

**立法會**  
**Legislative Council**

LC Paper No. CB(3) 681/08-09

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Tel : 2869 9205

Date : 10 June 2009

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 24 June 2009**

**Proposed resolution under  
the Race Discrimination Ordinance and  
the Interpretation and General Clauses Ordinance**

Further to LC Paper No. CB(3) 457/08-09 issued on 25 March 2009, the Secretary for Constitutional and Mainland Affairs has given notice to move a proposed resolution at the Council meeting of 24 June 2009 under the Race Discrimination Ordinance and the Interpretation and General Clauses Ordinance relating to the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation. The President has directed that “it be printed in the terms in which it was handed in” on the Agenda of the Council.

2. The proposed resolution is attached for Members’ consideration. The speech, in both English and Chinese versions, which the Secretary for Constitutional and Mainland Affairs will deliver when moving the proposed resolution is also attached.

( Mrs Justina LAM )  
for Clerk to the Legislative Council

Encl.

RACE DISCRIMINATION ORDINANCE  
AND  
INTERPRETATION AND GENERAL CLAUSES  
ORDINANCE

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**RESOLUTION**

(Under section 83 of the Race Discrimination Ordinance  
(29 of 2008) and section 35 of the Interpretation and  
General Clauses Ordinance (Cap. 1))

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RACE DISCRIMINATION (PROCEEDINGS BY EQUAL  
OPPORTUNITIES COMMISSION) REGULATION

RESOLVED that the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation, made by the Secretary for Constitutional and Mainland Affairs on 11 March 2009, be approved, subject to the following amendment – in section 3, in the Chinese text, by deleting “指” and substituting “指出”.

# **RACE DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES COMMISSION) REGULATION**

(Made by the Secretary for Constitutional and Mainland Affairs under section 83 of the Race Discrimination Ordinance (29 of 2008) subject to the approval of the Legislative Council)

## **1. Commencement**

This Regulation comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

## **2. Circumstances in which Commission may bring proceedings**

The circumstances in which the Commission may bring proceedings for the purposes of section 70(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so) are where –

- (a) the case raises a question of principle; and
- (b) it is in the interests of justice to do so,

and it appears to the Commission that the claim of the person is well-founded.

## **3. Remedies Commission may seek in proceedings brought by it**

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 70(3) of the Ordinance, including a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both a declaration and an injunction.

Secretary for Constitutional and  
Mainland Affairs

11 March 2009

**Explanatory Note**

Section 70 of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) sets out the matters in respect of which a person may bring civil proceedings under the Ordinance. Section 83 of the Ordinance empowers the Secretary for Constitutional and Mainland Affairs to specify in regulations –

- (a) the circumstances in which the Equal Opportunities Commission (“the Commission”) may bring proceedings if a person who is entitled to bring proceedings under section 70 of the Ordinance does not do so; and
  - (b) the remedies which the Commission may seek to obtain in such proceedings.
2. Accordingly, this Regulation empowers the Commission –
- (a) to bring such proceedings where a question of principle is involved and it is in the interests of justice to do so and it appears that the claim is well-founded; and
  - (b) in any such proceedings to seek any remedy available under section 70(3) of the Ordinance, including a declaration or an injunction or both.

**Speech by the Secretary for Constitutional and Mainland Affairs  
(24 June 2009)**

**Race Discrimination (Proceedings by Equal Opportunities  
Commission) Regulation**

Mr. President,

I move the resolution standing in my name on the Agenda. The resolution is to the effect that the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation made under section 83 of the Race Discrimination Ordinance be approved, subject to a minor textual amendment .

2. The Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation, if passed and when read together with section 83 of the Race Discrimination Ordinance, will enable the Equal Opportunities Commission, in a case where a person suffering racial discrimination, harassment or vilification may bring proceedings under section 70 of the Ordinance but has not done so, to bring court proceedings in the Commission's own name as if the Commission were that person where the case raises a question of principle and it is in the interests of justice to do so and it appears to the Commission that the claim is well founded.

3. The Regulation will also enable the Commission to apply for any remedies available to a claimant under the Race Discrimination Ordinance. These will include a declaration that the act which is the subject of proceedings is an unlawful act and an injunction in respect of such act.

4. Although there is a difference in expression in the threshold for the Equal Opportunities Commission to bring proceedings, between the Regulation and the similar regulations made under the Sex Discrimination Ordinance and the Family Status Discrimination Ordinance on the one hand, and the corresponding regulation under the Disability Discrimination Ordinance on the other, the Equal Opportunities Commission has confirmed that the standard for deciding whether to bring proceedings in its own name would be essentially the same across all the anti-discrimination ordinances. I note that the Commission has undertaken to issue a public statement to state this position.

5. Mr. President, I beg to move.