

RACE DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating;” and substituting “to amend certain definitions, and the provisions on discrimination against contract workers, in existing anti-discrimination legislation as well as the provision on unlawful sexual harassment by creating a hostile or intimidating environment in the Sex Discrimination Ordinance for alignment with corresponding provisions in this Ordinance;”.
1(2)	By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.
2(1)	In the definition of “club”, by deleting everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”.
2(1)	By deleting the definition of “estate agent” and substituting – ““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”.
2(1)	By deleting the definition of “near relative” and substituting – ““near relative” (近親), in relation to a person, means – (a) the person’s spouse; (b) a parent of the person or of the spouse;

- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

3 By deleting the clause and substituting –

“3. Application to Government

This Ordinance binds the Government.”.

4 By deleting subclauses (2), (3), (4) and (5) and substituting –

(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.”.

7(2) By deleting everything after “that” and substituting “creates a hostile or intimidating environment for the second-mentioned person.”.

15(1) By deleting everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

15 By adding -

“(7) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person

directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

18 By deleting the heading and substituting –

“18. Organizations of workers or employers or professional or trade organizations, etc.”.

18 By deleting subclause (5) and substituting –

“(5) Where, immediately before the enactment of this Ordinance, the main object of an organization to which this section applies was to enable the benefits of membership to be enjoyed by persons of a particular racial group (defined otherwise than by reference to colour), and that continues to be its main object on or after that enactment, this section is not to be construed as affecting that object and does not render unlawful an act that is done in order to give effect to that object.”.

18(6) By deleting “an organization of workers, an organization of employers, or an organization of both workers and employers” and substituting “an organization to which this section applies”.

20(2)(b) By deleting “on those matters” and substituting “regarding holidays or medium of instruction”.

26 By deleting subclause (2)(b) and substituting -

“(b) to make different arrangements regarding holidays or medium of instruction for persons of any racial group.”.

34 By deleting subclause (2).

44(1)(b) In the English text, by deleting “threatening” and substituting “threatening to subject”.

45 By deleting subclause (2)(b) and substituting –

“(b) an activity in public that –

(i) is a communication or the distribution or dissemination of any matter; and

(ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

46(1) By deleting “which includes” and substituting “and the activity consists of”.

64(3) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.

65 By deleting the clause and substituting –

“65. Power to conduct formal investigations

Without limiting section 60 –

(a) if the Commission thinks fit, it may conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section; and

(b) if required by the Chief Secretary for Administration, the Commission shall conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.”.

71(1) (a) By deleting paragraph (b).

(b) In paragraph (c), by deleting “or” at the end.

(c) In paragraph (d), by deleting the comma and substituting “; or”.

(d) By adding –
“(e) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (c) against the claimant or an act referred to in paragraph (d),”.

72(5) By deleting “67(4)” and substituting “67(5)”.

81(3) By deleting “conciliation under section 79 was concluded” and substituting “the complaint was disposed of under section 79(3) or (4)”.

84(1) By deleting “Secretary for Home Affairs” and substituting “Secretary for Constitutional and Mainland Affairs”.

89 By deleting the cross-heading immediately before the clause and the clause.

93 By deleting the clause and substituting –

“93. Interpretation

(1) Section 2(1) of the Sex Discrimination Ordinance (Cap. 480) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding -

““near relative” (近親), in relation to a person,

means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;
- (e) a grandparent of the person or of the spouse; or
- (f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

- (2) Section 2(4) is repealed.
- (3) Section 2(5)(b) is amended by repealing “sexually” and “work”.
- (4) Section 2(6) is repealed.”.

“93A. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 13 is amended by adding –

“(5) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93B. Discrimination in disposal or management of premises

Section 29(3) is amended, in the Chinese text, by repealing “地產中介人” and substituting “地產代理”.

93C. Claims under Part III or IV

Section 76(1) is amended –

(a) by repealing paragraph (b);

(b) in paragraph (c), by repealing the comma and substituting “; or”;

(c) by adding –

“(d) is to be treated, by virtue of section 46 or 47, as having committed an act of discrimination or sexual harassment referred to in paragraph (a) or (c) against the claimant.”.

93D. Period within which proceedings to be brought

Section 86(2A) is amended by repealing “conciliation under section 84 was concluded” and substituting “the complaint was disposed of under section 84(3) or (4)”.

Disability Discrimination Ordinance

93E. Interpretation

(1) Section 2(1) of the Disability Discrimination Ordinance (Cap. 487) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by repealing the definition of “estate agent” and substituting –

““estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);”;

(c) by adding –

““near relative” (近親), in relation to a person, means –

- (a) the person’s spouse;
- (b) a parent of the person or of the spouse;
- (c) a child of the person or the spouse of such a child;
- (d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the

spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

(2) Section 2(5) is repealed.

93F. Discrimination against contract workers

(1) Section 13(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 13 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the

principal has undertaken.”.

93G. Vilification

Section 46(2)(b) is repealed and the following substituted –

“(b) an activity in public that –

- (i) is a communication or the distribution or dissemination of any matter; and
- (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or”.

93H. Offence of serious vilification

Section 47 is amended by repealing “which include” and substituting “and the activity consists of”.

93I. Claims under Part III or IV

Section 72(1)(d) is repealed and the following substituted –

“(d) is to be treated, by virtue of section 48 or 49, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c),”.

93J. Period within which proceedings to be brought

Section 82(2A) is amended by repealing “conciliation under section 80 was concluded” and substituting “the complaint was disposed of under section 80(3) or (4)”.

Family Status Discrimination Ordinance

93K. Interpretation

(1) Section 2(1) of the Family Status Discrimination Ordinance (Cap. 527) is amended –

(a) in the definition of “club”, by repealing everything after “purposes” and substituting “and which provides and maintains its facilities, in whole or in part, from the funds of the association;”;

(b) by adding –

““near relative” (近親), in relation to a person,

means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of such a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of such a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;”.

(2) Section 2(4) is repealed.

93L. Discrimination against contract workers

(1) Section 9(1) is amended by repealing everything after “but” and substituting “by a contractor or sub-contractor of the principal.”.

(2) Section 9 is amended by adding –

“(6) In this section –

“contractor” (承判商) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” (次承判商) means a person who enters into a contract with another person (whether or not a contractor of the principal) to undertake all or any part of the work that a contractor of the principal has undertaken.”.

93M. Period within which proceedings are to be brought

Section 64(3) is amended by repealing “conciliation under section 62 was concluded” and substituting “the complaint was disposed of under section 62(3) or (4)”.

94 By deleting the cross-heading immediately before the clause and the clause.

Schedule 1 In item 14, by deleting “and Manpower”.

Schedule 2, In the English text, by deleting “remains to be” and substituting “remains”.
section 7

Schedule 2, In the English text, by deleting “remains to be” and substituting “remains”.
section 8

Schedule 2, (a) In the English text, by deleting “remains to be” and substituting
section 9 “remains”.

(b) In paragraph (b), by deleting “and Manpower”.

Schedule 2, section 11 (a) In the definition of “public officer”, in paragraph (b), by deleting “and Manpower”.

(b) In the definition of “specified English teacher”, in paragraph (c)(i), by deleting “and Manpower”.