

Legislative Council Panel on Constitutional Affairs

Rules made under the Race Discrimination Ordinance

Introduction

This Paper explains the two sets of Rules under consideration by the Equal Opportunities Commission to be made under the Race Discrimination Ordinance, Cap.602 (RDO).

The Rules

2. The two sets of Rules (in English and Chinese) proposed to be made are attached to this Paper and are as follows:-

- (i) The Race Discrimination (Formal Investigations) Rules; and
- (ii) The Race Discrimination (Investigation and Conciliation) Rules.

3. Both sets of Rules are in materially the same terms as the corresponding rules under other similar ordinances (the Sex Discrimination Ordinance, Cap.480, Disability Discrimination Ordinance, Cap.487 and the Family Status Discrimination Ordinance, Cap.527).

4. The Rules at paragraph 2.(i) above deal with formal investigations. They prescribe the manner in which notice of a formal investigation under section 65 of the RDO is to be given; the form of the notice requiring persons to provide information under section 66(1) of the RDO; the form of enforcement notices issued pursuant to section 71(2) of the RDO; and the manner of service of all such notices.

5. The Rules at paragraph 2(ii) above deal with procedural aspects relating to the lodging of complaints in writing under section 78 of the RDO and the conduct of investigation and conciliation thereof.

DRAFT

RACE DISCRIMINATION (FORMAL INVESTIGATIONS) RULES

(Made by the Equal Opportunities Commission under section 82 of the Race Discrimination Ordinance (29 of 2008))

1. Commencement

These Rules come into operation on the day appointed for the commencement of section 65 of the Race Discrimination Ordinance (29 of 2008).

2. Interpretation

Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers relating to a formal investigation, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Service of notices

In these Rules, a reference to a person being served with a notice is a reference to service on that person being effected –

- (a) by delivering it to that person personally;
- (b) by sending it by ordinary post to that person's last known residence or place of business;
- (c) where the person is a body (whether corporate or unincorporate), by delivering it to the secretary or an officer of the body at its registered office or principal office or by sending it by ordinary post to that secretary or such an officer at that office; or
- (d) where the person is acting by a solicitor, by delivering it at, or by sending it by ordinary post to, the solicitor's address for service.

4. Notice of holding of formal investigation

Where, under section 65 of the Ordinance, the Commission is required to give notice of the holding of a formal investigation –

- (a) to any person named in the terms of reference for the investigation; or
- (b) where the terms of reference are revised, to any person named in the revised terms of reference,

the notice served on such person must set out the terms of reference.

5. Requirement to furnish or give information or produce documents

Where, under section 66(1) of the Ordinance, the Commission requires a person to furnish written information or give oral information or produce documents, the notice served on the person must be in the form set out in Schedule 1 or in a form to the like effect with such modifications or variations as the circumstances may require.

6. Enforcement notice

An enforcement notice served on a person for the purposes of section 71(2) of the Ordinance must be in the form set out in Schedule 2 or in a form to the like effect with such modifications or variations as the circumstances may require.

SCHEDULE 1

[s. 5]

NOTICE TO FURNISH WRITTEN INFORMATION OR GIVE ORAL
INFORMATION AND PRODUCE DOCUMENTS

(Under section 66(1) of the Race Discrimination Ordinance (29 of
2008))

To A.B. of []

For the purposes of the formal investigation being conducted by the Equal Opportunities Commission (“the Commission”) the terms of reference of which [were given to you in a notice dated]/[are set out in the Schedule to this Notice], you are required, under section 66(1) of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) –

- (a) [to furnish the following information (*description of information to follow*) –]
- (b) [to attend at (*insert time*) on (*insert date*) at (*insert place*) and [give oral information about]/[give oral evidence about, and produce all documents in your possession or control relating to] [the following matters] [the matter of] (*specify the matters or matter*) –]

2. The information described in paragraph 1(a) must be furnished (*specify the time or times at which, and the manner and form in which, the information is to be furnished*).

Dated this day of 20.....

This Notice was issued by [the Commission] [*(name delegate)*] to whom the Commission has under section 67 of the Sex Discrimination Ordinance (Cap. 480) delegated its functions or powers under section 66(1) of the Ordinance].

[Service of this Notice was authorized in writing under section 66(2)(a) of the Ordinance.]

[Having regard to the terms of the reference of the investigation and section 66(2)(b)/section 73 of the Ordinance, service of this Notice does not require the consent of the Chief Secretary for Administration.]

[Commission]

[Delegate]

SCHEDULE

TERMS OF REFERENCE OF INVESTIGATION

SCHEDULE 2

[s. 6]

ENFORCEMENT NOTICE

(Under section 71 of the Race Discrimination Ordinance (29 of 2008))

To A.B. of []

In the course of a formal investigation the Equal Opportunities Commission (“the Commission”) has become satisfied that you were committing/had committed an act/acts to which section 71(2) of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) applies, namely (*insert particulars of acts*) –

2. You are therefore required, without prejudice to your other duties under the Ordinance or any other Ordinance, under section 71(2) of the Ordinance, not to commit any act which is [an unlawful discriminatory act under (*insert reference to relevant Part or provision of the Ordinance*)] [an unlawful act of harassment under (*insert reference to relevant Part or provision of the Ordinance*)] [a contravention of section 41 of the Ordinance] [a contravention of section 42/43/44/45 of the Ordinance by reference to Part 3/Part 4 of the Ordinance].

3. If compliance with the above requirement involves changes in any of your practices or other arrangements, you are further required under section 71(2) of the Ordinance to inform the Commission [in the manner specified in this Notice] that you have effected those changes and what those changes are [and to take the

following steps for the purpose of making that information available to other persons concerned, namely (*specify steps to be taken*).

[You are further required under section 71(3) of the Ordinance to furnish to the Commission [in the manner specified in this Notice] with the following information, in order for it to verify that this Notice has been complied with (*description of information to follow*) –]

[The information to be furnished by you to the Commission under this Notice must be furnished as follows (*specify the time or times at which, and the manner and form in which, the information, or information of a particular description, is to be furnished*) –]

Dated this day of 20.....

[Commission]

[Delegate]

Chairperson,
Equal Opportunities Commission

2009

Explanatory Note

The Race Discrimination Ordinance (29 of 2008) provides that a notice of the holding of a formal investigation under section 65, notice for requiring

information under section 66 and an enforcement notice under section 71 must be given in a form and the manner prescribed by the Equal Opportunities Commission (“the Commission”).

2. Accordingly, the Commission in these Rules –

- (a) in section 3 specifies the manner of service of those notices;
- (b) in section 4 specifies the manner in which notice of investigation is to be given to certain persons in cases in which general notice of the investigation is not given;
- (c) in section 5 prescribes the form of a notice requiring a person to furnish or give information or produce documents;
- (d) in section 6 prescribes the form of an enforcement notice.

DRAFT

RACE DISCRIMINATION (INVESTIGATION AND CONCILIATION) RULES

(Made by the Equal Opportunities Commission under section 82 of the Race Discrimination Ordinance (29 of 2008))

1. Commencement

These Rules come into operation on the day appointed for the commencement of section 78 of the Race Discrimination Ordinance (29 of 2008).

2. Interpretation

(1) In these Rules –

“class member” (申訴委託人), in relation to a representative complaint, means any person on whose behalf that complaint is lodged;

“conference” (會議) means a conference held for the purposes of section 78 of the Ordinance;

“representative complaint” (代表申訴) means a representative complaint referred to in section 78(2) of the Ordinance.

(2) Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers under section 78 of the Ordinance, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. Representative complaints

(1) A representative complaint alleging that another person has done an unlawful act may be lodged by –

(a) a person aggrieved by the act, on behalf of that person and another person or other persons also aggrieved by the act;

(b) 2 or more persons aggrieved by the act, on behalf of themselves and another person or other persons also aggrieved by the act; or

- (c) a person on behalf of another person or other persons aggrieved by the act.
- (2) A representative complaint may be lodged only with the consent of the class members and, where there is more than one class member, only –
 - (a) if the class members have complaints against the same person;
 - (b) if all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) if all the complaints give rise to a substantial common issue of law or fact.
- (3) A representative complaint must –
 - (a) describe or otherwise identify and state the number of class members;
 - (b) specify the nature of the complaints made on behalf of the class members; and
 - (c) specify the questions of law and fact that are common to the complaints of the class members.

4. Determination of representative complaints

(1) The Commission may determine that any complaint lodged with it should not be a representative complaint.

(2) The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons –

- (a) the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;

- (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
- (c) the complaint was not brought in good faith as a representative complaint; or
- (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

5. Commission may require information

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.

(2) A person who, without reasonable excuse, refuses or fails to comply with a notice served on the person under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

6. Restriction on disclosure of information

(1) The information furnished to the Commission by a person (“the informant”) in response to a notice served on the informant under section 5 must not be disclosed by the Commission, any member of the Commission or a committee, any employee of the Commission, any conciliator, or any person who has been such a member, employee or conciliator, except –

- (a) with the informant’s consent;
- (b) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;
- (c) in a report under section 8(4);

- (d) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
- (e) subject to section 78(6) of the Ordinance, for the purposes of any court proceedings.

(2) A person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

7. Directions to attend conference

(1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing direct any person referred to in subsection (2) to attend a conference at a time and place specified in the notice.

(2) The persons the Commission may, under subsection (1), direct to attend a conference are –

- (a) any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or
- (b) any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.

(3) The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).

(4) Where a body of persons, whether corporate or unincorporate, is directed to attend a conference under subsection (1), an officer or employee of that body may attend on behalf of that body.

(5) A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

8. Procedure at conference

(1) A conference is to be held in private.

(2) The person presiding at a conference may determine its order of proceedings and the manner of conducting it.

(3) Unless the person presiding at a conference consents –

(a) an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Disability Discrimination Ordinance (Cap. 487) which is applicable to the particular case);

(b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

(4) Where the person presiding at a conference –

(a) is of the opinion that a matter cannot be settled by conciliation;

(b) has endeavoured to settle a matter by conciliation but has not been successful; or

(c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,

the person must refer the matter to the Commission together with a report relating to any investigation made into the matter.

(5) A report for the purposes of subsection (4) must not include or describe anything said or done in the course of the conference.

Chairperson,
Equal Opportunities Commission

2009

Explanatory Note

The Race Discrimination Ordinance (29 of 2008) provides that the Equal Opportunities Commission (“the Commission”) may, for the purposes of section 78, prescribe the persons who may lodge a representative complaint and the matters to be taken into account by the Commission in determining a complaint should not be a representative complaint, require persons to furnish information, restrict the disclosure of information so furnished, direct persons to attend conferences and regulate the procedure of such conferences.

2. Accordingly, the Commission in these Rules –

- (a) in section 3 specifies the persons who may lodge a representative complaint;
- (b) in section 4 specifies the matters to be taken into account in determining a complaint should not be a representative complaint;
- (c) in section 5 specifies the manner in which persons may be required to furnish information;
- (d) in section 6 specifies the manner in which disclosure of information is restricted;

- (e) in section 7 specifies the manner in which persons may be directed to attend a conference;
- (f) in section 8 specifies the procedure to be followed at a conference.