

For information on

On 6 November 2017

**Legislative Council Subcommittee on Rights of Ethnic Minorities
Implementation and Review of the Race Discrimination Ordinance**

Discussion Paper from the Equal Opportunities Commission

Background

The Race Discrimination Ordinance (Cap. 602) (RDO) was enacted in 2008 and came into effect in 2009. The RDO provides that it is unlawful to discriminate against a person on the ground of race in specified areas, including employment; education; provision of goods, facilities and services; and disposal or management of premises. The RDO also makes racial harassment (engaging in unwelcome conduct that offends, humiliates or intimidates another person, or conduct that creates a hostile or intimidating environment for that other person) and vilification (by any activity in public, inciting hatred towards serious contempt for, or severe ridicule of, another person) unlawful.

Implementation of the RDO

2. Figures on the Equal Opportunities Commission's (EOC's) complaint-handling and legal services under the RDO are provided in the Annex.

Complaints and Enquiries

3. In 2016, the EOC received a total of 370 enquiries under RDO from the public, 21% more than the corresponding figure in 2015. By end-September 2017,

208 enquiries related to race were handled. The majority of these were made through the EOC telephone hotline, followed by complaints made in writing and in face-to-face meetings with EOC staff.

4. As for complaints, the numbers have been growing steadily since 2013 (28 cases, excluding self-initiated investigations which will be separately reported below), barring 2016 (202 cases) which showed a huge spike in racial vilification complaints due to a single incident (175 cases). As at end of September 2017, the EOC received 56 complaints under the RDO, of which all but one were lodged by non-Chinese complainants. This is already a 33% increase on the RDO complaints received in all of 2015 (42 cases). A breakdown of the complaints shows that non-employment related issues continue to outnumber the employment related cases, which is in contrast to all the other ordinances where employment complaints are the majority.

5. Within non-employment, access to goods, facilities and services was usually the category under which most complaints have been received in the past owing to its broader scope that includes banking, health services, retail, etc. However, this year has seen more complaints coming in for racial vilification – 45 so far. It is believed that this is owing to complaints lodged by an NGO against online racial hate messages which has seen a surge in the recent past.

Self-initiated Investigation

6. The EOC also initiates investigations into incidents involving unlawful acts under the RDO. These are incidents that are either noticed by the EOC, or brought to the attention of the EOC by third parties or aggrieved individuals who do not wish to be involved in the investigation and conciliation process. In 2016, the EOC conducted investigations into four race-related cases as compared to seven in 2015, which were all related to access to premises and goods and

facilities. These cases were settled with education letters issued by the EOC to the parties concerned. In 2017, two self-initiated investigations under the RDO have been conducted by end-September. One was settled with the issue of education letter and the other could not be pursued.

Legal Service

7. Where conciliation is unsuccessful, a complainant or aggrieved party may apply to the EOC for assistance in taking legal action on the complaint. The Legal and Complaints Committee of the EOC considers the applications and decides on whether or not to grant assistance to the applicant. The forms of legal assistance may include legal advice, legal services relating to the gathering and assessment of further information or evidence, or representation in legal proceedings. Since 10 July 2009 when the RDO came into effect, 13 applications for legal assistance have been made under the RDO, of which five were granted. In both 2015 and 2016, the EOC processed two applications under the RDO and gave legal assistance for one case each year. One application is currently under consideration.

8. It is important to note that the number of legally assisted cases varies each year, as the decision on granting legal assistance depends on a number of factors, including the complexity of the case and the strength of evidence to support a good prospect in court. Consideration is also given on whether the case involves a question of principle, and whether any meaningful result can be achieved by way of legal proceedings.

Our role as Amicus Curae

9. EOC is called upon to act as *amicus curae* or “friend of the court” from time to time in cases where EOC’s advice and independent submissions may be sought. One significant case, the first RDO case to be taken to local court, *Singh Arjun* (by

his next friend Singh Anita Guruprit) v Secretary for Justice & Hung Kai Kam (DCEO 9/2011), had EOC acting as *amicus curiae*.

10. As *amicus curiae*, the EOC provided our views on the extent to which police activities (including the response to and investigation of a request for assistance, arrests, as well as the treatment of an arrested person in custody) could constitute “services” within the meaning of sections 3 and 27 of the RDO. As the RDO currently does not expressly provide that it is unlawful for the Government to discriminate “in the performance of its functions or the exercise of its powers”, the EOC believes that this case raised an important question on the law’s scope of protection and may have set an important legal precedent.

11. The EOC noted that the judgment made specific reference to the role of the Commission to review the effectiveness of the current legislation, and, where appropriate, make recommendations for reform. In fact, the EOC has submitted its recommendations to the Government, under its Discrimination Law Review, to amend the Race Discrimination Ordinance as given in the section below.

Review of the RDO

12. Of the 73 recommendations for review made to the Government following the Discrimination Law Review in March 2016, 27 issues were identified by the EOC as higher priority areas for legislative or other reform. In March this year, the Government agreed to take forward nine of the 27 high priority issues of which seven are related to the RDO.

13. Given that the EOC’s recommendations are based on its experience of handling complaints and enquiries over the last twenty years as well as on response from the public consultations, we believe all the recommendations need due consideration. Hence, we urge the Government to look at the remaining issues as

listed below and initiate the necessary reforms to the RDO thereby making them more effective and in keeping with the needs of a changing society:

- Prohibiting race discrimination in the exercise of government functions or powers under the RDO
- Repealing the exception in vocational training and education in relation to medium of instruction
- Conducting public consultation with the aim of introducing protection from discrimination on grounds of nationality, citizenship and residency status under the RDO, including on the scope of protection and what exceptions may be appropriate

Research and Reports

14. Education is the key to the future of our children. To address the systemic barriers faced by non-Chinese speaking (NCS) students in their education, the EOC set up the Working Group on Education for Ethnic Minorities (the “Working Group”) to look into the issues in 2010 and, after a nine-month investigation, submitted the “Education for All” Report (the “Report”) to the Government in March 2011. We would like to believe that the Report may have impacted the Government’s subsequent policies towards NCS students and the introduction of the Chinese Language Curriculum Second Language Learning Framework (the “Framework”). Chinese language learning by ethnic minority (EM) students continues to be a top priority for the EOC. In fact, we are proposing to revive the Working Group in order to examine the effectiveness of the Framework in furthering the learning of Chinese by EM students since its implementation.

15. In order to get an assessment of systemic issues raised either through complaints or during outreach and networking, the EOC also undertakes research studies from time to time. In 2010, we commissioned a study titled “Racial Encounters and Discrimination Experienced by South Asians”. Results of the study

showed that the main problems facing South Asians were learning to read and write Chinese for students, and finding employment for adults. These findings reinforced EOC's strategy to focus on the areas of EM education, employment, service access and integration.

16. Last year, the EOC published a study on Discrimination against Ethnic Minorities in the Provision of Goods, Facilities and Services, the results of which showed that EMs are most likely to face discrimination in the areas of banking, tenancy and in retail. As a result, the EOC has been working with the banking sector and the Estate Agents Authority to provide training and information, particularly to frontline staff in dealing with EM customers so as to be culturally sensitive as well as to comply with the RDO.

Recent Work on Ethnic Minorities

17. Since 2014/15, the Government has provided an additional recurrent funding of \$4.69M for the EOC to set up and operate a dedicated EM Unit (the "Unit") to enhance the EOC's work on advancing equal opportunities for EMs. Using a three-pronged approach of policy recommendation, training and outreach, the Unit has been addressing EMs' concerns in the four major areas of education; employment; provision of goods, services and facilities; and community integration.

18. On policy recommendation, the Unit has made 15 submissions to the Legislative Council and met 11 Government Departments and public bodies on different EM concerns since July 2015. With the support of different Legislative Council Panels and Subcommittees, we welcomed the following measures, among others, in Government and public service policies and procedures that corresponded with our recommendations:

- Creation of new job positions dedicated to serving EM job seekers by the Labour Department;

- Undertaking of textbook development for NCS students by the Education Bureau (EDB);
- Formulation and review of guidelines on provision of interpretation services for EM service users by a number of Government Departments;
- Active consideration of recommendations to simplify procedures for booking interpretation services in public hospitals by the Hospital Authority;
- Increased requests for staff training on the RDO and cultural sensitivity by a number of Government Departments, etc.

19. Besides, 205 training sessions have been conducted from April 2015 to September 2017, 104 for the mainstream community such as Government officials, teachers, managerial staff of local businesses, etc.; and 112 sessions for the EM community. Some notable training initiatives, among others, included 11 sessions to all front desk staff of the Job Centres and Work Incentive Transport Subsidy Division under the Labour Department; regular training sessions for the Estate Agents Authority; two training series on promoting inclusive school policy to teachers and school administrators; collaboration with the EDB on conducting 6 talks to EM parents and NGO workers on fair kindergarten admission policies, etc.

20. On public education, the Unit has developed a number of guidance materials, one for the banking sector and two for the education sector in the recent past. A list of suggested good practices on serving EM customers was distributed to all banking corporations through the Hong Kong Association of Banks in 2015 while a guidance booklet entitled “Promotion of Racial Integration & Prevention of Racial Discrimination in Schools” was published and sent to all schools in the territory in 2016. Recently, in view that the Free Quality Kindergarten Policy is being implemented this school year, an Easy Guide on Fair Kindergarten Admission has just been issued to advise kindergartens to uphold non-discriminatory admission policies and measures.

21. Regarding community outreach, apart from participation in 289 network meetings and 215 community events since April 2015, the Unit has also tried to expand its scope of outreach through social media and corporate connections under the EMBRACE Campaign launched in March 2017¹. Riding on these efforts, three leadership groups have been formed within specific communities with the objective of creating a team of ambassadors who can raise awareness and provide information to community members as well as channel feedback to us on their concerns. These include a Nepalese Community group, a Pakistani women's group and a Sikh women's group. Some of the key concerns raised by these groups are domestic violence, support for EM children with special educational needs, workplace discrimination and housing issues.

22. Furthermore, we have recently formed a Youth Consultative Group on Racial Equality and Integration and selected 32 Youth Members, 10 Chinese and 22 non-Chinese respectively, through nomination from schools and universities. They would not only bring young people's perspectives into the Commission's policy recommendations and public education, but would also be empowered to represent young people in raising their concerns on race-related issues in the public arena.

The Way Ahead

23. The RDO serves as a powerful deterrent against racial discrimination. However, as with any law, there are gaps. Additionally, with society constantly changing and needs evolving, laws do need to be reviewed periodically and modified as appropriate. The Discrimination Law Review exercise by the EOC attempted to achieve this and the EOC will continue to work with the Government

¹ "EMBRACE" is a play on the terms EM and Race with the message "Embrace racial equality".

to consider taking forward all other recommended amendments besides the ones adopted as soon as possible.

24. Through its extensive work on EM issues and connections with the EM community, some of the concerns the Unit has repeatedly come across are:

- Language as the biggest barrier and challenge for EMs in most areas, particularly in their education, employment and access to service
- Discrimination faced due to religious/cultural practices
- Racial vilification on social media and other media as well as on public platforms
- Hesitation to complain despite facing discriminatory behavior/practices/policies

25. To address these issues, the EOC will continue its efforts to monitor the educational initiatives and support on Chinese learning of NCS students and promote an inclusive school policy; to call for further employment support for EMs and promote cultural diversity in the workplace among employers; and to urge the Government as well as the private sector to step up their services to ensure fair access by EMs.

26. With the recent additional one-off funding allocation of \$3M from the Government, the EOC will embark on a media campaign targeting the mainstream population, with particular focus on employers, service providers and landlords, to look beyond racial stereotypes and adopt non-discriminatory practices. Besides, more research studies, in the areas of EM education and academic pathways; employment opportunities for EM youth; and professionalization of interpretation services for EMs, would also be conducted to facilitate the formulation of evidence based policies and measures to ensure equal opportunities for EMs in the future.

27. Last but not least, with the growing incidence and reporting of online hate messages and racial vilification, the Commission has felt it necessary to address the issue. Meetings with a major social media service provider have led to the organization of a roundtable bringing together NGOs working with EMs, that particular social media service provider and the EOC to discuss and debate ways in which to combat this growing problem. Separately, the EOC is also working with NGOs to ascertain the extent of the issue and consider whether any action can be initiated against some of the perpetrators.

Equal Opportunities Commission

November 2017

EQUAL OPPORTUNITIES COMMISSION
Statistics on Enquiries, Complaints & Legal Assistance
Under the Race Discrimination Ordinance (RDO)

Nature	2009	2010	2011	2012	2013	2014	2015	2016	2017 (Jan-Sep)
Total No. of Complaints Received	26	75	64	55	33	45	48	203*	58
(i) Complaint Investigation (CI)	20	64	54	43	28	39	42	202	56
(ii) Self-initiated Investigation (SII)	6	11	10	12	5	6	6	1	2
Total No. of Enquiries	265	353	347	423	679	478	306	370	208

*Racial vilification complaints due to a single incident contributed to 178 cases.

Nature of Complaints Received (including CI & SII)	2014	2015	2016	2017 (Jan to Sep)
A. Employment-related	13	17	7	6
B. Non-employment-related:	32	31	196	52
a. Consent for Assignment or Sub-letting	0	1	0	1
b. Education	1	3	1	2
c. Goods, Services & Facilities				
(i) Complaint Investigation	21	18	18	0
(ii) Self-initiated Investigation ²	6	6	1	2
d. Others	4	3	176*	47*

*Most of these complaints were made on racial vilification.

No. of Racial Harassment & Racial Vilification Case ³	2014	2015	2016	2017 (Jan to Sep)
A. Racial Harassment	17	5	7	1
B. Racial Vilification	1	2	179	45

Ethnicity of Complainants (CI only)	2014	2015	2016	2017 (Jan to Sep)
A. Non-Chinese	31	37	24	55
B. Chinese	8	5	178	1

² All SII cases under the RDO over the past four years are related to provision of goods, services & facilities.

³ Some racial harassment and vilification cases were simultaneously related to specified employment or non-employment areas.

Status of Complaint Handled	2009	2010	2011	2012	2013	2014	2015	2016	2017 (Jan-Sep)
A. Complaints Handled ⁴	20	74	66	48	46	42	54	213	64
B. Under Investigation	10	12	5	18	3	12	11	7	56
C. Investigation Discontinued									
a. Early Resolution ⁵	0	0	8	0	4	0	0	2	1
b. Other Situations ⁶	9	35	44	23	29	15	31	193	4
D. Endeavour to Conciliate									
a. Conciliated	0	16	8	4	6	15	4	7	1
b. Conciliation Not Successful ⁷	1	11	1	3	4	0	8	4	2

Self-initiated Investigation	2009	2010	2011	2012	2013	2014	2015	2016	2017 (Jan-Sep)
A. Investigation Conducted									
a. Discriminatory Advertising	0	0	0	0	2	1	0	0	0
b. Access to Premises & Provision of Goods & Services	6	11	12	12	4	6	7	4	2
B. Status									
a. Under Investigation	0	2	0	1	1	1	3	0	0
b. Resolved	3	2	4	7	2	2	4	2	0
c. No Further Action	3	7	8	4	3	4	0	2	2

Applications for Legal Assistance (From Jul 2009 to Oct 2017)	Employment	Non-employment		Total
		Education	Goods & Services	
A. Granted	1	2	2	5
B. Not Granted	2	0	5	7
C. Under Consideration	1	0	0	1

⁴ The figures include complaints carried forward from previous years.

⁵ Complainants had no desire to pursue complaint after matter resolved in the course of investigation.

⁶ On ground of : no unlawful act; no desire to pursue complaint (except for cases covered by Note (5) above); lapsed over 12 months; should not be a representative complaint; being frivolous, vexatious, misconceived or lacking in substance.

⁷ Conciliation effort made but failed to bring about settlement.