

## PSHA's speech on Race Discrimination Bill

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Following is the speech by the Permanent Secretary for Home Affairs, Mrs Carrie Lam, at the press conference on the Race Discrimination Bill today (November 29):

Dear friends of the media,

In March this year, I led the Hong Kong Special Administrative Region (HKSAR) Government delegation to attend the United Nations Human Rights Committee's hearing on the HKSAR's Second Report in light of the International Covenant on Civil and Political Rights (ICCPR) held in New York. During the hearing, I assured the Human Rights Committee that the HKSAR Government was according utmost priority to completing the drafting of the Race Discrimination Bill. I am pleased that the Bill is now ready -- it will be published in the Government Gazette this Friday (December 1) and introduced into the Legislative Council by the Secretary for Home Affairs on December 13.

The Bill is the result of extensive consultations and careful drafting. To recapitulate, we mounted a public consultation on the legislative proposals between September, 2004, and February, 2005. We received more than 240 submissions and attended 67 meetings to listen to views. The Bill now presented to you contains 94 clauses and five schedules. While it is largely modelled on the three existing anti-discrimination ordinances - the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance -- it has also reflected views and comments expressed to us during the public consultation with a view to ensuring clarity and effective implementation.

Despite the consultations and work done over the past two years, some may still query the need for racial discrimination legislation in Hong Kong when we are living in a generally harmonious society with no prevalent racial disputes or rivalries. Others may worry the new legislation will give rise to frivolous complaints and litigations and adversely affect the operation of Government or business. I feel obliged to dispel such worries. But let me first reiterate the justifications for legislating against racial discrimination.

The HKSAR Government firmly upholds the principles of equality and safeguards the rights of individuals. Article 39 of the Basic Law specifies that, inter alia, the provisions of the ICCPR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. More specifically, Hong Kong has an obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to prohibit and eliminate racial discrimination. As you will agree with me, the rights and freedoms of individuals and the rule of law underpin HKSAR's success. This piece of legislation is thus important to maintaining Hong Kong's international reputation.

At a practical level, the decision to legislate against racial discrimination is not made lightly -- it is preceded by thorough deliberations within Government and in the community at large as well as extensive public education work to raise public awareness on racial equality and foster a culture of mutual understanding. As a result, the proposal has gained majority support. In 1997, more than 80% of respondents surveyed opposed racial discrimination legislation but a similar survey in 2004 found 60% in support of legislation. Most respondents believed that legislation would not have an adverse effect on Hong Kong's economy.

The main purposes of the Race Discrimination Bill are -

- \* to make discrimination, harassment and vilification on the ground of race unlawful;
- \* to prohibit serious vilification of persons on the ground of race; and
- \* to extend the jurisdiction of the Equal Opportunities Commission to cover racial discrimination.

The Bill seeks to strike a balance between safeguarding the rights and freedoms of persons against racial discrimination and respecting the legitimate rights and freedoms of other individuals. We have made sure that the Bill is reasonable in its justifications, practicable in implementation and that it should be acceptable to the people affected. By clarifying the intent of the Bill where appropriate, we believe this would reduce unnecessary litigations.

Let me now highlight the main provisions in the Bill.

"Race" is defined as meaning the race, colour, descent, national origin or ethnic origin of a person. This definition is consistent with that internationally adopted under ICERD. Nationality, citizenship, resident status, length of stay and indigenous villager

status are not grounds of race. In other words, differential treatment of persons from different ethnic backgrounds on the ground of their Hong Kong Permanent Resident status or their length of stay in Hong Kong is not racial discrimination.

Racial discrimination may take the form of direct discrimination or indirect discrimination. Direct discrimination occurs when a person treats another person less favourably than he or she would treat other persons of a different race in similar circumstances. For example, an employer who refuses to consider an application for job from a non-Chinese candidate who is equally qualified as other Chinese applicants will be engaging in direct discrimination. Indirect discrimination is less obvious: it occurs when a person imposes a requirement or condition which in fact is applicable to all but it will put people of a racial group at a particular disadvantage because they are less likely to meet the requirement or condition, and that the requirement or condition imposed cannot be shown to be justifiable by reasons not related to race. For example, an employer in recruiting a cleaner imposes a requirement that all job applicants must pass a written Chinese test. Potential job applicants who are non-ethnic Chinese will find it difficult to meet this requirement and having regard to the job nature, the written Chinese requirement could hardly be regarded as justified. We are fully aware that indirect discrimination may not be straightforward and hence we have provided in the Bill two alternate tests in helping to measure whether indirect discrimination has occurred, i.e. the "rationality and proportionality" test and the "reasonably practicable" test and some guidelines on how the latter would be applied.

Racial discrimination also includes discrimination on the basis of the race of a near relative and discrimination by way of victimisation, that is, when a person is being treated less favourably because he or she has filed a race discrimination complaint or proceedings against another person. Other unlawful acts under the Bill include racial harassment and racial vilification. Serious vilification, involving threatening physical harm or inciting others to threaten physical harm is a criminal offence. I should just add that we have expanded the definition of "racial harassment" to include situations when a person acts in such a way as to make the environment of work, study or training hostile or intimidating for another person, on the grounds of the latter's race. We have also taken the opportunity to amend the Sex Discrimination Ordinance to provide for the same expanded concept of harassment on grounds of sex.

As in the case of the other anti-discrimination ordinances, the Bill prescribes six areas of activities in which racial discrimination and harassment are rendered unlawful and these provisions bind both the Government and the private sector. The

six areas are --

- \* Employment
- \* Education
- \* Provision of goods, facilities, services and premises
- \* Election and appointment to public bodies
- \* Pupilage and tenancy by, and instruction to, barristers
- \* Membership of and access to clubs

Earlier on, I said that the Bill aims at striking the balance between safeguarding the rights of individuals against racial discrimination and respecting the legitimate rights and freedoms of other individuals. This is because we believe it would not be right for the law to demand equal treatment on the ground of race in every aspect of life, including for example, whom a person may want as friends. In situations when an individual's privacy or freedom of choice are involved, we consider it necessary to allow for exceptions. I would like to illustrate this point with reference to a few exceptions we have provided in the Bill.

For example, while employment is a protected area, we allow individual employers to appoint a domestic helper of a particular ethnicity on grounds that the employer should have the choice of deciding whom to bring into the home to live with him or her and their family. The same applies to provider of foster care service in a home setting as well as landlord/tenant relationship where the landlord who also lives in the flat should have the freedom to choose his or her tenant but we have been careful in limiting such exceptions to small dwellings. On domestic helpers, I should emphasise that the exception applies only to appointment. Once appointed, the domestic helper is protected from racial discrimination in other aspects of employment. He or she naturally also enjoy safeguards in other protected areas of activities such as provision of goods or services. It is therefore misleading to allege that we are denying foreign domestic helpers protection from racial discrimination under the Bill.

This brings me to my final point about the Bill, that is, exception clauses, which some critics might wonder whether they had diluted the effect of the Bill. An analysis of these exception clauses would show that they are included for different purposes and some are specifically included to ensure that members of a particular racial group may continue to enjoy special measures intended for their benefit, such as charities and special training. Others are common provisions modelled on other

anti-discrimination legislation to ensure a smooth and effective implementation, such as a three-year grace period from the enactment of legislation for small employers (defined as employing no more than 5 employees) to adapt to the new law and grand-fathering clauses covering existing establishments or employment. A further category of exceptions is justified on grounds of clarity: for example, to put it beyond doubt that the racial discrimination legislation is not intended to limit existing statutory functions, immigration legislation or employment on overseas terms where this is justified on grounds other than race. We do not believe that these exceptions would "water down" the Bill. We stand ready to explain and justify each and every of these exceptions to LegCo in its scrutiny of the Bill.

Given the importance and apparent complexity of this Bill, we have published a booklet using ordinary language to help explain the main provisions in the Bill. Apart from producing it in Chinese and English, we are translating the booklet into the native language of several ethnic groups residing in Hong Kong for their easy reference.

Finally, the HKSAR Government is firmly committed to promoting racial harmony, which is one of the important components of a harmonious society. Since the establishment of a Race Relations Unit in Home Affairs Bureau in 2002, we have mounted a series of measures to raise awareness and assist integration in society of ethnic minorities, particularly those who are less privileged. Our annual spending on these initiatives has more than doubled over these years to some \$10 million in 2006-07. Legislation must go hand-in-hand with mutual respect, compassion and support. We will spare no efforts in working in this direction.

Thank you.

Ends/Wednesday, November 29, 2006