

# **Administrative Guidelines on Promotion of Racial Equality**

## **1. INTRODUCTION**

1.1 These Guidelines provide guidance to concerned Bureaux, Departments and other public authorities (collectively referred to as “relevant public authorities” hereafter), as listed in paragraph 1.5, to promote racial equality and ensure equal access to public services in the key areas concerned, and to take this into account in the formulation, implementation and review of relevant policies and measures. Relevant public authorities should take appropriate steps to implement these Guidelines.

### **Government policy on racial equality**

1.2 The Government is committed to eliminating racial discrimination and promoting equal opportunities for ethnic minorities. The Basic Law, the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) and the Race Discrimination Ordinance (RDO) (Cap. 602) provide the legal framework to prohibit discrimination on the ground of race (see [Annex](#) for an overview of the provisions relevant to the provision of public services).

1.3 In addition to compliance with the legal requirements, the Government has also been taking measures to promote racial equality with a view to ensuring that persons of different races have equal access to, and benefit from, resources and opportunities available in the society. This is achieved through public education and promotional activities, and strengthening support services to ethnic minorities. The introduction of these Administrative Guidelines is a further step to this end.

### **Purpose and scope of the Guidelines**

1.4 These Guidelines provide guidance to relevant public authorities so that they would adopt the good practice of considering the promotion of racial equality as an integral dimension in the formulation, implementation and review of relevant policies and measures. They should also take appropriate measures and initiatives to meet the objective taking account their relevant circumstances.

1.5 The Guidelines cover the key public services which are particularly relevant to meeting the special needs of ethnic minorities and facilitating their integration into the community, namely, medical, education, vocational training, employment and major community services. The relevant public authorities are Education Bureau, Food and Health Bureau, Department of Health, Labour Department, Social Welfare Department, Home Affairs Department, Hospital Authority, Vocational Training Council, Employees Retraining Board, Construction Industry Council, Office of the Government Chief Information Officer, Television and Entertainment Licensing Authority, Office of the Telecommunications Authority and Innovation and Technology Commission. The Administration will keep the scope of the Guidelines under review.

1.6 Guidance on promotion of racial equality in the area of employment is provided in the Code of Practice on Employment under the RDO, issued by the Equal Opportunities Commission (EOC). Relevant public authorities should refer to the Code for guidance on employment matters.

### **Coordination**

1.7 The Constitutional and Mainland Affairs Bureau (CMAB) is responsible for coordinating and maintaining an overview on the implementation of the Guidelines in the Administration as a whole, including monitoring implementation of the Guidelines, collecting relevant information and publicising such information to the public. The relevant public authorities are responsible for implementing the Guidelines within their respective policy and programme areas.

## **2. GUIDING PRINCIPLES**

2.1 The guiding principles governing the efforts of the relevant public authorities on promoting racial equality are:

- (a) steps should be taken to eliminate racial discrimination arising from the policies and measures of the relevant public authorities; and
- (b) equal access to public services for ethnic minorities should be taken into account during the formulation, implementation and review of relevant policies and measures.

2.2 These principles complement each other. For example, conscious consideration of the racial equality factor in providing public services may help the public authority concerned to avoid measures that may cause racial discrimination.

2.3 The Guidelines provide a systematic means to enhance awareness of these principles and to facilitate the relevant public authorities to meet the policy objective.

2.4 Sections 3 to 4 elaborate on the above guiding principles respectively. Section 5 provides guidance on the training requirements to achieve the objective. Section 6 elaborates on the reporting mechanism regarding the implementation of the Guidelines.

### **3. COMPLIANCE WITH LEGAL REQUIREMENTS ON RACIAL EQUALITY**

#### **Legal Framework**

3.1 The Government has obligations under the Basic Law and the HKBORO to prohibit all forms of discrimination, including that on the ground of race.

3.2 Article 25 of the Basic Law provides that “All Hong Kong residents shall be equal before the law”. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) similarly provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. The Basic Law provides that the provisions of the ICCPR as applied to Hong Kong shall remain in force, and those provisions are implemented locally under the HKBORO. An act of racial discrimination by a public authority that contravenes the HKBORO may be challenged in the Court.

3.3 The RDO stipulates in detail what constitutes unlawful racial discrimination. The RDO provides that it is unlawful to discriminate on the ground of race in specified areas, including employment, education, provision of goods, facilities, services and premises. It is also unlawful to racially harass another person (i.e. engages in unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these fields.

3.4 The EOC is the enforcement authority of the RDO. It is entrusted under the RDO with the functions and powers to work towards the elimination of discrimination and promote equality of opportunity and harmony between persons of different racial groups. In relation to racial discrimination, it has the power to handle complaints on unlawful acts, conduct conciliation and provide assistance accordingly under sections 78 and 79 of the RDO; conduct formal investigations under section 64 of the RDO; and obtain information in accordance with section 66 of the RDO. The EOC can make recommendations for changes in policies and procedures to a public authority, or recommendations to the Chief Secretary for

Administration on changes in the law or otherwise, in the light of the findings in its formal investigations.

### **Compliance with Legal Requirements**

3.5 The Government has a responsibility to ensure that no racial discrimination would occur in the formulation and implementation of their policies and measures in accordance with the relevant legal provisions. The relevant public authorities should consider appropriate measures to assist their staff in gaining a proper understanding of such obligations, as well as the relevant roles and powers of the EOC.

3.6 It should be emphasized that the purpose of these Guidelines is to set out good practices for the relevant public bodies to promote racial equality in key service areas and to help raise awareness of the importance of racial equality. The relevant public authorities should take measures separately to ensure compliance with the legal requirements under the RDO. If they have any questions about the implementation of the RDO, they could seek advice from the Department of Justice or the EOC.

## **4. FORMULATION OF POLICIES AND MEASURES**

### **Overview**

4.1 On top of compliance with legal requirements, the relevant public authorities should take into account the needs, sensitivities and concerns of different racial groups in various stages of formulating and implementing relevant policies and measures to ensure that persons of different races have equal access to public services.

### **Key steps**

4.2 The relevant public authorities should consider taking the following steps with regard to existing and new policies and measures:

- (a) identify the policies and measures that relate to key public services which are most relevant to the needs of ethnic minorities;
- (b) assess whether and to what extent these policies and measures may affect racial equality or provision of equal access to key public services, and consult relevant stakeholders as appropriate in the process;
- (c) consider whether any changes to existing or proposed policies and measures are warranted, and take measures to adopt such changes;
- (d) monitor the implementation of the changes; and
- (e) review the policies and measures concerned from time to time.

4.3 The following sections explain the stages in more detail.

#### **(I) Relevant policies and measures**

4.4 In identifying relevant policies and measures, the relevant public authorities should pay particular attention to those which:

- (a) could affect different racial groups in different ways;
- (b) cover public services important to ethnic minorities; and

- (c) could cause concerns on racial discrimination.

## (II) Assessment and consultation

4.5 For the assessment of whether policies and measures may affect racial equality or provision of equal access to key public services, the following factors should be taken into account:

- (a) how different racial groups are affected by the policy or measure;
- (b) whether the policy or measure benefits ethnic minorities or whether it has an adverse impact on racial equality. For instance, whether it puts some racial groups at a disadvantage, either directly or indirectly; and
- (c) whether the policy or measure meets the needs of ethnic minorities.

4.6 The relevant public authorities should consider appropriate steps to facilitate their assessment. These steps may include collection of relevant information and statistics, consultation with relevant stakeholders and other appropriate measures.

4.7 Generally, it is for the relevant public authorities to consider what organisations, parties and/or individuals need to be specifically consulted on particular issues. If ethnic minorities are likely to be affected, particular care should be taken to seek views from those who can appreciate the issue from their perspective as far as possible.

## (III) Considering changes

4.8 If the assessment shows that the policy or measure may indeed have an adverse impact on racial equality or equal access to public services, the relevant public authorities should consider whether and how changes are to be made to the policy or measure. The following questions may be relevant:

- (a) what causes the adverse impact and how it can be addressed;

- (b) what steps can be taken to avoid the adverse impact; and
- (c) whether and what alternatives to the policy or measure in question are available for meeting the policy objective.

#### (IV) Implementing and monitoring changes

4.9 For changes identified for implementation, the relevant public authorities should keep in view the implementation progress, including the effect of such changes, to assess if they have achieved the intended outcome.

4.10 The relevant public authorities should consider appropriate measures to enhance the transparency in this regard. One of the means to achieve this is to draw up and publicise a checklist of measures that would assist in promoting racial equality and equal access to key public services. The checklist could include elements such as:

- (a) policies and measures relevant to racial equality and equal access to public services;
- (b) changes made or being planned to existing or new policies and measures;
- (c) actions to be taken to implement the changes; and
- (d) arrangements for monitoring the progress of implementation.

4.11 To facilitate assessment by the public, the relevant public authorities should consider establishing indicators and / or targets as appropriate. Such indicators and targets to be set should aim to achieve one or more of the following objectives:

- (a) promoting measures to eliminate unlawful racial discrimination;
- (b) stepping up measures to promote racial equality;
- (c) enhancing access to public services by ethnic minorities; and

(d) gauging the effect of measures taken.

(V) Record and publicity

4.12 The relevant public authorities should keep proper records of the assessments and improvements made as a result. This would be useful for the purpose of monitoring and future reviews. They should also consider appropriate publicity arrangements to facilitate the public to understand their action taken to promote racial equality.

## **5. STAFF TRAINING**

5.1 Staff training is an important aspect in the implementation of the Guidelines. The relevant public authorities should consider providing appropriate guidance and training to facilitate the understanding of the Guidelines among staff concerned.

5.2 The relevant public authorities should consider providing training to enhance staff sensitivity and understanding of race-related issues in general, including particularly their appreciation of cultural differences and their awareness of the special needs of members of the ethnic minorities.

5.3 CMAB will liaise with the EOC and the Civil Service Training and Development Institute (CSTDI) of the Civil Service Bureau to provide appropriate training for staff of the relevant public authorities on racial sensitivity and cultural diversity, which would facilitate their understanding of the RDO, these Guidelines, and relevant issues. The relevant public authorities should encourage relevant staff to attend the training sessions.

5.4 The relevant public authorities can also contact the EOC or the CSTDI as appropriate for assistance in arranging tailor-made training courses for their staff.

5.5 Based on information provided by the relevant public authorities, CMAB will facilitate arrangements for experience sharing in order to bring an overall benefit to the promotion of racial equality by the Administration as a whole by learning through the experiences of each other.

## **6. IMPLEMENTATION OF THE GUIDELINES**

6.1 The relevant public authorities are responsible for implementing the Guidelines within their policy / programme areas to promote racial equality and ensure equal access to public services in key areas concerned. They should also consider appropriate arrangements to keep the progress of implementation under review.

6.2 The relevant public authorities should consider deploying resources as required to implement measures to promote racial equality and ensure equal access to public services in key areas concerned. In case additional resources are required and the resources cannot be absorbed by the relevant public authorities, consideration should be given to bidding for additional provision of resources in accordance with established procedures.

6.3 The CMAB coordinates and takes an overview on the implementation of the Guidelines in the Administration as a whole. It will monitor the implementation of the Guidelines and collect relevant information from the relevant public authorities, such as the checklists drawn up under paragraph 4.10. The CMAB will brief the Panel on Constitutional Affairs of the Legislative Council on the implementation progress and publicise the relevant information as appropriate. The CMAB will also keep the Guidelines under review.

6.4 The relevant public authorities concerned should consider additional publicity efforts on measures or improvements taken under their respective policy and service areas.

6.5 The relevant public authorities should each designate an officer to co-ordinate the implementation of the Guidelines within their organisations. These officers will be responsible for overseeing the internal arrangements for reviewing the relevant policies and measures, and performing the function of contact point within the Administration.

**Provisions of the Race Discrimination Ordinance  
relevant to the provision of public services**

The Race Discrimination Ordinance (RDO) (Cap. 602) stipulates in detail what constitutes unlawful racial discrimination.

2. “Race” under the RDO is defined to mean a person’s race, colour, descent, national or ethnic origin (please refer to section 8 of the RDO for the legal provisions).

3. The RDO provides that it is unlawful to discriminate in specified areas, including employment; education; provision of goods, facilities, services and premises; election and appointment matters of public bodies etc; arrangements in relation to barristers and membership of clubs. It is also unlawful to racially harass another person (i.e. engages in unwelcome conduct, in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) in these fields.

4. Under the RDO, “discrimination” covers the following:

- (a) “*Direct*” *Discrimination* : this refers to the case when one person (“the discriminator”) treats another person (“the victim”) less favourably than other people because of the victim’s race (see section 4(1)(a) of RDO); and
- (b) “*Indirect*” *Discrimination* : even if the same requirements or conditions are applied to all persons regardless of race, “indirect” discrimination may result if such treatment has a disparate adverse impact on, or if it causes a disparate disadvantage to, people of a particular racial group, but cannot be shown to be justifiable irrespective of race (see section 4(1)(b) and 4(2) of RDO for the legal definition.)

Whether “disparate” adverse impact or disadvantage is

caused is decided by comparing the proportions of people in different racial groups who can comply with the requirement or condition. If the proportion of people in a particular racial group who can comply is considerably smaller than other groups, the requirement or condition could be indirectly discriminatory, unless the requirement or condition can be shown to serve a legitimate objective and bears a rational and proportionate connection to the objective.

5. “*Racial harassment*” is defined under section 7 of the RDO. It covers, on the ground of race, unwelcome conduct (including oral and written statement) by which a person would reasonably be offended, humiliated or intimidated, or conduct which creates a hostile or intimidating environment for a person.

6. A number of government functions falls under the areas specified under the RDO as mentioned in paragraph 3 above. The area of provision of goods, facilities, services and premises is particularly relevant to public authorities providing key public services. It is explicitly mentioned under section 27 that the services of any department of the Government or any undertaking by or of the Government are examples of the facilities and services referred to in that section. As a result, discrimination by refusing to provide services to the victim, or refusing to provide services of the like quality, in the like manner and on the like terms to the victim as are normal in relation to other members of the public, would be unlawful.

7. Public authorities have a responsibility to ensure that no racial discrimination or racial harassment would occur in the formulation and implementation of their policies and measures in accordance with the relevant legal provisions. They should take steps to ensure that their staff understand fully the legal responsibility.

8. Legal advice should be sought in case of doubt regarding the legal framework and whether a specific policy or measure would contravene the legal provisions against racial discrimination and harassment.

9. Policies and measures in breach of the RDO would be unlawful. They could be challenged legally by means such as tort action in the District Court.

10. Under the RDO, the public has an additional avenue of the redress mechanism by making complaints to the Equal Opportunities Commission (EOC), the enforcement authority of the RDO. The EOC is entrusted with the functions and powers to work towards the elimination of discrimination and promote equality of opportunity and harmony between persons of different racial groups generally, among others. In relation to racial discrimination, it has the power to handle complaints on unlawful acts, conduct conciliation and provide assistance accordingly under sections 78 and 79 of the RDO, conduct formal investigations under section 64 of the RDO, and obtain information in accordance with section 66 of the RDO. The EOC can make recommendations for changes in policies and procedures to a public authority, or recommendations to the Chief Secretary for Administration on changes in the law or otherwise, in the light of the findings in its formal investigations.