) is deleted
Hong Kong Catholic Commission For Labour Affairs [CB(2)798/07-08(10)]	<u>Option A is supported</u> on the condition that Clause 4(2) to (5) is deleted.
Mr Patrick YU [CB(2)783/07-08(06) revised]	<u>Option A is supported</u> on the condition that Clause 4(3) to (5) is deleted.
Dr Kelley LOPER	<u>Option A</u> is supported.
EOC [CB(2)759/07-08(03)]	<p>The new formulation under Option A is broader in scope and less technical. It adopts "provision, criterion or practice", instead of "requirement or condition" as used in the three anti-discrimination laws. It also makes the numeric comparison of proportions unnecessary by providing simply that an individual of the minority needs only to show that the group would be disadvantaged when compared with other people, and that the individual himself is among the disadvantaged.</p> <p>The defence provided for under the new Clause 4(1A)(c) can only be invoked if the discriminator can</p>

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	<p>show that the provision, criterion or practice in question is a proportionate means of achieving a legitimate aim. In line with established principles, this is likely to involve a balancing exercise requiring consideration of adopting alternatives even if they may involve additional expenditure, so long as such expenditure is not unjustifiable in all the circumstances.</p>
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p>Option A does not appear to address the issue of indirect discrimination. Whilst direct discrimination is fairly easy to identify, indirect discrimination is not and this issue should be addressed.</p>
Hong Kong Unison Limited [CB(2)775/07-08(01)]	<p>Option A will not achieve practical effect unless the existing Clause 4(2) to (5) are deleted.</p>
Hong Kong Discrimination Policies Concern Network [CB(2)798/07-08(06)]	<p>Option A retains existing Clause 4(5) of the Bill, which is problematic as it implies that potential defendants should not have to incur any additional expenditure or provide any additional services to address the needs of ethnic minorities.</p>
Employers' Federation of Hong Kong [CB(2)783/07-08(05)]	<p>The proposal to remove the distinction between "direct" and "indirect" discrimination is a matter of concern. Such distinction exists in each of the existing anti-discrimination laws and exists in many common law jurisdictions.</p>
<p><u>Comments on Option B -</u></p>	
EOC [CB(2)759/07-08(03)]	<p>These deputations are unable to comment on Option B in the absence of adequate information on the situation in South Africa or any text of proposed provisions.</p>
Hong Kong Unison Limited [CB(2)775/07-08(01)]	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	

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Mr Y K CHONG [CB(2)759/07-08(04)]	Option B is not preferred because its underlying concepts are different from the existing anti-discrimination laws.
New Arrivals from the Mainland [Appendix III to LC Paper No. LS14/07-08]	
<u>Comments on Option A -</u>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<u>Option A is supported.</u>
Mr Y K CHONG [CB(2)759/07-08(04)]	<u>Option A is supported</u> on the condition that the relevant items in Schedule 5 to the Bill and the term "a near relative" in the proposed new Clause 7A is replaced by "an associate".
EOC [CB(2)759/07-08(03)]	If the intention of the new Clause 5A is to protect new arrivals from the Mainland, an alternative approach would be to limit the victims to new arrivals from the Mainland by reference to the one-way permit scheme, instead of using "lack of permanent residency", "right of abode", or "length of residence", as grounds of discrimination since a person of Chinese origin who has no permanent residency and right of abode can be coming from any other part of the world.
<u>Comments on Option B -</u>	
Mr Patrick YU [CB(2)783/07-08(06) revised]	<u>Option B is supported</u> on the condition that - (a) new Clause 8(2) and (3) are included as follows - "Clause 8(2)

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	<p>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>(b) the existing Clause 8(3)(b)(i) and Clause 8(3)(c) are deleted.</p>
EOC [CB(2)759/07-08(03)]	Option B does not explicitly state whether the legislative intent is to make discrimination against new arrivals from the Mainland unlawful. It simply deletes the reference to "permanent residency", "right of abode" and "length of residence" from Clause 8(3) under the Bill. It remains unclear whether new arrivals from the Mainland will be covered by the Bill.
Mr Y K CHONG [CB(2)759/07-08(04)]	Clause 8(2) to (6) under Option B are unacceptable and below international human right standards.
<p>The language exemption (Clause 58) [Appendix IV to LC Paper No. LS14/07-08]</p>	
<p><u>Comments on Option A -</u></p>	
HK SKH Lady MacLehose Centre [CB(2)759/07-08(01)]	The proposed new Clause (1C)(a) under Option A is inadequate, as it does not require a provider of medical treatment to provide to a patient a verbatim translation, in the vernacular of that patient, of

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	<p>any drug label.</p> <p>The proposed new Clause (1C)(b) under Option A is inadequate, as it does not require a provider of medical treatment to provide to a patient a verbatim translator, in the vernacular of that patient, of any oral communication between them.</p>
EOC [CB(2)759/07-08(03)]	<p>The proposed new Clause 58(1C) under Option A should be revised to provide for a list of examples of what are expected to be provided by a medical treatment provider to accommodate the needs of a patient, as well as a defence of unjustifiable hardship for medical treatment providers who cannot rely on the exception under Clause 58(1).</p>
Hong Kong Christian Service [CB(2)759/07-08(02)]	<p>The proposed new Clauses (1B) and (1C) under Option A are opposed as they do not require a provider of medical treatment to provide to a patient a verbatim translation, in the vernacular of that patient, of any drug label or during medical treatment.</p>
<p><u>Comments on Option B -</u></p>	
Civic Party [CB(2)783/07-08(04)] [CB(2)798/07-08(03)]	<p><u>Option B is supported.</u></p>
Association for the Advancement of Feminism [CB(2)901/07-08(01) & (02)]	<p><u>Option B is supported</u> on the condition that the proposed new Clause 5B(5) is deleted.</p>
Hong Kong Unison Limited [CB(2)775/07-08(01)]	<p><u>Option B is supported</u> on the condition that the proposed new Clause 5B(5) is deleted.</p>
Mr Patrick YU [CB(2)783/07-08(06) revised]	<p><u>Option B is supported</u> on the condition that the proposed new Clause 5B(5) is made a sunset clause.</p>

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Mr Y K CHONG [CB(2)759/07-08(04)]	<u>Option B is supported</u> on the condition that the proposed new Clause 5B(5) is made a sunset clause.
EOC [CB(2)759/07-08(03)]	The effect of Option A appears to be that, if both English and Chinese languages are used, there is no discrimination constituted under the proposed new Clause 5B(3). However, some small business operators may have difficulties in using both English and Chinese for communication with clients.
Hong Kong Christian Service [CB(2)759/07-08(02)]	The proposed new Clause (5) under Option B is opposed as they do not require a provider of medical treatment to provide to a patient a verbatim translation, in the vernacular of that patient, of any drug label or during medical treatment.

Council Business Division 2
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