

Legislative Council Panel on Constitutional Affairs

Administrative Guidelines on Promotion of Racial Equality

Purpose

This paper seeks Members' views on the draft Administrative Guidelines on Promotion of Racial Equality.

Background

2. During the scrutiny of the Race Discrimination Bill (RDB) by the Legislative Council (LegCo) in 2008, the Administration has agreed to draw up administrative guidelines for Bureaux and Departments concerned and relevant public authorities to follow in their formulation and implementation of relevant policies and measures.

3. After consulting relevant Bureaux and Departments, draft Administrative Guidelines have been drawn up, as attached at **Annex A**.

The draft Guidelines

4. The draft Guidelines provide general guidance to concerned Bureaux and Departments and other relevant public authorities to promote racial equality and ensure equal access to public services in key areas concerned, and take this into account in their formulation, implementation and review relevant policies and measures. The aim is to encourage them to adopt the good practice of considering the promotion of racial equality as an integral dimension in the formulation and implementation of relevant policies and measures. They are also encouraged to take measures and initiatives to meet the objective in the light of their specific circumstances.

5. As we have informed the Bills Committee of the RDB, the key public services in this context are medical, education, vocational

training, employment and major community services. The concerned Bureaux, Departments and relevant 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.

6. The proposed Guidelines are divided into the following sections –

Section 1 – Objective of the Guidelines;

Section 2 – Description of the guiding principles;

Section 3 – obligation of the Government under the relevant legislation;

Section 4 – Elaboration of key steps for relevant bureaux, departments and public authorities to take in their formulation and implementation of policies and measures;

Section 5 – Highlighting the importance of staff training;

Section 6 – Implementation and coordination of the Guidelines; and

Annex – Provisions of the Race Discrimination Ordinance (RDO) which are of special relevance to the government.

7. The CMAB will maintain an overview on the implementation of the Guidelines in the Administration as a whole. Individual Bureaux, Departments and public authorities concerned will be responsible for implementing the Guidelines within their policy or programme areas.

8. Under the draft Guidelines, one of the means to enhance the transparency in the efforts of the relevant Bureaux, Departments and public authorities is to draw up and publicise a checklist of measures that would assist in promoting racial equality and equal access to key public services. A draft sample checklist covering the major activities areas in education is at **Annex B**, as an example to illustrate how the checklist in the Guidelines would be drawn up. The Education Bureau will refine the checklist after taking into account comments from Members.

9. Similarly we will invite other relevant bureaux and departments to draw up checklists in accordance with the Guidelines after the Guidelines have been published.

Way forward

10. We will consult relevant ethnic minority groups and organizations on the draft Guidelines through established channels, such as the Committee on Promotion of Racial Harmony and the Ethnic Minorities Forum, as well as other relevant parties such as the Equal Opportunities Commission. We will take into account their views as well as Members' comments in finalizing the Guidelines.

Constitutional and Mainland Affairs Bureau
June 2009

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Annex A

Administrative Guidelines on Promotion of Racial Equality

1. INTRODUCTION

1.1 These Guidelines provide general guidance to concerned Bureaux and Departments of the Hong Kong Special Administrative Region (HKSAR) Government and other relevant public authorities, as listed in paragraph 1.5, to promote racial equality and ensure equal access to public services in the key areas concerned, and take this into account in their formulation, implementation and review of relevant policies and measures.

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 society. This is achieved through public education and promotional activities, and strengthening support services to ethnic minorities. The introduction of Administrative Guideline is a further step to this end.

Purpose and scope of the Guidelines

1.4 These Guidelines offer general guidance to relevant public authorities on the promotion of racial equality. The aim is to encourage them to 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 are also encouraged to

take measures and initiatives to meet the objective in the light of their specific 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 concerned Bureaux, Departments and relevant 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. 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 maintaining an overview on the implementation of the Guidelines in the Administration as a whole. The relevant Bureaux, Departments and 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 relevant Bureaux, Departments and 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 Bureaux, Departments and 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 relevant Bureaux, Departments and 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 RACE 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 ICCPR as applied to Hong Kong is enshrined in the Basic Law, as well as 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 Equal Opportunities Commission (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 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. Relevant Bureaux, Departments and public authorities should consider taking measures as appropriate 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 concerned Bureaux, Departments and public bodies to promote racial equality in key service areas. Bureaux, Departments and 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 Equal Opportunities Commission (EOC).

4. FORMULATION OF POLICIES AND MEASURES

Overview

4.1 On top of compliance with legal requirements, relevant Bureaux, Departments and public authorities are encouraged to 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 Relevant Bureaux, Departments and 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 the stakeholders if necessary 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 Bureaux, Departments and public authorities concerned should consider paying 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 Where necessary, relevant Bureaux, Departments and public authorities should consider taking appropriate steps to facilitate their assessment. These steps may include collection of relevant information and statistics and consultation with stakeholders where appropriate.

4.7 Generally, it is for the relevant Bureaux, Departments and 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 which 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 Bureaux, Departments or public authorities concerned 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 they 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, relevant Bureaux, Departments and public authorities are encouraged to keep in view the implementation progress, including the effect of such changes, to assess if they have achieved the intended outcome.

4.10 Relevant Bureaux, Departments and public authorities are encouraged to enhance the transparency in the efforts 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, relevant Bureaux, Departments and public authorities are encouraged to establish indicators and / or targets as appropriate. Such indicators and targets to be set could aim to:

- (a) promote measures to eliminate unlawful racial discrimination;

- (b) step up measures to promote racial equality;
- (c) enhance access to public services by ethnic minorities; and
- (d) gauge the effect of measures taken.

(V) Record and publicity

4.12 Relevant Bureaux, Departments and public authorities are encouraged to 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 are also encouraged to take steps 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. Relevant Bureaux, Departments and public authorities are encouraged to consider providing appropriate guidance and training to facilitate the understanding of the Guidelines among staff concerned.

5.2 Relevant Bureaux, Departments and public authorities are encouraged to 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, as necessary, liaise with the Equal Opportunities Commission or the Civil Service Training and Development Institute to provide appropriate training for civil servants on racial sensitivity and cultural diversity. If necessary, Bureaux and Departments can also contact the Equal Opportunities Commission or Civil Service Training and Development Institute for assistance in arranging training courses for their staff.

5.4 Based on information provided by Bureaux and Departments, 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 Bureaux, Departments and relevant public authorities concerned are responsible for implementing the Guidelines within their policy / programme areas. They are encouraged to make arrangements to keep the progress of implementation under review.

6.2 The CMAB takes an overview on the implementation of the Guidelines in the Administration as a whole. It will collect relevant information on the implementation of the Guidelines from Bureaux, Departments and public authorities concerned, such as the checklists that are drawn up under paragraph 4.10. The CMAB will brief the Panel on Constitutional Affairs of the Legislative Council on the implementation progress as appropriate.

6.3 Relevant Bureaux, Departments and public authorities concerned can also consider additional publicity efforts on measures or improvements taken under their specific policy and service areas.

6.4 Bureaux, Departments and public authorities concerned are encouraged to designate an officer to co-ordinate the implementation of the Guidelines within their organisation. 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.

Constitutional and Mainland Affairs

June 2009

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

The Race Discrimination Ordinance (RDO) 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. 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 Bureaux and Departments 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.

6. Bureaux, Departments and relevant authorities have 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. They should take steps to ensure that their staff understand fully the legal responsibility.

7. 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.

8. 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.

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

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Annex B

Existing and planned measures on the promotion of equality for ethnic minorities

Education

The Government's education policy is to provide appropriate learning opportunities for all students with a view to helping them attain all-round development. The Education Bureau attaches importance to providing education support for non-Chinese speaking (NCS) students to facilitate their early integration into our local education system and wider community. To this end, we have laid down clear direction and been putting in place a series of coherent educational support measures for the NCS students.

A. Supplementary Guide to the Chinese Language Curriculum for NCS students

Services Concerned	<ul style="list-style-type: none">• The Supplementary Guide recommends different curriculum modes under the umbrella of a common curriculum framework for all NCS students in need. To ensure that these curriculum modes could be easily adopted in schools with NCS students irrespective of race, learning materials covering both primary and secondary levels and a series of packages of teaching reference materials have been developed alongside the Guide.
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Existing Support Measures	<p><u>The Supplementary Guide</u></p> <ul style="list-style-type: none">• The Supplementary Guide was released in November 2008 and distributed to schools with relevant packages of teaching reference materials in December 2008. Courses and workshops on the Supplementary Guide have been provided to Chinese Language teachers.
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Learning materials and teaching reference materials

- Part one of the first set of learning materials, covering both

primary to secondary levels, was uploaded in March 2009 with the printed copies delivered to schools in June 2009.

- The teaching reference materials, including various learning software and Chinese lexical items with English explanations for use in Hong Kong schools, were distributed to schools from December 2008 to May 2009. Copies are also available for sale in the Government Bookstore.

Assessment of Future Work • The above measures will be evaluated after a few years of school implementation.

Additional Measures Taken / To Be Taken • Part two of the first set and the final set of learning materials will be completed in June 2009 and June 2010 respectively.
• A set of research-based assessment tools will be developed for supporting schools in assessing the Chinese Language learning of NCS students.

B. Designated Schools

Services Concerned • The purposes of establishing designated schools are to strengthen our focused support to schools having admitted a critical mass of NCS students, with a view to facilitating the development of supporting teaching materials and school-based support programmes for NCS students for sharing of good practices and professional experiences with other schools which have also admitted NCS students.

Existing Support Measures Designated schools and provision of a special grant
• The number of designated schools was increased from 15 in the 2006/07 school year to 19 in the 2007/08 school year and to 22 in the 2008/09 school year.

	<ul style="list-style-type: none"> • Each designated school has been provided with an annual special grant ranging from \$300,000 to \$600,000 to put in place school-based support programmes for NCS students.
Assessment of Future Work	<ul style="list-style-type: none"> • The number of designated schools will be reviewed and their performance would be monitored regularly to ensure effective use of the special grant to improve the learning and teaching of NCS students.
Additional Measures Taken / To Be Taken	<ul style="list-style-type: none"> • We plan to increase the number of schools designated for intensive support to 25 in the 2009/10 school year.

C. Chinese Language Learning Support Centre

Services Concerned	<ul style="list-style-type: none"> • The Chinese Language Learning Support Centre (commissioned to a tertiary institution) provides remedial programmes after school hours or during holidays for NCS students, in particular the late starters in Chinese learning, and renders professional support to teachers.
Existing Support Measures	<p><u>Provision of remedial programmes for NCS students and briefing sessions for teachers</u></p> <ul style="list-style-type: none"> • In the 2008/09 school year, the Centre has expanded its services by operating at eight designated venues, an increase from five venues in the 2007/08 school year. • The number of NCS students enrolled in the Centre has increased from 250 (2007/08 school year) to some 352 in the current school year. • 9 teacher briefing sessions were held in the 2008/09 school year.
Assessment of Future Work	<ul style="list-style-type: none"> • The remedial programmes and teacher briefing sessions by the Centre have been successfully completed.

Additional Measures Taken / To Be Taken	<ul style="list-style-type: none"> • About 20 classes of remedial programme for NCS students and about 10 teacher briefing sessions will continue to be provided in the 2009/10 school year.
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D. Information for NCS Parents / Students

Services Concerned	<ul style="list-style-type: none"> • To help the NCS parents/students understand our school system, major education policies and the related education services.
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Existing Support Measures	<p><u>Non-Chinese Speaking Parent Information Package</u></p> <ul style="list-style-type: none"> • The Non-Chinese Speaking Parent Information Package available in major ethnic minority languages have been prepared and distributed to NCS parents through schools and Maternal and Child Health Centres. It has also been distributed to the non-government organizations and relevant Government bureaux/departments to strengthen the support for NCS parents/students.
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Other measures to facilitate communication

- Relevant information, e.g. applications for Primary 1 and Secondary 1 places under relevant school places allocation systems and the executive summary of the Supplementary Guide to the Chinese Curriculum for the NCS students, has been translated into major ethnic minority languages.
- Simultaneous interpretation service is provided when conducting briefing sessions and, where necessary, interpretation service of major ethnic minority languages can be arranged.

Dedicated website

- A dedicated website is available at <http://www.edb.gov.hk/ncs> to facilitate NCS parents' understanding of the services available.

Assessment of Future Work • Feedback on the Information Package, other leaflets or website will be collected on a need basis.

Additional Measures Taken / To Be Taken • Updating of the Parent Information Package and other information leaflets will be done as and when necessary.

Conclusion

We will update the above measures and include other new measures in the checklist as and when appropriate.