

Bills Committee on Race Discrimination Bill
List of issues raised by members of the Bills Committee
(as at 01.12.07)

	Issues (Relevant Clauses)	Administration's response (LC Paper No.)
I.	Application to Government (Clause 3)	
(1)	To provide justifications for granting broad exemption for the performance of functions and powers of the Government under Clause 3 and the legal effect of the proposed provision. The Administration is required to address the following concerns and views - (a) overseas legislation, such as the Race Relations Act (RRA) 1976 of the United Kingdom (UK), relevant legislation in Australia, and the Charter of Rights in Canada, does not grant such a broad exemption as proposed in Clause 3; (b) a member of the public who has been discriminated against by the Government in performing certain Government functions, e.g. law enforcement, cannot make complaints to the Equal Opportunities Commission (EOC) and can only sue the Government to seek remedy by instituting civil proceedings under the Hong Kong Bill of Rights Ordinance (HKBORO); (c) it is doubtful whether the Government can fulfill adequately its international obligations in the elimination of racial discrimination if Clause 3 as presently worded is included in the Bill; (d) the Administration should provide information on the background in the UK leading to the addition of section 19B to RRA in 2000; (e) the remit of EOC should be expanded so that it can act on complaints lodged under HKBORO; and (f) the concerns raised by Professor Carole Petersen about Clause 3 in her article entitled "Hong Kong's Race Discrimination Bill : A Critique and Comparison with the Sex Discrimination and Disability Discrimination Ordinances (DDO)".	CB(2)513/07-08(02) CB(2)173/07-08(01)

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(2)	To consider whether Clause 3 could be amended to the effect that the Bill would apply to the Government insofar as the performance of functions and duties by public authorities and the making of appointments by the Government are concerned or alternatively by adding provisions similar to sections 19B and 76 of RRA.	Paragraph 42 of CB(2)2753/06-07(01)
(3)	To respond to Mr Ronny TONG's concern that the Government would use Clause 3 as currently worded as a defence in lawsuits filed against the Government under HKBORO concerning alleged discriminatory acts on the ground of race in the performance of functions and powers of the Government and his suggestion that the Administration should amend Clause 3 to reflect clearly the Government's position that it would not do so.	CB(2)362/07-08(01)
(4)	To provide a legal analysis elaborating (with specific examples) on the extent of regulatory control to be imposed on the Government by this Bill and its acts to be excluded by Clause 3, as well as the scope of the Government's legal liability in the area of racial discrimination under HKBORO.	
(5)	To confirm whether the complainant in the hypothetical case of racial discrimination described in paragraph 11 of LC Paper No. CB(2)173/07-08(01) could seek remedies under Article 22 of Hong Kong Bill of Rights.	CB(2)513/07-08(01)
II.	Racial discrimination and criteria for determining "justifiability" (Clause 4)	
(1)	To explain the criteria which should be considered by the public in assessing whether the test of "justifiability" under Clause 4 will be met and provide the relevant guidelines to be issued to the public after enactment of the Bill.	CB(2)1823/06-07(01)
(2)	To explain the basis of applying the rationality and proportionality test and the practicability test to justify the application of a requirement or condition under Clause 4(1)(b), given that the fundamental right to have equal and effective protection before the law without any discrimination under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) is an unqualified one.	

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(3)	To provide the General Comments issued by the United Nations Human Rights Committee relating to the application of the rationality and proportionality principle.	CB(2)2753/06-07(02)
(4)	To confirm whether the implementation of the new Obstetric Package Charge for Non-eligible Persons whose husbands are Hong Kong residents constitutes racial discrimination, given that it has the effect of putting these pregnant women who are predominantly Chinese at a disadvantage as compared with pregnant women of other races whose husbands are also Hong Kong residents.	
(5)	To explain the differences between the test of "reasonable practicability" under Clause 4(2) of the Bill and the defence of "unjustifiable hardship" in DDO, and the reasons for the differences.	CB(2)2231/06-07(03)
(6)	To consider whether Clause 4(1)(b) could be revised to incorporate the new subsections (1A)-(1C) added to section 1 RRA in 2003 in order to expand the scope of indirect discrimination under the Bill.	Paragraph 42 of CB(2)2753/06-07(01)
III.	Meaning of "on the ground of race" and application to new arrivals from the Mainland (Clause 8)	
(1)	To consider deleting Clause 8(3) so that the scope of the Bill can cover new arrivals from the Mainland, and whether the responsible Policy Secretary will 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, in the past five years to address the problem of discrimination against new arrivals from the Mainland (including the resources allocated for such measures) and the assessment on the effectiveness of such measures.	CB(2)2753/06-07(03)

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(4)	To explain the impact of waiving the seven-year residency requirement imposed on new arrivals from the Mainland, and the areas in which the Administration anticipates that a lot of litigations may 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, as well as the number of cases in the past one year in which the Director of Social Welfare exercised discretion to waive the residence requirement for the provision of Comprehensive Social Security Assistance.	
(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.	
(7)	To explain why inclusion of new arrivals from the Mainland within the scope of the Bill will adversely affect their integration into Hong Kong whereas granting protection to ethnic minorities by this Bill will not have the same effect.	
(8)	To set out the major policy measures or concrete sets of circumstances which would be covered by the exceptions provided for under Clauses 8(2) and (3).	
(9)	To consider whether Clause 8(2) and (3) could be amended so that new arrivals from the Mainland would be included within the scope of the Bill with necessary exceptions be made either in Clause 8 or in Schedule 5.	Paragraph 42 of CB(2)2753/06-07(01)
IV.	Education and vocational training (Clauses 20, 26, 49 & 58)	
(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 LC Paper No. CB(2)1152/06-07(01).	

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(3)	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 LC Paper No. CB(2)1152/06-07(01).	CB(2)1351/06-07(01)
(4)	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)
(5)	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)
(6)	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 ICCPR.	CB(2)1351/06-07(02)
(7)	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)
(8)	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)
(9)	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	CB(2)1152/06-07(03)

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	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 DDO 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.	
(10)	To explain whether the imposition of the requirement of obtaining a pass in Chinese Language and Culture in the Hong Kong Advanced Level Examination for university admission on all local students, which puts NCS students at a great disadvantage, constitutes indirect discrimination.	
(11)	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.	Paragraph 10 of CB(2)2573/06-07(01)
(12)	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 should be required to get supplementary credits from any other spoken language.	Paragraphs 5 and 7 of CB(2)2573/06-07(01)
(13)	To provide information on the academic attainment of ethnic minority students in public examinations and the number of these students who have been admitted to local universities.	CB(2)1351/06-07(02)
(14)	To provide the number of local NCS students studying in local universities.	CB(2)377/07-08(01)
(15)	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)

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(16)	To provide details of the Belgian Linguistics Case (1968) 1EHRR 252 and relevant citation/judgment.	CB(2)1152/06-07(02)
(17)	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)
(18)	To consider Mr Howard YOUNG's suggestion that a provision should be made requiring universities to apply a less stringent Chinese Language entry requirement to NCS students and, in this regard, reference should be made to similar measures in the UK where only non-local students were allowed to sit for the GCSE examination.	Paragraphs 5 to 9 of CB(2)2573/06-07(01)
(19)	To liaise with the Education Bureau for the timeframe of reverting to the Bills Committee on the outcome of the Bureau's discussion with the universities on the feasibility of accepting alternative qualifications in Chinese.	CB(2)2573/06-07(01)
(20)	To provide the result of the Administration's latest discussion with the eight institutions funded by UGC on acceptance of alternative qualifications in Chinese e.g. GCSE (Chinese) examination, for admission to universities.	CB(2)2573/06-07(01) CB(2)377/07-08(01)
(21)	To request the UGC-funded institutions to fully implement the proposed new arrangements for university admission in 2008 and to consider whether the four NCS students mentioned in paragraph 4 of LC Paper No. CB(2)377/07-08(01) could be favourably considered for admission to universities in accordance with the proposed new arrangements.	
(22)	To provide the number of NCS students who had failed to be admitted to the matriculation stream merely on the ground of their failing to pass the Chinese Language subject in the Hong Kong Certificate of Education Examination (HKCEE).	
(23)	To address the concern that, before the implementation of the new academic structure comprising three-year junior secondary, three-year senior secondary and four-year undergraduate education, many NCS student would still be unable to be admitted to the matriculation stream solely due to their failing to pass the Chinese Language requirement in HKCEE.	

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(24)	To provide the number of students who had been exempted from meeting the Chinese Language requirement for admission under the Joint University Programmes Admission System (JUPAS) and the non-JUPAS route respectively.	
(25)	To explain the meaning of equivalent requirement referred to in paragraph 4 of LC Paper No. CB(2)377/07-08(01).	
(26)	To request the UGC-funded institutions to adopt similar minimum requisite grading under the alternative Chinese Language qualifications to be accepted.	
(27)	To consider the suggestion of providing a standard alternative Chinese Language curriculum for NCS students.	
(28)	To respond to Miss CHAN Yuen-han's view that a policy decision must be made to ensure that vocational training institutions would have adequate resources to cater for the needs of ethnic minorities including those who knew little English.	
V.	Provision of goods, facilities and services (Clause 58)	
(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.	
(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.	

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(4)	To consider whether Clause 58 could be amended to exclude the provision to the public of goods, facilities and services by public authority generally or particular authority specifically.	Paragraph 42 of CB(2)2753/06-07(01)
VI.	Discrimination by, or in relation to, barristers (Clause 35)	
(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.	CB(2)2753/06-07(04)
(2)	To consider the alternative of covering a field of non-employment pupillage instead of singling out a profession.	CB(2)2753/06-07(04)
VII.	Employment (Clauses 10, 13 & 14)	
(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.	
VIII.	Immigration legislation (Clause 55)	
(1)	To provide justification for the exception for immigration legislation.	
IX.	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)

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(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)
X.	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)

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