

**Bills Committee on Race Discrimination Bill**

**Major issues raised by deputations/individuals  
for the meeting on 3 March 2007**

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
<b>Application to Government</b> (Clause 3)	
Equal Opportunities Commission [CB(2)1168/06-07(05)]  Mr Y K CHONG [CB(2)1226/06-07(04)]  Hong Kong Unison Limited [CB(2)1226/06-07(01)]	(a) The Bill, unlike other existing anti-discrimination ordinances, does not apply to the performance of functions and powers of the Government.
<b>Discrimination and harassment to which the Bill applies</b> (Clauses 4 to 9)	

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
<b>I. <u>Application to new arrivals from the Mainland</u></b>	
<p>Society for Community Organisation (SOCo), New Immigrants Mutual Aid Association [CB(2)1168/06-07(01)] [CB(2)1226/06-07(02)]</p> <p>Professor G G WANG [CB(2)1168/06-07(04)]</p> <p>Democratic Party [CB(2)1226/06-07(03)]</p> <p>Association of Mainland Overseas Returned Scholars in Hong Kong [CB(2)1226/06-07(07)]</p> <p>Hong Kong Human Rights Monitor</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(a) The scope of the Bill should be extended to cover discrimination against new arrivals from the Mainland by adding the following grounds of discrimination to be addressed by the Bill -</p> <ul style="list-style-type: none"> <li>- language,</li> <li>- origin from any place outsider HKSAR,</li> <li>- nationality,</li> <li>- residency status, or</li> <li>- immigrant status or former immigrant status.</li> </ul> <p>(b) "National origin" in the definition of "race" under the Bill should be interpreted to include "origin from any place outside HKSAR".</p> <p>(c) Definition of "race" should include new arrivals from the Mainland, following examples in Australian/New Zealand law.</p> <p>(d) Policies such as imposition of the seven years' residency requirement for welfare benefits are discriminatory against new arrivals from the Mainland.</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
<p>International Social Service - Hong Kong Branch</p> <p>Hong Kong General Chamber of Commerce (HKGCC) [CB(2)1147/06-07(01)]</p> <p>The Federation of Hong Kong &amp; Kowloon Labour Unions [CB(2)1168/06-07(06)]</p>	<p>(e) New arrivals from the Mainland should not be included within the scope of protection of the Bill, as the existing level of resources/assistance available to them is already adequate and designating them as a protected category may marginalise and segregate them from society.</p> <p>(f) Given the difficulties of identifying who will be qualified as "recent arrivals from Mainland China", it will be more appropriate to address discrimination against new arrivals through public education instead of including them within the scope of protection of the Bill.</p> <p>(g) The meaning of "race" and "racial group" should be clearly defined to avoid misunderstanding and claims.</p>
<p>II. <u>Criteria for determining "justifiability"</u></p>	
<p>Equal Opportunities Commission (EOC) [CB(2)1168/06-07(05)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p> <p>Hong Kong Against Racial</p>	<p>(a) The Bill contains provisions regarding what is a justifiable requirement or condition which are not found in other anti-discrimination ordinances.</p> <p>(b) Reference should be made to relevant legislation in the European Union in defining the scope of "indirect discrimination" under the Bill.</p>

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Discrimination  Hong Kong Integrated Nepalese Society (HKINS) [CB(2)1168/06-07(02)]	<p>(c) The test for indirect discrimination is too onerous and not found in the legislation of other common law jurisdictions. Clause 4 (Racial discrimination) and clause 58 (Exception for languages) will render the Bill ineffective in offering protection against indirect discrimination.</p> <p>(d) The policy of imposing the entry requirement of a pass in the Hong Kong Certificate of Education Examination in "Chinese Language" for a number of civil service posts without justifications is discriminatory against ethnic minorities.</p>
<b>III. <u>Discrimination on the ground of language or religion and other forms of discrimination</u></b>	
Society for Community Organisation [CB(2)1168/06-07(01)]  Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]  Far East Overseas Nepalese Association	<p>(a) The Bill should make provisions to explicitly provide that discrimination on the ground of language is not allowed so as to protect ethnic minorities from being denied access to government services due to language barrier.</p>

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<p>[CB(2)1226/06-07(05)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p> <p>Hong Kong Against Racial Discrimination</p>	
<p>Hong Kong Coalition of Indonesian Migrants Workers Organisation [CB(2)1226/06-07(05)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p> <p>Civic Party [CB(2)1243/06-07(02)]</p>	<p>(b) The Government is obliged under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to legislate against discrimination on the ground of religion, and a holistic approach for prohibiting various forms of discrimination should be adopted, including discrimination on the ground of language, religion, political opinion, birth or other status.</p>

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IV. <u>Discrimination on the ground of race of near relative</u>	
Mr Y K CHONG [CB(2)1226/06-07(04)]  Equal Opportunities Commission [CB(2)1168/06-07(05)]	(a) The Bill covers only near relatives whereas a similar concept of transferred discrimination in the Disability Discrimination Ordinance covers a wider range of people (i.e., associates).
<b>Discrimination and harassment in employment field</b> (Clauses 10 to 25)	
I. <u>Exception for small employers with not more than five employees during the first three years of the enactment of the Bill</u>	
Democratic Party [CB(2)1226/06-07(03)]  Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]  International Social Service - Hong	(a) To reduce the three-year transitional period for small employers to one year or less.

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Kong Branch  Christian Action  Mr Y K CHONG [CB(2)1226/06-07(04)]	
Hong Kong General Chamber of Commerce [CB(2)1147/06-07(01)]	(b) The transitional period of one year is too short, and the Administration should deploy sufficient resources to necessary publicity work to explain in detail the requirements contained in the Bill to small to medium enterprises (SMEs).
New Territories General Chamber of Commerce	(c) The exemption for small employers should be granted on a permanent basis.
<b>II. <u>Exception for existing employment on local and overseas terms of employment</u></b>	
Employers' Federation of Hong Kong [CB(2)1202/06-07(01)]  Hong Kong General Chamber of	(a) The exception should be allowed in order to attract and retain talent, both local and overseas.  (b) EOO/HKU supports the exception as it will allow the University to offer competitive remuneration package to attract competent appointees.

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
Commerce [CB(2)1147/06-07(01)]  The British Chamber of Commerce in Hong Kong  Equal Opportunity Officer, The University of Hong Kong (EEO/HKU) [CB(2)1168/06-07(10)]	
Mr Y K CHONG [CB(2)1226/06-07(04)]	(c) The exception may violate Article 26 of ICCPR and the International Labour Organisation conventions applicable to Hong Kong.
III. <u>Exception for genuine occupational qualification</u>	
Mr Y K CHONG [CB(2)1226/06-07(04)]  Civic Party [CB(2)1243/06-07(02)]	(a) The exception may be abused by employers in recruitment and its application should be restricted by applying an objective test.



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<b>IV. <u>Meaning of employment at establishment in Hong Kong</u></b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	(a) 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.
<b>V. <u>Qualifying bodies</u></b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	(a) It is an over-legislation to allow imposition of requirement for language proficiency by qualifying bodies under clause 19(2).
<b>VI. <u>Vocational training</u></b>	
Vocational Training Council [CB(2)1202/06-07(03)]	(a) The exception for medium of instruction and arrangements regarding holidays in education and training bodies under clause 20(2)) is supported.
Civic Party [CB(2)1243/06-07(02)]	(b) Clause 20(2) will allow vocational training institutes to continue to ignore the demands of ethnic minorities for special arrangement to be made to cater for their special language needs.
<b>Education</b> (Clauses 26, 49 and 58)	

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
<b>I. <u>No mandatory requirement for modification of arrangement for medium of instruction in educational establishments</u></b>	
<p>Hong Kong Unison Limited [CB(2)1226/06-07(01)]</p> <p>Democratic Party [CB(2)1226/06-07(03)]</p> <p>Pakistan Islamic Welfare Union [CB(2)1168/06-07(03)]</p> <p>Society for Community Organisation [CB(2)1168/06-07(01)]</p> <p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>(a) The Bill fails to bring about any improvement to the problem of language barrier suffered by ethnic minority students whose educational opportunities will continue to be undermined.</p> <p>(b) The exception for language will allow schools to refuse providing English translation or translation in any other languages to cater for the special needs of students.</p> <p>(c) While ethnic minority children may study in Chinese schools under the new school allocation system, no support measures (e.g. special training for teachers) are provided to these schools to cater for the needs of these students.</p> <p>(d) Ethnic minority students are in need of the provision of a tailor-made Chinese curriculum for them, school circulars in English, and Chinese tutorials to assist them learn Chinese and integrate into mainstream education.</p> <p>(e) The 15 designated schools should recruit ethnic minority teachers who know Chinese.</p>
<p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(f) Not imposing a mandatory requirement for modification of medium of instruction in educational establishments (clause 26(2)) is supported as English is the medium of instruction mainly used by the University.</p>

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Association of Hong Kong Chinese Middle Schools (the Association) [CB(2)1168/06-07(11)]	(g) The Association is concerned that in the event that clause 26 is deleted from the Bill, the resource implications (e.g. arising from the need to provide services such as translation to ethnic minority students) will be serious.  (h) The Association is concerned that the Bill does not address problems, such as whether ethnic minority students/teachers can demand for special arrangements regarding school uniform/students' hair style or school catering service be made to meet their special needs.
<b>Provision of goods, facilities, services and premises</b> (Clauses 27 to 33 and 58)	
I. <u>Exception for use, or failure to use, particular language in regard to provision of goods, services and facilities, etc.</u>	
Pakistan Islamic Welfare Union [CB(2)1168/06-07(03)]  Hong Kong Unison Limited [CB(2)1226/06-07(01)]  Hong Kong SKH Lady Maclehorse Centre [CB(2)1202/06-07(02)]	(a) Clause 58 will legitimise existing discriminatory practices, such as the Labour Department advertising job vacancies in Chinese only, and public hospitals refusing to provide translation service for ethnic minorities, and the exception will reinforce the language barrier of ethnic minorities and deprive them of equal opportunities in gaining access to social services.  (b) The exception for the government's or private sectors' failure to provide translation service in important fields, e.g. education, employment, medical service, police, legal aid, housing, etc., should be removed.

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<p>Employers' Federation of Hong Kong [CB(2)1202/06-07(01)]</p> <p>Hong Kong New Territories Commercial and Industrial General Association Yuen Mun Branch [CB(2)1219/06-07(02)]</p> <p>Hong Kong General Chamber of Commerce (HKGCC) [CB(2)1147/06-07(01)]</p> <p>Hong Kong Federation of Insurers [CB(2)1168/06-07(07)]</p> <p>Yau Tsim Mong Committee on Promotion of Hong Kong Economy (YTMCPHKE) [CB(2)1168/06-07(09)]</p>	<p>(c) The Federation welcomes the exception for languages for the provision of goods and services.</p> <p>(d) It will not be appropriate to prescribe that both Chinese and English are required in all circumstances, since the Basic Law states that both Chinese and English are Hong Kong's official languages.</p> <p>(e) YTMCPHKE considers that as Hong Kong is a metropolitan city and English is commonly used, business enterprises should not be required to use any particular language other than Chinese and English for communication with customers.</p>

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<b>II. <u>Exceptions for small dwellings</u></b>	
Mr Y K CHONG [CB(2)1226/06-07(04)]	(a) The Administration should explain the rationale of providing for such exceptions.
<b>III. <u>Exceptions for voluntary bodies</u></b>	
Civic Party [CB(2)1243/06-07(02)]	(a) It is worried that the exception will give rise to groups or voluntary bodies which promote racial hatred and discrimination.
<b>Matters not affected by Parts 3, 4 or 5 of the Bill</b> (Clauses 49 to 59)	
<b>I. <u>Special measures</u></b>	
Dr James Joseph KEEZHANGATTE [CB(2)1243/06-07(01)]  Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]	(a) Reference should be made to relevant legislation in the United States and make provisions to permit affirmative action to be taken under the Bill to meet the special needs of ethnic minorities.  (b) Service providers in the public sector and educational/training institutions should be imposed a mandatory requirement to adopt special measures (e.g. providing interpretation services) to ensure equal treatment of ethnic minorities.

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
<p>Hong Kong SKH Lady Macle hose Centre [CB(2)1202/06-07(02)]</p> <p>Vocational Training Council (VTC) [CB(2)1202/06-07(03)]</p> <p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(c) VTC supports the exception for the special measures which are intended for bestowing benefits on ethnic minorities and promoting equal opportunities for them under clause 49.</p> <p>(d) EOO/HKU supports the exception as the University may need to make some special administrative arrangements (e.g. to guarantee hostel places to non-local students)</p>
<p>II. <u>Charities</u></p>	
<p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(a) The exception for charities would allow the University flexibility in administering scholarships/awards.</p>
<p>III. <u>Nationality law, etc. not affected</u></p>	
<p>Equal Opportunity Officer, The University of Hong Kong [CB(2)1168/06-07(10)]</p>	<p>(a) The exception is supported as it will allow the University to continue to administer benefits/assistance that are only available to local students such as the University Financial Assistance, most scholarships, grants and loans, etc.</p>
<p>Mr Y K CHONG</p>	<p>(b) The exception should be deleted as it is too broad and unnecessary.</p>

<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
[CB(2)1226/06-07(04)]	
<b>IV. <u>Exception for immigration legislation</u></b>	
<p>Hong Kong Integrated Nepalese Society [CB(2)1168/06-07(02)]</p> <p>Society for Community Organisation &amp; Voices of the Rights of Asylum Seekers and Refugees [CB(2)1168/06-07(01)]</p> <p>Coalition for Migrants Rights [CB(2)1226/06-07(05)]</p> <p>Filipinos Domestic Helper General Union [CB(2)1226/06-07(05)]</p> <p>Indonesian Migrant Workers Union [CB(2)1226/06-07(05)]</p>	<p>(a) The Immigration Ordinance should not be excluded from coverage of the Bill.</p> <p>(b) Asylum seekers, refugees and torture claimants should be included as protected groups under the Bill. The existing Immigration Ordinance, which renders no protection for these people, is indirectly discriminatory against people who mainly come from Africa and Southeast Asian regions.</p> <p>(c) It is unreasonable to require ethnic minorities who wish to obtain HKSAR passports to undergo interviews/tests in Chinese and to reject applicants who are not proficient in Chinese language.</p> <p>(d) Existing immigration legislation/policies (e.g. "New Conditions of Stay", "Two-week Rule", the levy on foreign domestic workers' (FDWs') employers, and the Immigration Ordinance which splits ethnic minority families and new immigrant family apart) are discriminatory against FDWs and should be reviewed in the light of the Bill.</p> <p>(e) EOC should be empowered to extend the visas of FDWs involved in cases of contract violation so that they would not be forced to return to their place of origin without being given the chance to seek proper redress.</p>

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<p>Hong Kong Coalition of Indonesian Migrants Workers Organisation [CB(2)1226/06-07(05)]</p> <p>Association of Indonesian Migrant Workers [CB(2)1226/06-07(08)]</p>	<p>(f) The right to participate in labour unions should be protected by ensuring that migrant workers are issued visas for their union work.</p> <p>(g) The visa ban in respect of Nepalese migrant workers contradicts the provisions of the Bill and should be abolished.</p>
<p>Mr Y K CHONG [CB(2)1226/06-07(04)]</p>	<p>(h) Exemptions concerning immigration legislation, statutory requirements, application to New Territories land, and languages should all be justified by applying the proportionality test.</p>
<p><b>Equal Opportunities Commission</b> (Clauses 60 to 85)</p>	
<p>Society for Community Organisation [CB(2)1168/06-07(01)]</p> <p>Hong Kong Human Rights Commission [CB(2)1168/06-07(01)]</p>	<p>(a) EOC should be empowered to regularly review existing policies in the light of provisions of the Bill.</p> <p>(b) Ethnic minority representatives should be appointed as members of EOC.</p> <p>(c) EOC should make available multilingual services in handling complaints lodged under the</p>



<b>Deputation/Individual [LC Paper no. of submission]</b>	<b>Major issues</b>
Mr Y K CHONG [CB(2)1226/06-07(04)]	<p>Bill, and EOC should be given adequate resources for implementation of the Bill after its enactment, e.g. adequate translation service support throughout the process of handling such complaints.</p> <p>(d) The body responsible for implementing the Bill should comply with the Paris Principles, should include members from diverse backgrounds to reflect the ethnic diversity of the society, and should be empowered to bring civil proceedings against those who have performed discriminatory acts and to advise private or public bodies on compliance with the requirements of the Bill.</p>