

## **Consultation on Legislating Against Racial Discrimination**

### **Frequently Asked Questions**

#### **Q1 What is the Government's race relations policy?**

A1 The Government's policy on race relations is to -

- (a) eliminate and combat all forms of racial discrimination;
- (b) promote racial equality and communal harmony; and
- (c) encourage ethnic minorities settled in Hong Kong to integrate into the wider community, while retaining their cultural identity. This entails -
  - providing practical assistance to members of the ethnic minorities to facilitate their settlement in Hong Kong and their integration into the wider community;
  - addressing the problem of racial discrimination; and
  - promoting equal opportunities for all ethnic groups.

#### **Q2 Why do we need to legislate against racial discrimination?**

A2 The three principal reasons for legislating against racial discrimination are to –

- (a) prevent and combat racial discrimination;
- (b) establish norms and standards in race relations; and
- (c) fulfil Hong Kong's obligations under the International Convention

on the Elimination of All Forms of Racial Discrimination (ICERD).

Although inter-communal relations between the local Chinese majority and ethnic minorities are generally harmonious and peaceful, instances of racial discrimination and intolerance do occur, particularly against persons of South and Southeast Asian origin. There is a need to introduce legislation to prohibit discrimination against people on racial grounds and to prevent and combat all forms of racial discrimination in Hong Kong.

The ICERD applies to the HKSAR by extension of China's ratification and imposes an international obligation to prohibit all forms of racial discrimination. However, there is as yet no comprehensive proscription on racial discrimination in the private sector or among individuals. There have been calls, both locally and internationally, for legislation to remedy this deficiency and it is against this background that we have taken the decision to introduce legislation against racial discrimination.

**Q3 Why legislate now?**

A3 In February 1997, we published a consultation paper entitled “Equal Opportunities: A Study on Discrimination on the Ground of Race” to solicit public views on the question of legislation. Over 80% of the respondents opposed legislation. The Government therefore decided not to legislate at that stage, but to pursue non-legislative measures and

public education instead. We also decided periodically to revisit the question of legislation to ascertain whether changing circumstances warranted a change of policy.

In 2001-02, the Home Affairs Bureau (HAB) revisited the question and found that circumstances had changed. Some of the organisations that opposed legislation expressed their opposition in milder terms. In a survey conducted between February and March in 2004, about 60% of the respondents supported the introduction of legislation to prohibit racial discrimination. About 65% believed that a race discrimination law would not have a negative impact on the Hong Kong economy. In the light of this change of public outlook and with a view to its international obligations, the Government announced its decision to introduce legislation against racial discrimination.

**Q4 Will the Government extend the consultation period?**

A4 We have done so. On 7 December 2004, we announced the decision to extend the consultation period from 31 December 2004 to 8 February 2005, to allow more time for public discussion.

**Q5 Which groups have been consulted on the proposals?**

A5 The consultations are open to all members of the public and all are welcome to submit their views. Since the publication of the Consultation Paper, we have met with many groups that have an interest in the issue. Among others, these have included

representatives of the minority communities, non-governmental organizations, business organisations, and organisations representing the labour and social welfare sectors. Additionally, the topic has been extensively discussed by the Committee on the Promotion of Racial Harmony, the Human Rights Forum, and the Ethnic Minorities Forum. We have also attended meetings with the media and participated in radio programmes, including those in minority languages, to explain the legislative proposals and to listen to views of the public.

**Q6 Why is the Consultation Paper not published in minority languages?**

A6 The Consultation Paper is published in the two official languages of Hong Kong - Chinese and English. In order to cater for the needs of the ethnic minorities, a summary of the Consultation Paper in the form of leaflets is also published in 10 languages, namely Chinese, English and eight other minority languages - Tagalog, Bahasa Indonesia, Thai, Hindi, Urdu, Nepali, Sinhalese and Bengali.

We fully understand that some members of the minority communities would like to see a consultation paper in their own languages. However, that would be impractical. We have no in-house capability to undertake the translations and we would be obliged to outsource the work, in most cases to overseas translation houses. We would not be able to proofread the translations and would need to ask the relevant consulates to do so for us: an enormous imposition as the Consultation Paper is some 50 pages long. The process would be costly and

time-consuming. In short, publishing the Consultation Paper in languages other than English and Chinese would not be an effective use of our scarce resources.

**Q7 Has the Government taken any measures to enhance understanding of the Consultation Paper by the ethnic minorities?**

A7 Yes. We have -

- (1) published the contents of the leaflets and special features on the consultation exercise in six minority language newspapers in Tagalog, Urdu, Bahasa Indonesia, and Nepali;
- (2) participated in forums and meetings organised by non-governmental organisations in order to explain the proposals to the minorities. In so doing, we have provided interpretation services in the relevant minority languages; and
- (3) discussed the proposals on minority language radio programmes, addressing the audience with the help of the programme host.

**Q8 What is the forward timetable?**

A8 After the consultations end on 8 February 2005, we will analyse the views submitted and take them into account in finalising the draft Bill, which we aim to introduce into the Legislative Council in May or June 2005.

**Q9 Will the Bill be modelled on any precedent?**

A9 The form and content will be closely modelled - with suitable adaptation - on the three existing anti-discrimination Ordinances, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance.

**Q10 What types of discriminatory acts will be covered?**

A10 It is proposed that the Bill should render the following acts unlawful -

- (a) direct racial discrimination;
- (b) indirect racial discrimination;
- (c) discrimination on the basis of the race or ethnic origin of the spouse or a relative of a person;
- (d) discrimination by way of victimisation;
- (e) racial harassment; and
- (f) racial vilification.

**Q11 What is the definition of racial discrimination?**

A11 It is proposed that a person (the discriminator) should be regarded as discriminating against another person if on racial or ethnic grounds if he treats that person less favourably than he treats or would treat other persons. In accordance with Article 1 of the ICERD, 'racial or ethnic grounds' will mean race, colour, descent, national or ethnic origin.

**Q12 What is meant by ‘descent’?**

A12 In its ‘General Comment No. 29’, the UN Committee on the Elimination of Racial Discrimination (the treaty body for the ICERD) has defined ‘descent’ as essentially referring to persons –

“who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality.”

In short, it is unlikely that there are many – if any – victims of discrimination on the ground of descent in Hong Kong. Nevertheless, it is necessary to proscribe it in order to comply with the requirements of the ICERD.

**Q13 What areas of activity will be covered?**

A13 It is proposed that the Bill should cover -

(a) employment;

- (b) education;
- (c) provision of goods, facilities, services and premises;
- (d) advisory and statutory bodies;
- (e) discrimination by, or in relation to, barristers;
- (f) clubs; and
- (g) Government.

**Q14 Why is it proposed that the new arrivals from the Mainland should be excluded from the new legislation?**

A14 The proposed legislation will protect everyone in Hong Kong from racial discrimination, including Hong Kong's Chinese majority and new arrivals from the Mainland. But the ICERD defines 'racial discrimination' as discrimination on the grounds of 'race, colour, descent, national or ethnic origin'. Most – possibly all - new arrivals from the Mainland are Han Chinese, as is the local Chinese majority. Thus, they are of the same race and ethnic origin as that majority and it follows from the ICERD definition that discrimination by a local Chinese person against a new arrival from the Mainland cannot be *racial* discrimination. Discrimination on account of a person's new migrant status is outside the intended scope of the proposed legislation.

**Q15 Why is it proposed that a grace period of three years should be given to small companies and employers?**

A15 The proposal is that employer with fewer than 6 employees will be exempted from the anti-discriminatory provisions relating to employment for 3 years after the Bill is enacted into law and becomes effective. We have proposed this because -

- (a) small companies and employers were also given a grace period when the three existing anti-discrimination Ordinances came into effect; and
- (b) we consider that small companies and employers will need time to adapt to a new regulatory regime.

**Q16 Will racial slurs be prohibited after the new legislation comes into effect?**

A16 Depending on the circumstances of the case, making racist remarks may constitute ‘racial harassment’ or ‘racial vilification’.

‘Racial harassment’ refers to an act of a person who harasses another person by engaging in unwelcome or unwanted conduct which includes verbal abuse on account of the racial or ethnic background of the latter in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated. An example of racial harassment is where a person frequently makes racist remarks against a colleague of ethnic minority origin at work in order to humiliate or

intimidate him.

‘Racial vilification’ refers to an act whereby a person, by any activity in public (including verbal abuse in public), incites hatred towards, serious contempt for, or severe ridicule of, another person on the ground of the person’s racial or ethnic background.

The courts will decide whether an act constitutes racial harassment or racial vilification on the facts of each case.

**Q17 What are the legal consequences of racial harassment and racial vilification?**

A17 It is proposed that a person will be able to initiate civil proceedings in tort if another person has committed an act of unlawful harassment or vilification against him.

A person will commit the criminal offence of ‘racial vilification’, if his conduct includes -

- (a) threatening physical harm towards, or towards any premises or property of the person vilified; or
- (b) inciting others to threaten physical harm towards, or towards any premises or property of the person vilified.

**Q18 Which institution will be responsible for implementing the new legislation?**

A18 This is an issue on which we have invited public views. We are

inclined to put the new legislation under the jurisdiction of the Equal Opportunities Commission (EOC) which oversees the three existing anti-discrimination Ordinances. Another alternative is to set up a dedicated 'Commission for Racial Equality'. Members of the public may also put forward other proposals during the consultation period.

**Q19 Will the EOC get additional resources if it is entrusted with implementing the new legislation?**

A19 HAB will transfer to the EOC the funds currently employed for the promotion of racial harmony and handling of complaints against racial discrimination. In the 2004-05 financial year, the budget is about \$5.8 million.

**Home Affairs Bureau**

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