

Bills Committee on Race Discrimination Bill
Outstanding issues raised during the clause-by-clause examination
 (as at 30.05.08)

Clause	Contents and relevant issues	Meeting date
2	Interpretation	
	<p>(a) To follow up on the concern raised by the Hong Kong Bar Association regarding the definition of "club" which requires that the association has to sell or supply liquor for consumption on its premises and thus would have the effect of excluding clubs or associations catering for a membership that share the Muslim faith;</p> <p>(b) To review the definition of "estate agent" for consistency with the definition of the same term in the Estate Agents Ordinance (Cap. 511), and to consider making the same amendment to the Sex Discrimination Ordinance (Cap. 480) (SDO);</p> <p>(c) To consider the view that the definition of "near relative" is self-contradictory as it includes "brother or sister...(by affinity)" but excludes parents-in-law; and</p> <p>(d) To review relevant provisions in the existing anti-discrimination ordinances on which the drafting of Clause 2(5) and Clause 56 is modeled, and to consider whether the relevant provisions should be amended to the effect that the "requirement" in Clause 56 would not be restricted to requirements of existing statutory provisions only, but should include future legislation.</p>	7 Dec 07 and 26 May 08
4	Racial discrimination	
	<p>(a) To discuss with the Equal Opportunities Commission (EOC) as to whether relevant guidelines regarding the interpretation of the term "segregation" in Clause 4(6) could be included in the future codes of practice and report to members on the discussion; and</p> <p>(b) To consider deleting the expression "It is declared that," ("現宣布：") in the proposed provision.</p>	7 Dec 07
5	Discrimination on the ground of near relative	
	To consider deleting Clause 5 to avoid causing confusion arising from the unclear meaning of "near relative".	7 Dec 07

Clause	Contents and relevant issues	Meeting date
7	Racial harassment	
	(a) To address the concerns that the reference to "near relative" might cause confusion and the express reference to the test of a reasonable person in Clause 7(1) would exclude the subjective perception of the victim from being considered by the court in considering whether there is an act of racial harassment; and (b) To consider whether Clause 7(2) should also cover environment in which a person carries out recreational activities.	7 Dec 07 13 Dec 07
8	Meaning of "race", "on the ground of race", "racial group" and comparison of cases of persons or different racial groups	
	To address the concern that Clause 8(2) and Clause 8(3)(d) would have the effect of exempting any blatant racial discriminatory act claimed to be done on the ground of a person's "nationality".	13 Dec 07
10	Discrimination against applicants and employees	
	To provide the number of companies in Hong Kong hiring not more than five employees.	13 Dec 07
12	Exception for employment intended to provide training in skills to be exercised outside Hong Kong	
	To review the drafting of Clause 12 for the purpose of achieving clearly the policy intent of providing for an exception for employment intended to provide training in skills to be exercised outside Hong Kong for the benefit of the employees as described.	13 Dec 07
15	Discrimination against contract workers	
	To examine whether there is any need for clarification regarding protection for contract workers who work under a sub-contract which is not made directly with the principal.	13 Feb 08
26	Discrimination by responsible bodies for educational establishment	
	To review the drafting of Clause 26(2)(b) for the purpose of improving the clarity regarding its scope.	16 Apr 08

Clause	Contents and relevant issues	Meeting date
Clause 18 Clause 36	Trade unions, etc. Discrimination by clubs	
	<p>(a) To improve the wording of the heading to specify more clearly the organizations to be covered under the provision;</p> <p>(b) To provide information on the number of trade organizations which comprise exclusively of members of the same race;</p> <p>(c) To explain from policy perspective whether these trade organizations should also be exempted under Clause 18 or other appropriate provision and the rationale for such an exemption if provided; and</p> <p>(d) To consider whether grandfathering arrangement should be provided for existing trade organizations of this nature.</p>	6 May 08
Clause 34	Discrimination in eligibility to stand for election, etc.	
	To review the need for Clause 34(2).	21 Apr 08
Clause 38 Clause 39	Educational establishments Other harassment	
	To consider including government acts within the scope of these two provisions.	21 Apr 08
Clause 45	Vilification	
	<p>(a) To consider whether Clause 45(2)(b) should be amended to cover an activity in public that is a communication or the distribution or dissemination of any matters; and consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; and</p> <p>(b) To explain from policy point of view activities to be regulated under the provision and elaborate (with some other examples) on the liability to be borne by persons concerned in a situation where a person communicates to his friends only, through the internet, messages which incite hatred against persons of a particular race and his friend subsequently disseminates the messages through the internet to the public.</p>	26 May 08

Clause	Contents and relevant issues	Meeting date
Clause 46	Offence of serious vilification	
	<p>(a) To amend Clause 46(1) which refers to "activity in public ... which includes threatening ... or inciting others to threaten .." in order to make it clear that the threat or the incitement of threat is a necessary element of the activity in public which would constitute serious vilification; and</p> <p>(b) To clarify its policy whether an objective or subjective test would apply for the mens rea of the offence and whether inchoate offences would be included if the provision targets the act of incitement.</p>	26 May 08
Clause 54	Nationality law, etc. not affected	
	To explain the difference in scope between Clause 54 and section 21(2) of SDO and the justification for such difference.	6 May 08
Clause 55	Immigration legislation	
	To justify the need/rationale for this provision (a) if it is meant to cover application of relevant legislation on the basis of nationality given that Clause 8(3) is included in the Bill or (b) if it is meant to cover relevant legislation relating to acquirement of nationality, citizenship, resident status or naturalization given that such matter has been governed by Article 24 of Basic Law.	6 May 08
Clause 64	Codes of practice	
	To move a Committee Stage amendment (CSA) to Clause 64(3) to replace the "Secretary for Home Affairs" with the "Secretary for Constitutional and Mainland Affairs".	26 May 08
Clause 65	Power to conduct formal investigation	
	To consider the suggestion of re-drafting the clause as "Without limiting section 60, the Commission may, if it thinks fit, and shall, if required by the Chief Secretary for Administration, conduct a formal investigation...".	26 May 08
Clause 80	Assistance other than by way of conciliation	
	To provide information on how EOC has exercised its powers to initiate legal proceedings on behalf of victims under the existing anti-discrimination laws in Hong Kong.	13 Dec 07

Clause	Contents and relevant issues	Meeting date
Clause 84	Regulations to empower Commission to bring certain proceedings	
	To move a CSA to Clause 84 to replace the "Secretary for Home Affairs" with the "Secretary for Constitutional and Mainland Affairs".	26 May 08
Schedule 2	Employees in existing employment	
	<p>(a) To move CSAs to paragraphs 9 and 11(b) and any other provisions in the Bill where reference is made to the Education and Manpower Bureau (EMB) replacing EMB with the Education Bureau;</p> <p>(b) To consider whether it is appropriate to include judicial officers as employees given that judicial officers are not regarded as "employees" under the law; and</p> <p>(c) To provide a separate paper to explain the rationale for adopting the dates in paragraphs 3(a)(i) & (b)(i), 4(a)(i), 4(b)(i), and 5(a) respectively.</p>	13 Dec 07
Others	<p>To provide written responses to -</p> <p>(a) the list of questions on specific provisions of the Bill provided by Hon CHOY So-yuk [LC Paper No. CB(2)1249/06-07(01)]; and</p> <p>(b) the summary on "Views received from deputations/individuals on specific clauses of the Bill" [LC Paper No. CB(2)1030/07-08(01)].</p>	