

Race Discrimination Bill

Further Submission of the Hong Kong Bar Association to the Bills Committee

1. The Hong Kong Bar Association ("the HKBA") has considered the Administration's response to views received from deputations/individuals on specific clauses of the Race Discrimination Bill ("the Bill") (LC Paper No CB(2)2152/07-08(01)) and the Administration's paper on administrative guidelines on promotion of racial equality (LC Paper No CB(2)2219/07-08(01)).
2. Although the Administration has indicated that it would propose committee stage amendments ("CSAs") to clauses 3 and 4, the HKBA considers that the Bill remains unsatisfactory on a number of important aspects.
3. While the Administration has indicated that it would introduce a CSA to amend clause 3 to "This Ordinance binds the Government", it is not prepared to introduce provisions to outlaw race discrimination by the Government and public authorities in (1) the carrying out of their functions; and (2) in connection with appointment of posts and offices which are not regarded as employment.

4. The Administration's reasons for not introducing these provisions, namely that their introduction would have far-reaching adverse implications on the Government's ability to make and implement policies; and that the Government would become vulnerable to an influx of litigation, highlight precisely the genuine need for these provisions. The HKBA does not consider that drawing up administrative guidelines for government bureaux and departments to follow in their formulation and implementation of policies and measures is a suitable alternative. It leaves victims of discrimination without an effective remedy. Consistent with the concept of the rule of law, the Government should be on the same footing as private bodies when it comes to liability to compensate for acts of unlawful racial discrimination.

5. The HKBA regrets that the Administration declines to delete clauses 8(2) and (3)(b), (c) and (d), which together exclude acts done on the ground of a person's immigration status (not being a permanent resident of the HKSAR), length of residence in the HKSAR, or nationality, citizenship or resident status of another country or place, from constituting acts done on the ground of race, colour, descent or national or ethnic origin of a person.

6. The Administration's response, which focused on the status of being a permanent resident of the HKSAR and length of residence in the HKSAR, fails to address the totality of the objectionable content of these clauses, which, the HKBA considers,

would create loopholes in enforcement of the enacted legislation, allowing, for example, shop owners to discriminate against customers on the ground of them being nationals of a particular country.

7. The HKBA considers that the Administration should carefully review its decision not to include in the scope of the Bill the outlawing of discrimination against immigrants newly arrived from Mainland China, bearing in mind that the United Nations CERD Committee, in its letter to the Central People's Government of 7 March 2008, was prepared to countenance such discrimination as a form of discrimination coming within its purview.

8. The HKBA maintains its objection over the exemptions proposed in clauses 55 (immigration legislation) and 56 (acts done for the purpose of complying with a requirement of an existing statutory provision). The HKBA considers that the Administration should carefully review its proposed exception for languages in clause 58, bearing in mind that the United Nations CERD Committee, in its letter to the Central People's Government of 7 March 2008, was prepared to countenance indirect racial discrimination on the basis of language.

Dated: 12 June 2008.

Hong Kong Bar Association