

Bills Committee on Race Discrimination Bill
List of issues raised by members
(as at 17.4.07)

	Issues	Administration's response (LC Paper No.)
I.	Application to new arrivals from the Mainland	
(1)	To consider deleting clause 8(3) so that the scope of the Bill can cover new arrivals from the Mainland, and whether the Secretary for Home Affairs would withdraw the Bill if clause 8(3) is deleted during the Committee Stage of the whole Council.	
(2)	To examine whether the definition of "race" in relevant overseas legislation is restricted to race only or other considerations are also included.	CB(2)963/06-07(02)
(3)	To explain measures taken by the Administration in various areas, particularly in public education, to address the problem of discrimination against new arrivals from the Mainland.	
(4)	To explain the impact of waiving the seven-year residency requirements imposed on new arrivals from the Mainland, and the areas in which the Administration anticipated that a lot of litigations might arise if these new arrivals are covered by the Bill.	
(5)	To provide information on how the eligibility of new immigrants for receiving social services/welfare is regulated in overseas countries (e.g. by imposition of residency requirement) and the Administration's justification for imposing the same or similar requirements on the new arrivals from the Mainland.	
(6)	To provide information on the ethnic groups in the People's Republic of China and clarification on whether people belonging to these ethnic groups will be protected from discrimination on the ground of national origin under the Bill.	

	Issues	Administration's response (LC Paper No.)
II.	Education and vocational training	
(1)	To explain the policy and legal considerations for not imposing an obligation for affirmative action under the Bill.	CB(2)1152/06-07(01)
(2)	To explain the scope of affirmative action referred to in paragraph 18 of the Administration's paper entitled "Affirmative action" [LC Paper No. CB(2)1152/06-07(01)], and to provide a summary and analysis of the minority judgments of the United States Supreme Court on the three cases concerning university admission policies set out in the Annex to this paper.	CB(2)1351/06-07(01) -- Summary and analysis of the minority judgments
(3)	To consider taking affirmative action to resolve the problem of lack of avenue provided to non-Chinese speaking (NCS) students to attain qualifications in Chinese for admission to universities.	CB(2)1019/06-07(01) CB(2)1152/06-07(01)
(4)	To advise whether the admission of non-local students subject to a 10% quota by University Grants Committee (UGC)-funded institutions, who are predominantly Mainland students and do not need to meet the Chinese Language requirement applicable to local students, will be regarded as racial discrimination under the Bill against local NCS students.	CB(2)1351/06-07(02)
(5)	To consider allocating a quota for admitting NCS students to UGC-funded institutions (e.g. in the form of a quota for NCS students on top of the approved student number of 14 500 for first-year-first degree programmes or a quota within the approved student number) for students who participate in the General Certificate of Secondary Education (GCSE) (Chinese) examination in Hong Kong, and whether such a quota system will be allowed under clause 49 or challenged as in breach of the Basic Law or Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), or Article 2 of the International Covenant on Civil and Political Rights (ICCPR).	CB(2)1351/06-07(02)

	Issues	Administration's response (LC Paper No.)
(6)	To explain whether clause 49(c) as currently drafted will allow a university to set a quota for NCS students for admission to its first-year-first-degree programmes.	CB(2)1351/06-07(02)
(7)	To advise whether the Administration will give an undertaking as a matter of policy that it will take long-term administrative measures which will have the effect of implementing affirmative action under clause 49 to support NCS students, if the suggestion of allocating a quota is not considered.	CB(2)1019/06-07(01) CB(2)1351/06-07(02)
(8)	To explain why a defence can be established under clause 49 for implementing special support measures intending to bestow benefits on ethnic minorities, e.g. the special support measures to help NCS student to learn Chinese and inviting the UGC-funded institutions to consider accepting alternative qualifications in Chinese in considering admission of these students, having regard to the argument that provision of concessionary fares to persons with a disability may constitute a contravention of the Disability Discrimination Ordinance and the High Court's ruling in the case of <i>Equal Opportunities Commission v Director of Education [2001]</i> that the then Secondary School Places Allocation system was unlawfully sex-discriminatory.	CB(2)1152/06-07(03)
(9)	To explain whether the imposition of the Chinese Language requirement for entry to universities on all local students, which has put NCS students at a great disadvantage, constitutes indirect discrimination.	
(10)	To explain whether it will be allowed under clause 49 for a university to give favourable weighting in its admission system to ethnic minority students (provided that they meet the English Language requirement and a lower-level Chinese Language requirement) for the sake of achieving racial diversity in student population.	

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(11)	To consider how to prevent abuses by non-NCS students if alternative qualifications in Chinese e.g. GCSE (Chinese) examination, are recognised by universities, and Mr Howard YOUNG's suggestion that students taking the GCSE (Chinese) examination be required to get supplementary credits from any other spoken language.	
(12)	To provide information on the academic attainment of ethnic minority students in public examinations and the number of these students who had been admitted to local universities.	CB(2)1351/06-07(02)
(13)	To provide the numbers of local NCS students studying in local universities.	
(14)	To provide the number of places available for Chinese Language teachers of the designated schools to participate in the relevant training programmes and the number of these teachers; and the demand for and resources allocated to the provision of special support measures (including provision of remedial programmes) to cater for the specific needs in language of NCS students.	CB(2)1351/06-07(02)
(15)	To provide details of the Belgian Linguistics Case (1968) 1EHRR 252 and relevant citation/judgment.	CB(2)1152/06-07(02)
(16)	To explain how the specific needs of ethnic minorities, who have difficulties with both Chinese and English, in receiving vocational training will be met.	CB(2)1019/06-07(01) CB(2)1351/06-07(02)
III.	Provision of goods, facilities and services	
(1)	To provide further justification for the exception for use, or failure to use, particular language in regard to the provision of goods, services and facilities.	
(2)	To explain the circumstances under which it is not practicable for Government departments to use English (which is an official language) in their provision of goods, facilities and services to the public.	

	Issues	Administration's response (LC Paper No.)
(3)	To follow up the complaints made by deputations that ethnic minorities are unable to receive appropriate medical treatment at public hospitals/clinics due to language problem, and to provide the number of complaints lodged by ethnic minorities to the Administration and other public organisations in the past few years about failures of public hospitals/clinics to provide translation services to cater for NCS service users as well as information on any public organisations/government departments which only use Chinese in their provision of services to the public.	
IV.	Discrimination by, or in relation to, barristers	
(1)	To provide detailed justification for singling out barristers in the Bill in relation to discrimination on the ground of race against a person seeking pupillage or tenancy, or who is a pupil or tenant, in barrister's chambers.	
(2)	To consider the alternative of covering a field of non-employment pupillage instead of singling out a profession.	
V.	Employment	
(1)	To provide further justification for exempting small businesses employing not more than five employees during the first three years of the enactment of the Bill.	
(2)	To provide justification for the exception relating to the choice of an employer at the point of recruitment of a domestic helper.	
(3)	To provide further justification for the exceptions for existing differential treatment on local and overseas terms of employment as well as overseas terms of employment.	
VI.	Immigration legislation and resident status	
(1)	To provide justification for the exception for immigration legislation.	

	Issues	Administration's response (LC Paper No.)
VII.	Conformity with the Basic Law and international human rights treaties	
(1)	To explain how the Bill as presently drafted is in conformity with Article 25 of the Basic Law i.e., "All Hong Kong residents shall be equal before the law".	CB(2)963/06-07(03) CB(2)1019/06-07(04)
(2)	To explain how the Bill as presently drafted meets the obligations under various international human right treaties applicable to Hong Kong, such as the International Convention on the Elimination of All Forms of Racial Discrimination, ICCPR and ICESCR.	CB(2)963/06-07(03)
VIII.	Other issues	
(1)	To provide a paper comparing the scope and exemptions of the Bill with those in overseas legislation against racial discrimination.	
(2)	To confirm whether graphics or accents used will be regarded as part of the advertisement in determining whether the advertisement is of a discriminatory nature.	CB(2)1019/06-07(02)
(3)	To consider whether discrimination on the ground of religion should be covered by the Bill.	
(4)	To consider providing detailed guidelines on whether using "鬼佬" or "阿差" to address an ethnic minority will constitute racial discrimination under the Bill.	
(5)	To consider whether consequential amendments to other ordinances (in addition to those already proposed in the Bill) will be necessary, such as the Road Traffic Ordinance in relation to the requirement to wear crash helmets.	CB(2)1019/06-07(03)