

**Bills Committee on the Race Discrimination Bill**

**The Administration's proposals  
for Committee Stage Amendments**

The attached documents are submitted for Members' consideration at the meeting to be held on 14 June 2008 –

- (a) at Annex A, a summary of the proposals for Committee Stage Amendments (CSAs) which the Administration will move upon resumption of Second Reading Debate of the Bill on 9 July 2008; and
- (b) at Annex B, the proposed wording of the CSAs, marked in revision mode on the relevant extract of the Bill to facilitate reference.

**Constitutional and Mainland Affairs Bureau  
June 2008**

## Race Discrimination Bill (RDB)

### The Administration's proposed Committee Stage Amendments (CSAs)

<b>Proposed CSA</b>
<p><b>Long Title</b></p> <p>To amend the long title to reflect the impact of the proposed CSAs, including the related amendments and the provisions on discrimination against contract workers to the existing anti-discrimination ordinances as well as the provision on unlawful harassment by creating a hostile or intimidating environment in the Sex Discrimination Ordinance.</p>
<p><b>Clauses 1(2), 64(3) and 84(1):</b></p> <p>To replace "Secretary for Home Affairs" by "Secretary for Constitutional and Mainland Affairs", so as to reflect the transfer of responsibility for co-ordination of human rights policies from the Home Affairs Bureau to the Constitutional and Mainland Affairs Bureau with effect from 1 July 2007.</p>
<p><b>Clauses 2: Definition of club</b></p> <p>To amend the definition of "club" in Clause 2 by deleting "sells or supplies liquor for consumption on its premises" so as to cover also clubs <u>not</u> selling liquor.</p> <p>The proposed CSA would also include related amendments to the three existing anti-discrimination ordinances.</p>
<p><b>Clause 2: Definition of estate agent</b></p> <p>To amend the definition of "estate agent" so that it "has the same meaning as in the Estate Agents Ordinance (Cap 511)"</p> <p>The proposed CSA would also include related amendments to the SDO and DDO.</p>

## **Proposed CSA**

### **Clause 2: Definition of near relative**

To expand the scope of “near relative” to include parents-in-law, children-in-law, brothers-in-law and sisters-in-law and to revise the presentation so as to remove unnecessary stigma against illegitimate children.

The proposed CSA would also include related amendments to the three existing anti-discrimination ordinances.

### **Clause 3: Application to Government**

To replace “This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person” by “This Ordinance binds the Government.”

### **Clause 4(2)(b) and Clause 4(3) to 4(5): Definition of racial discrimination**

To delete Clause 4(2)(b) and 4(3) to 4(5) so as to address the concerns over the alternative test of “reasonable practicability” in defining indirect racial discrimination.

### **Clause 7(2): Racial harassment**

To extend the scope of Clause 7(2) to cover all the circumstances relevant for the purposes of any provision of the Bill, so that it will also cover other environment, such as those in which a person receives service, instead of only those in which a person works, studies or undergoes training.

The proposed CSA would also include a related amendment to the SDO.

### **Clause 15: Discrimination against contract workers**

To amend Clause 15 so as to ensure protection not only for those contract workers who are employed by a contractor but also those employed by a

## **Proposed CSA**

sub-contractor who do not have a direct contract with the principal.

The proposed CSA would also include related amendments to the three existing anti-discrimination ordinances.

### **Clauses 18: Exception for trade unions, etc.**

To amend the title of Clause 18 to read “Organizations of workers or employers or professional or trade organizations, etc.” so as to fully reflect the coverage of the relevant provisions and to eliminate the misimpression that this Clause only covers trade unions.

To revise Clauses 18(5) and (6) so as to clarify the legislative intention and extend their coverage to “any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists”, thus ensuring equal treatment with “an organization of workers, an organization of employers, or an organization of both workers and employers”.

### **Clause 20(2)(b): Persons concerned with provision of vocational training**

To amend Clause 20(2)(b) to clarify that the words “those matters” refer to the “arrangements regarding holidays or medium of instruction” stated in Clause 20(2)(a).

### **Clause 26(2)(b): Discrimination by responsible bodies for educational establishment**

To amend clause 26(2)(b) to clarify that the words “those matters” refer to the “arrangements regarding holidays or medium of instruction” stated in Clause 26(2)(a) .

### **Clause 34(2): Discrimination in eligibility to stand for election, etc.**

To delete Clause 34(2) which relates to appointment as the Chief Executive, to Executive Council, as a Principal Official, to LegCo or as Chief Justice of the

**Proposed CSA**

Court of Final Appeal or Chief Judge of the High Court. The deletion will not alter the legal position as the Basic Law provisions on these appointments will prevail over the Race Discrimination Ordinance (if enacted) in case of any inconsistency.

**Clause 44(1)(b): Pressure to discriminate**

To clarify the meaning of Clause 44(1)(b) by replacing “threatening” by “threatening to subject”.

**Clause 45(2)(b): Vilification**

To revise Clause 45(2)(b) so as to clarify the meaning of the provision.

The proposed CSA would also include a related amendment to the DDO.

**Clause 46(1): Offence of serious vilification**

To clarify the meaning of Clause 46(1) by replacing “which includes” by “and the activity consists of”.

The proposed CSA would also include a related amendment to the DDO.

**Clause 65: Power to conduct formal investigation**

To amend Clause 65 so as to clarify that the Equal Opportunities Commission (EOC) may conduct formal investigations if it thinks fit and shall conduct such investigation if required by the Chief Secretary for Administration.

**Clause 71(b): Claims in respect of discrimination, harassment and vilification**

To amend Clause 71(b) so as to clarify that claims under Clause 47 (Liability of employers and principals) or Clause 48 (Aiding unlawful acts) may be made not only against an act of discrimination but also against harassment and

**Proposed CSA**

vilification.

The proposed CSA would also include related amendments to the SDO and DDO.

**Clause 72(5): Issue of enforcement notice**

To correct a typographical error in Clause 72(5) by replacing “Section 67(4)” by “Section 67(5)”.

**Clause 81(3): Period within which proceedings to be brought**

To amend Clause 81(3) by replacing “conciliation under section 79 was concluded” by “the complaint was disposed of under section 79(3) or (4)”. This is to clarify that the 24-month limitation for bringing proceedings to the District Court under Clause 81(1) does not include the time taken by the EOC for investigation and conciliation. It covers both situations where the Commission has completed investigation and conciliation (Clause 79(3)) and situations where, under Clause 79(4), the Commission decides not to conduct, or to discontinue, an investigation of a complaint.

The proposed CSA would also include related amendments to the three existing anti-discrimination ordinances.

**Clause 89. Chinese Temples Ordinance**

**Clause 94. Chinese Permanent Cemeteries Ordinance**

To delete amendments affecting the General Chinese Charities Fund and the fund under the management of the Board of Management of the Chinese Permanent Cemeteries.

**Schedule 1: Educational Establishments and Their Responsible Bodies and  
Schedule 2: Employee in Existing Employment**

To replace “Permanent Secretary for Education and Manpower” and “Education

**Proposed CSA**

and Manpower Bureau” by “Permanent Secretary for Education” and “Education Bureau” respectively, so as to reflect the renaming of the Education Bureau with effect from 1 July 2007.

To replace references to “remains to be” by “remains” for drafting refinement.

## Extracts of the Race Discrimination Bill

(With draft Committee Stage Amendments marked up against relevant provisions)

### A BILL To

Render discrimination, harassment and vilification, on the ground of race, unlawful; to prohibit serious vilification of persons on that ground; to extend the jurisdiction of the Equal Opportunities Commission to include such unlawful acts; to confer on the Commission the function of eliminating such discrimination, harassment and vilification and promoting equality and harmony between people of different races; ~~to extend unlawful sexual harassment under the Sex Discrimination Ordinance to cover rendering the environment in which a person works, studies or undergoes training sexually hostile or intimidating; to amend certain definitions, and the provisions on discrimination against contract workers, in existing anti-discrimination legislation as well as the provision on unlawful harassment by creating a hostile or intimidating environment the Sex Discrimination Ordinance for alignment with corresponding provisions in this Ordinance;~~ to make other consequential and related amendments to enactments; and for related purposes.

#### 1. Short title and commencement

(1) This Ordinance may be cited as the Race Discrimination Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the ~~Secretary for Home Affairs~~ Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –

...

“club” (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes ~~—that—~~

(a) ~~provides and maintains its facilities, in whole or in part, from the funds of the association; and~~

(b) sells or supplies liquor for consumption on its premises; and which provides and maintains its facilities, in whole or in part, from the funds of the association;



...

~~“estate agent” (地產代理) means a person who, by way of profession or trade, provides services for the purpose of –~~

- ~~(a) — finding premises for persons seeking to acquire them; or~~
- ~~(b) — assisting in the disposal of premises;~~

~~“estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);~~

~~“near relative” (近親), in relation to a person, means the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the person (whether of full blood or half blood or by affinity), and “child” (子女) includes an illegitimate child and the wife or husband of an illegitimate child;~~

~~“near relative” (近親), in relation to a person, means –~~

- ~~(a) the person’s spouse;~~
- ~~(b) a parent of the person or of the spouse;~~
- ~~(c) a child of the person or the spouse of a child;~~
- ~~(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;~~
- ~~(e) a grandparent of the person or of the spouse; or~~
- ~~(f) a grandchild of the person or the spouse of a grandchild,~~

~~and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;~~

...

### ~~3. Application to Government~~

~~This Ordinance applies to an act done by or for the purposes of the Government that is of a kind similar to an act done by a private person.~~

### 3. Application to Government

This Ordinance binds the Government.

## PART 2

### DISCRIMINATION AND HARASSMENT TO WHICH THIS ORDINANCE APPLIES

#### 4. Racial discrimination

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the discriminator”) discriminates against another person if –

- (a) on the ground of the race of that other person, the discriminator treats that other person less favourably than the discriminator treats or would treat other persons; or
- (b) the discriminator applies to that other person a requirement or condition which the discriminator applies or would apply equally to persons not of the same racial group as that other person but –
  - (i) which is such that the proportion of persons of the same racial group as that other person who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it;
  - (ii) which the discriminator cannot show to be justifiable irrespective of the race of the person to whom it is applied; and
  - (iii) which is to the detriment of the other person because that person cannot comply with it.

~~(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable either –~~

- ~~(a) if it serves a legitimate objective and bears a rational and proportionate connection to the objective; or~~
- ~~(b) if it is not reasonably practicable for the person who allegedly discriminates against another person not to apply the requirement or condition.~~

~~(3) In determining for the purposes of subsection (2)(b) whether it is reasonably practicable for a person who allegedly discriminates against another person not to apply a requirement or condition, any relevant circumstances of the particular case may be taken into account including those referred to in subsection (4).~~

~~(4) The circumstances that may be taken into account include, but are not limited to –~~

- ~~(a) the nature of the benefit or detriment likely to accrue to or be suffered by, or the likely impact on, all persons concerned;~~
- ~~(b) an estimate of the proportion of persons likely to benefit out of all the persons concerned, if the requirement or condition is not applied;~~
- ~~(c) whether any activities of the person who allegedly discriminates against another person will be disrupted if the requirement or condition is not applied and, if so, the extent of the disruption; and~~

~~(d) — whether the person who allegedly discriminates against another person will need to provide additional services or facilities or incur additional expenditure (including recurrent expenditure), if the requirement or condition is not applied.~~

~~(5) — Nothing in subsection (3) or (4) is to be construed as requiring the person who allegedly discriminates against another person or any other person concerned to confer any benefit, suffer any detriment, provide any services or facilities or incur any expenditure which the person or that other person (as the case may be) is not otherwise required to confer, suffer, provide or incur.~~

(2) For the purposes of subsection (1)(b)(ii), a requirement or condition is justifiable if it serves a legitimate objective and bears a rational and proportionate connection to the objective.

(6) It is declared that, for the purposes of this Ordinance, segregating a person from other persons on the ground of the race of that person is treating that person less favourably than the other persons are treated.

## **7. Racial harassment**

(1) In any circumstances relevant for the purposes of any provision of this Ordinance, a person harasses another person if, on the ground of the race of that other person or a near relative of that other person, the first-mentioned person engages in unwelcome conduct (which may include an oral or a written statement), in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by that conduct.

(2) In any circumstances relevant for the purposes of any provision of this Ordinance, a person (“the first-mentioned person”) harasses another person (“the second-mentioned person”) if, on the ground of the race of the second-mentioned person or his or her near relative, the first-mentioned person, alone or together with other persons, engages in conduct (which may include an oral or a written statement) that ~~renders hostile or intimidating the environment in which the second-mentioned person works, studies or undergoes training, or carries out related or incidental activities~~ creates a hostile or intimidating environment for the second-mentioned person.

## **15. Discrimination against contract workers**

(1) This section applies to any work for a person (“the principal”) that is available for doing by individuals (“contract workers”) who are employed not by the principal himself or herself but ~~by another person, who supplies them under a contract made with the principal.~~ by a contractor or sub-contractor of the principal.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a contract worker –

- (a) in the terms on which the principal allows that contract worker to do that work;
- (b) by not allowing the contract worker to do it or continue to do it;
- (c) in the way the principal affords the contract worker access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them; or
- (d) by subjecting the contract worker to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person not of a particular racial group at a time when, if the work were to be done by a person taken into the principal's employment, being of that racial group would be a genuine occupational qualification for the job.

(4) Without prejudice to section 8(2) and (3), nothing in this section renders unlawful any act done by the principal for the benefit of a contract worker not ordinarily resident in Hong Kong in or in connection with allowing the contract worker to do work to which this section applies, where the purpose of the contract worker's being allowed to do that work is to provide him or her with training in skills which he or she appears to the principal to intend to exercise wholly outside Hong Kong.

(5) Without prejudice to section 8(2) and (3), nothing in this section renders unlawful any act done by the principal for the benefit of any contract worker in or in connection with allowing the contract worker to do work to which this section applies, where –

- (a) the work requires special skills, knowledge or experience not readily available in Hong Kong;
- (b) the contract worker –
  - (i) possesses those skills, knowledge or experience; and
  - (ii) comes to do the work from a place outside Hong Kong; and
- (c) the act is reasonably done for a person who comes from that place, having regard to –
  - (i) the prevailing terms of employment offered to persons with those skills, knowledge or experience in places outside Hong Kong; and
  - (ii) any other relevant circumstances (other than the race of the person).

(6) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the contract worker in question belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his or her contract workers.

(7) In this section–  
“contractor” ( ) means a person who undertakes any work for the principal

under a contract that is entered into by the person directly with the principal;

“sub-contractor” ( ) means a person who enters into a contract with another person (whether or not a contractor) to undertake all or any part of the work that a contractor has undertaken.

**18. Trade unions, Organizations of workers or employers or professional or trade organizations, etc.**

(1) This section applies to an organization of workers, an organization of employers, an organization of both workers and employers, or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists.

(2) It is unlawful for an organization to which this section applies, in the case of a person who is not a member of the organization, to discriminate against the person –

- (a) in the terms on which it is prepared to admit the person to membership; or
- (b) by refusing, or deliberately omitting to accept, the person’s application for membership.

(3) It is unlawful for an organization to which this section applies, in the case of a person who is a member of the organization, to discriminate against the person –

- (a) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him or her access to them;
- (b) by depriving the person of his or her membership, or varying the terms on which he or she is a member; or
- (c) by subjecting the person to any other detriment.

(4) This section does not apply to provision in relation to the death or retirement from work of a member made before the commencement date in so far as any such provision continues for that member on and after that date.

~~(5) This section does not apply to or in relation to an organization of workers, an organization of employers, or an organization of both workers and employers –~~

- ~~(a) the main object of which is to enable the benefits of membership to be enjoyed by persons of a particular racial group defined otherwise than by reference to colour; and~~
- ~~(b) which had been established before the enactment of this Ordinance.~~

(5) Where, immediately before the enactment of this Ordinance, the main object of an organization to which this section applies was to enable the benefits of membership to be enjoyed by persons of a particular racial group (defined otherwise than by reference to colour), and that continues to be its

main object on or after that enactment, this section is not to be construed as affecting that object and does not render unlawful an act that is done in order to give effect to that object.

(6) In determining whether the main object of ~~an organization of workers, an organization of employers, or an organization of both workers and employers~~ an organization to which this section applies is as stated in subsection (5), regard shall be had to –

- (a) the essential character of the organization;
- (b) the extent to which the affairs of the organization are so conducted that the persons primarily enjoying the benefits of membership are of the racial group in question; and
- (c) any other relevant circumstances.

## **20. Persons concerned with provision of vocational training**

(1) It is unlawful, in the case of a person (“the first-mentioned person”) seeking or undergoing training which would help to fit him or her for employment, for any person (“the second-mentioned person”) who provides, or makes arrangements for the provision of, facilities for such training to discriminate against the first-mentioned person –

- (a) in the terms on which the second-mentioned person affords the first-mentioned person access to any training course or other facilities concerned with such training;
- (b) by refusing, or deliberately omitting to afford, the first-mentioned person such access;
- (c) by terminating the first-mentioned person’s training; or
- (d) by subjecting the first-mentioned person to any other detriment during the course of his or her training.

(2) Nothing in subsection (1) is to be construed as requiring a person who provides, or makes arrangements for the provision of, facilities for such training –

- (a) to modify for persons of any racial group its arrangements regarding holidays or medium of instruction; or
- (b) to make different arrangements ~~on those matters~~ regarding holidays or medium of instruction for persons of any racial group.

(3) Subsection (1) does not apply to –

- (a) discrimination which is rendered unlawful by any of the provisions of section 10 or 26; or
- (b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Ordinance.

## PART 4

### DISCRIMINATION AND HARASSMENT IN OTHER FIELDS

#### *Education*

#### **26. Discrimination by responsible bodies for educational establishments**

(1) It is unlawful for the responsible body for an educational establishment to discriminate against a person –

- (a) in the terms on which it offers to admit that person to the establishment as a student;
- (b) by refusing, or deliberately omitting to accept, an application for that person's admission to the establishment as a student; or
- (c) where the person is a student of the establishment –
  - (i) in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or
  - (ii) by expelling the person from the establishment or subjecting him or her to any other detriment.

(2) Nothing in subsection (1) is to be construed as requiring the responsible body for an educational establishment –

- (a) to modify for persons of any racial group arrangements of the establishment regarding holidays or medium of instruction; or
- ~~(b) to make different arrangements on those matters for persons of any racial group persons.~~
- (b) to make different arrangements regarding holidays or medium of instruction for persons of any racial group.

#### *Public bodies, etc.*

#### **34. Discrimination in eligibility to stand for election, etc.**

(1) It is unlawful for a person to discriminate against another person in –

- (a) determining the eligibility of a person to stand for election to a relevant body or relevant position, or to be selected for a relevant position;
- (b) the terms or conditions on which a person is considered eligible to stand for election to a relevant body or relevant position, or to be selected for a relevant position;

- (c) determining the eligibility of a person to vote in elections of members of a relevant body or the holder of a relevant position;
- (d) the terms or conditions on which a person is considered eligible to vote in elections of members of a relevant body or the holder of a relevant position, or to take part in the selection of the holder of a relevant position;
- (e) considering whether a person should be appointed as a member of a relevant body, where some or all of the members of that body are appointed; or
- (f) considering whether a person should be appointed to a relevant position, approved as a member of a relevant body or recognized as holding a relevant position.

~~(2) Subsection (1) does not apply to, or in relation to, a person's eligibility—~~

- ~~(a) to be selected and be appointed the Chief Executive;~~
- ~~(b) to be appointed to the Executive Council;~~
- ~~(c) to be nominated and be appointed a principal official of the Hong Kong Special Administrative Region;~~
- ~~(d) to be elected to the Legislative Council;~~
- ~~(e) to be elected the President of the Legislative Council; or~~
- ~~(f) to be appointed the Chief Justice of the Court of Final Appeal or the Chief Judge of the High Court.~~

(3) In this section –

- (a) a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body;
- (b) a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position.

#### **44. Pressure to discriminate**

(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part 3 or 4 by –

- (a) providing or offering to provide the person with any benefit; or
- (b) subjecting or ~~threatening~~ threatening to subject the person to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person concerned, if it is made in such a way that he or she is likely to hear of it.

#### **45. Vilification**

(1) It is unlawful for a person, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons on the ground of the race of the person or members of the class of persons.



- (2) Nothing in this section renders unlawful –
- (a) a fair report on an activity in public;
  - ~~(b) an activity in public being a communication for the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or~~
  - (b) an activity in public that –
    - (i) is a communication or the distribution or dissemination of any matter; and
    - (ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or
  - (c) an activity in public done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussions about and expositions of any matter.

(3) In this section and section 46, “activity in public” (公開活動) includes any of the following activities, whether or not the person carrying out the activity is in a public place while carrying out the activity –

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material;
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia;
- (c) the distribution or dissemination of any matter to the public.

#### **46. Offence of serious vilification**

(1) A person commits an offence if the person, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person (“the second-mentioned person”) or members of a class of persons, on the ground of the race of that second-mentioned person or the members of that class of persons ~~which includes –~~ and the activity consists of –

- (a) threatening physical harm –
  - (i) towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons; or
  - (ii) towards the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access;or
- (b) inciting others to threaten physical harm –

- (i) towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons; or
  - (ii) towards the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

### *Codes of practice*

#### **64. Codes of practice**

(1) The Commission may issue codes of practice containing such practical guidance as it thinks fit for the purposes of –

- (a) the elimination of discrimination;
- (b) the promotion of equality of opportunity and harmony between persons of different racial groups; or
- (c) the elimination of harassment and vilification.

(2) When the Commission proposes to issue a code of practice, it shall prepare and publish (otherwise than in the Gazette) the code; it shall consider any representations made to it about the code and may modify the code accordingly.

(3) In the course of preparing any code of practice for eventual publication under subsection (2), the Commission shall consult such associations, organizations, associations of organizations or bodies as appear to the Commission to be appropriate including any associations, organizations, associations of organizations or bodies specified by the ~~Secretary for Home Affairs~~ Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

(4) If the Commission determines to proceed with a code of practice published under subsection (2), it shall cause the code to be –

- (a) published in the Gazette; and
- (b) laid on the table of the Legislative Council at the next sitting after its publication in the Gazette.

(5) The Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which a code of practice is laid on the table of that Council (“the relevant period”), provide that the code of practice shall be amended in any manner consistent with this section.

(6) If the relevant period would but for this section expire after the end of a session or a dissolution of the Legislative Council, but on or before the day of its second sitting in the next session, the period for amending the code is deemed to be extended and expire on the day after that second sitting.

(7) The Legislative Council may, before the expiration of the relevant period, by resolution extend the period for amending the code of

practice to the first sitting of that Council held not earlier than the twenty-first day after the day of such expiration.

(8) Where the relevant period is extended under subsection (6), the Legislative Council may, before the expiration of the extended period, by resolution extend that extended period to the first sitting of that Council held not earlier than the twenty-first day after the day of the second sitting in the next session referred to in that subsection.

(9) A resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing of the resolution or within such further period as the Chief Executive may allow in a particular case.

(10) A code of practice shall come into operation –

(a) if on the expiration of the relevant period or that period as extended under subsection (6), (7) or (8), the Legislative Council has not passed a resolution amending the code of practice, on the expiration of the relevant period or that period as so extended (as the case may be); and

(b) if the Legislative Council passes a resolution amending the code of practice, at midnight on the day before the day on which the resolution is published in the Gazette.

(11) A code of practice may contain such transitional provisions or savings as appear to the Commission to be necessary or expedient in connection with the matters which are the subject of the code.

(12) The Commission may from time to time revise the whole or any part of a code of practice and issue the revised code, and subsections (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) apply (with appropriate modifications) to a revised code.

(13) Without limiting subsection (1), a code of practice may include such practical guidance as the Commission thinks fit as to what steps it is reasonably practicable for employers to take for the purpose of preventing their employees from doing in the course of their employment acts made unlawful by this Ordinance.

(14) A failure on the part of any person to observe any provision of a code of practice shall not of itself render the person liable to any proceedings; but in any proceedings under this Ordinance before any court any code of practice issued under this section shall be admissible in evidence, and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(15) In this section, “sitting” (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included in the order paper.

## **65. Power to conduct formal investigations**

Without limiting section 60, –

- (a) if the Commission ~~may if it~~ thinks fit, it may conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section; and
- (b) if required by the Chief Secretary for Administration, the Commission shall, conduct a formal investigation for any purpose connected with the carrying out of any of its functions under that section.

**71. Claims in respect of discrimination, harassment and vilification**

(1) A claim by or on behalf of any person (“the claimant”) that another person (“the respondent”) –

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part 3 or 4;
- ~~(b) is by virtue of section 47 or 48 to be treated as having committed such an act of discrimination against the claimant;~~
- (c) has committed an act of harassment against the claimant which is unlawful by virtue of Part 3 or 4; ~~or~~
- (d) has committed an act which is unlawful by virtue of section 45; or
- (e) is to be treated, by virtue of section 47 or 48, as having committed an act of discrimination or harassment referred to in paragraph (a) or (c) against the claimant or an act referred to in paragraph (d),

may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) Subsection (1) does not apply to a claim under section 19(1) of an act in respect of which an appeal, or proceedings in the nature of an appeal, may be brought under any enactment.

(3) Proceedings under subsection (1) are to be brought in the District Court but all such remedies shall be obtainable in such proceedings as, apart from this subsection and section 70(1), would be obtainable in the Court of First Instance.

(4) Without limiting the power conferred by subsection (3), the District Court may –

- (a) make a declaration that the respondent has engaged in conduct, or committed an act, that is unlawful under this

Ordinance and order that the respondent shall not repeat or continue such unlawful conduct or act;

- (b) order that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent shall employ or re-employ the claimant;
- (d) order that the respondent shall promote the claimant;
- (e) order that the respondent shall pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the respondent's conduct or act;
- (f) order that the respondent shall pay to the claimant punitive or exemplary damages; or
- (g) make an order declaring void in whole or in part and either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.

(5) By virtue of this subsection and notwithstanding any law, the District Court has jurisdiction to hear and determine any proceedings under subsection (1) and has all such powers as are necessary or expedient for it to have in order to provide, grant or make any remedy, injunction or order mentioned in this Ordinance.

(6) In respect of an unlawful act of discrimination falling within section 4(1)(b), no award of damages is to be made if the respondent proves that the requirement or condition concerned was not applied with the intention of treating the claimant unfavourably on the ground of the race of the claimant.

(7) For the avoidance of doubt, it is declared that damages in respect of an unlawful act of discrimination or harassment, or an act which is unlawful by virtue of section 45, may include compensation for injury to feelings whether or not they include compensation under any other head.

### *Enforcement notices*

## **72. Issue of enforcement notices**

- (1) This section applies to any act which is –
  - (a) an unlawful discriminatory act;
  - (b) an unlawful act of harassment;
  - (c) a contravention of section 41; or
  - (d) a contravention of section 42, 43, 44 or 45,

and so applies whether or not the proceedings have been brought in respect of the act.

(2) If in the course of a formal investigation the Commission becomes satisfied that a person is committing, or has committed, any acts to which this section applies, the Commission may in the prescribed manner serve on the person a notice in the prescribed form requiring the person –

- (a) not to commit any such acts (which may include discontinuing or changing any of the person's practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof); and
- (b) where compliance with paragraph (a) involves changes in any of the person's practices or other arrangements –
  - (i) to inform the Commission that he or she has effected changes and what those changes are; and
  - (ii) to take such steps as may be reasonably required by the notice for the purpose of affording that information to other persons concerned.

(3) An enforcement notice may also require the person on whom it is served to furnish the Commission with such other information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(4) An enforcement notice may specify the time at which, and the manner and form in which, any information is to be furnished to the Commission, but the time at which any information is to be furnished in compliance with the notice must not be later than 5 years after the notice has become final.

(5) Section ~~67(4)~~67(5) applies to requirements under subsections (2)(b), (3) and (4) contained in an enforcement notice which has become final as it applies to requirements in a notice served under section 67(1).

***Period within which proceedings to be brought***

**81. Period within which proceedings to be brought**

(1) The District Court shall not consider a claim under section 71 unless proceedings in respect of the claim are instituted within the period of 24 months beginning –

- (a) when the act complained of was done; or

- (b) if there is a relevant report in relation to that act, with the day on which the report is published or made available for inspection under section 68,

whichever is the later.

(2) The District Court –

- (a) shall not consider an application under section 77(2)(a) unless it is made within the period of 24 months beginning when the act to which it relates was done; and
- (b) shall not consider an application under section 77(4) unless it is made within the period of 5 years so beginning.

(3) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 79(1), then the period that elapsed between the date when the complaint was lodged and the date when ~~conciliation under section 79 was concluded~~the complaint was disposed of under section 79(3) or (4), as certified in writing by the Commission, shall be disregarded.

(4) Notwithstanding subsections (1) and (2), the District Court may consider any claim or application which is out of time, if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(5) For the purposes of subsection (4), the circumstances of the case include, in relation to any claim –

- (a) whether the act to which the claim relates was the subject of a complaint lodged under section 79(1); and
- (b) if so, the period that elapsed between when the act was done and when that complaint was so lodged.

(6) For the purposes of this section –

- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract;
- (b) any act extending over a period shall be treated as done at the end of that period; and
- (c) a deliberate omission shall be treated as done when the person concerned decided upon it.

(7) In the absence of evidence to the contrary, a person shall be taken for the purposes of this section to decide upon an omission, that is deciding upon omitting to do an act (“relevant act”) –

- (a) when the person does an act inconsistent with doing the relevant act; or
- (b) if the person has done no such inconsistent act, when the period expires within which he or she might reasonably have been expected to do the relevant act if it were to be done.

(8) The Chief Executive in Council may, by notice published in the Gazette, amend subsection (1) by substituting a longer period for the period specified in that subsection.

(9) In this section, “relevant report” (有關報告), in relation to an act referred to in subsection (1), means a report –

- (a) published or made available for inspection under section 68; and
- (b) from which it can reasonably be construed (whether or not the report mentions the act or the report was in any way prepared in consequence of the act) that the Commission is of the opinion that the act, or the class of acts to which the act belongs, is unlawful under a provision of Part 3, 4 or 5.

#### **84. Regulations to empower Commission to bring certain proceedings**

(1) The ~~Secretary for Home Affairs~~ Secretary for Constitutional and Mainland Affairs may make regulations –

- (a) where any person may bring proceedings under section 71 but has not done so, empowering the Commission, in such circumstances as are specified in the regulations, to bring and maintain those proceedings as if the Commission were that person;
- (b) specifying which of the remedies referred to in section 71(3) shall be obtainable by the Commission in any such proceedings;
- (c) for the purposes of enabling the Commission to bring and maintain any such proceedings (including any related purposes), specifying modifications to which any



provisions of this Ordinance (including any subsidiary legislation) shall be read.

(2) Any regulations made under this section shall be subject to the approval of the Legislative Council.

(3) This section is without prejudice to the Commission's power to bring proceedings by way of judicial review, in relation to this Ordinance or any other law, pursuant to its functions under section 60(1).

### ~~Chinese Temples Ordinance~~

#### ~~89. General Chinese Charities Fund~~

~~Section 9(1)(b) of the Chinese Temples Ordinance (Cap. 153) is amended by repealing "Chinese".~~

### ~~Chinese Permanent Cemeteries Ordinance~~

#### ~~94. Powers of the Board~~

~~Section 7(2) of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) is amended by repealing "persons of the Chinese race in Hong Kong" and substituting "Hong Kong residents".~~

## SCHEDULE 1

[ss. 2(1) & 85]

### EDUCATIONAL ESTABLISHMENTS AND THEIR RESPONSIBLE BODIES

Item	Educational establishment	Responsible body
14.	Any school, within the meaning of section 3(1) of the Education Ordinance (Cap. 279), entirely maintained and controlled by the Government	The Permanent Secretary for Education <del>and Manpower</del>

## SCHEDULE 2

[ss. 14 & 85]

## EMPLOYEE IN EXISTING EMPLOYMENT

...

7. An employee (other than a public officer or specified English teacher) who is an employee specified in section 2 remains ~~to be~~ an employee so specified, whether or not the employment of the employee by the employer concerned, or (where section 2(b) applies) by any of the employers within the group of companies concerned, was or is pursuant to any extension, any renewal or re-engagement after termination and whether or not the employee was or has been promoted.

8. A judicial officer, an ICAC officer or any other public officer, who is an employee specified in section 3, 4 or 5 remains ~~to be~~ an employee so specified, whether or not the service of the officer was or is pursuant to any extension, any renewal or re-engagement after termination and whether or not the officer was or has been promoted.

9. A specified English teacher who is an employee specified in section 6 remains ~~to be~~ an employee so specified whether or not the service of the specified English teacher was or is pursuant to –

- (a) any extension, any renewal or re-engagement after termination; or
- (b) any transfer from one primary or secondary school to another, or from a primary or secondary school to the Native-speaking English Teacher Section of the Education ~~and Manpower~~ Bureau or vice versa.

...

11. For the purposes of this Ordinance –

...

“public officer” (公職人員) does not include a specified English teacher who is employed –

- (a) in a primary or secondary school entirely maintained and controlled by the Government; or
- (b) in the Native-speaking English Teacher Section of the Education ~~and Manpower~~ Bureau;

“specified English teacher” (指明英語教師) means a teacher –

- (a) who is a native-speaker of English or possesses native-speaker English competency;
- (b) who is normally first recruited from a place outside Hong Kong; and
- (c) who –
  - (i) is employed in a secondary school under the Enhanced Native-speaking English Teacher Scheme administered by the Education ~~and Manpower~~ Bureau;
  - (ii) is employed in a primary school under the Native-speaking English Teacher Scheme administered by that Bureau; or

- (iii) is employed as an Advisory Teacher or a Regional Native-speaking English Teacher Coordinator in the Native-speaking English Teacher Section of that Bureau.

## Sex Discrimination Ordinance

### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

...

“club” (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes ~~that-~~

~~(a) — provides and maintains its facilities, in whole or in part, from the funds of the association; and~~

~~(b) — sells or supplies liquor for consumption on its premises; and which provides and maintains its facilities, in whole or in part, from the funds of the association;~~

...

~~“estate agent” (地產中介人) means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;~~

“estate agent” (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);

...

“near relative” (近親), in relation to a person, means –

(a) the person’s spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;

...

~~(4) — For the purposes of this Ordinance, a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half blood or by affinity), and “child” (子女) includes an illegitimate child and the wife or husband of an illegitimate child.~~

(5) For the purposes of this Ordinance, a person (howsoever described) sexually harasses a woman if-

(a) the person-

(i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or

(ii) engages in other unwelcome conduct of a sexual

- nature in relation to her,  
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated; or
- (b) the person, alone or together with other persons, engages in conduct of a sexual nature which creates a ~~sexually~~ hostile or intimidating ~~work~~-environment for her

### 13. Discrimination against contract workers

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but ~~by another person, who supplies them under a contract made with the principal, by a contractor or sub-contractor of the principal.~~

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a contract worker-

- (a) in the terms on which he allows her to do that work;
- (b) by not allowing her to do it or continue to do it;
- (c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them; or
- (d) by subjecting her to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

(4) Subsection (2)(c) shall not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

(5) In this section-

"contractor" ( ) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

"sub-contractor" ( ) means a person who enters into a contract with another person (whether or not a contractor) to undertake all or any part of the work that a contractor has undertaken.

### 76. Claims under Part III or IV

(1) A claim by any person ("the claimant") that another person ("the respondent")-

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III or IV;

~~(b) is by virtue of section 46 or 47 to be treated as having committed such an act of discrimination against the claimant;~~  
~~or~~

(c) has committed an act of sexual harassment against the claimant which is unlawful by virtue of Part III or IV; or

(e) is to be treated, by virtue of section 46 or 47, as having committed an act of discrimination or harassment referred to in paragraph (a) or (c) against the claimant.

may be made the subject of civil proceedings in like manner as any other claim in tort.

...

Period within which proceedings to be brought

### **86. Period within which proceedings to be brought**

...

(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 84(1), then the period that elapsed between the date when the complaint was lodged and the date when ~~conciliation under section 84 was concluded~~ the complaint was disposed of under section 84(3) or (4), as certified in writing by the Commission, shall be disregarded. (Added 71 of 1997 s. 8)

...

## Disability Discrimination Ordinance

### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-

...

"club" (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes ~~that~~

~~(a) provides and maintains its facilities, in whole or in part, from the funds of the association; and~~

~~(b) sells or supplies liquor for consumption on its premises; and which provides and maintains its facilities, in whole or in part, from the funds of the association;~~

...

~~"estate agent" (地產代理) means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;~~

"estate agent" (地產代理) has the same meaning as in the Estate Agents Ordinance (Cap. 511);

...

"near relative" (近親), in relation to a person, means –

(a) the person's spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;

...

~~(5) For the purposes of this Ordinance, a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half blood or by affinity), and "child" (子女) includes an illegitimate child and the wife or husband of an illegitimate child.~~

...

### 13. Discrimination against contract workers

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but ~~by another person, who supplies~~

~~them under a contract made with the principal, by a contractor or sub-contractor of the principal.~~

...

(6) In this section—

“contractor” ( ) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the principal;

“sub-contractor” ( ) means a person who enters into a contract with another person (whether or not a contractor) to undertake all or any part of the work that a contractor has undertaken.

#### **46. Vilification**

...

(2) Nothing in this section renders unlawful-

(a) a fair report of an activity in public;

~~(b) an activity in public being a communication for the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or~~

(b) an activity in public that –

(i) is a communication or the distribution or dissemination of any matter; and

(ii) consists of a publication which is subject to a defence of absolute privilege in proceedings for defamation; or

(c) an activity in public done reasonably and in good faith, for academic, artistic, scientific or research purposes in the public interest, including discussions about and expositions of any matter.

...

#### **47. Offence of serious vilification**

A person who, by any activity in public, incites hatred towards, serious contempt for, or severe ridicule of, another person with a disability or members of a class of persons with a disability ~~which include~~ and the activity consists of -

(a) threatening physical harm towards, or towards any premises or property of, that second-mentioned person or the members of that class of persons or the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access; or

(b) inciting others to threaten physical harm towards, or towards any premises or property of, that second-mentioned person or the members of that class of



persons or the premises or property of any other person to which that second-mentioned person or the members of that class of persons have access, commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

## 72. Claims under Part III or IV

(1) A claim by or on behalf of any person ("the claimant") that another person ("the respondent")-

- (a) has committed an act of discrimination against the claimant which is unlawful by virtue of Part III or IV;
- (b) has committed an act of harassment against the claimant which is unlawful by virtue of Part III or IV;
- (c) has committed an act which is unlawful by virtue of section 46; or
- (d) is to be treated, by virtue of section 48 or 49, as having committed an act of discrimination or harassment referred to in paragraph (a) or (b) against the claimant or an act referred to in paragraph (c);~~is by virtue of section 48 or 49 to be treated as having committed such an act of discrimination against the claimant;~~

may be made the subject of civil proceedings in like manner as any other claim in tort.

...

Period within which proceedings to be brought

## 82. Period within which proceedings to be brought

...

(2A) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 80(1), then the period that elapsed between the date when the complaint was lodged and the date when ~~conciliation under section 80 was concluded~~ the complaint was disposed of under section 80(3) or (4), as certified in writing by the Commission, shall be disregarded. (Added 71 of 1997 s. 13)

...

## Family Status Discrimination Ordinance

### 2. Interpretation

(1) In this Ordinance unless the context otherwise requires-

...

"club" (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes ~~that~~

~~(a) provides and maintains its facilities, in whole or in part, from the funds of the association; and~~

~~(b) sells or supplies liquor for consumption on its premises; and which provides and maintains its facilities, in whole or in part, from the funds of the association;~~

...

"near relative" (近親), in relation to a person, means –

(a) the person's spouse;

(b) a parent of the person or of the spouse;

(c) a child of the person or the spouse of a child;

(d) a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister;

(e) a grandparent of the person or of the spouse; or

(f) a grandchild of the person or the spouse of a grandchild,

and, in determining the above relationships, children born out of wedlock are to be included, an adopted child is to be regarded as a child of both the natural parents and the adoptive parent or parents and a step child as the child of both the natural parents and any step parent;

...

~~(4) For the purposes of this Ordinance, a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half blood or by affinity), and "child" (子女) includes an illegitimate child and the wife or husband of an illegitimate child.~~

...

### 9. Discrimination against contract workers

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but ~~by another person, who supplies them under a contract made with the principal.~~ by a contractor or sub-contractor of the principal.

...

(6) In this section–

"contractor" ( ) means a person who undertakes any work for the principal under a contract that is entered into by the person directly with the

principal;  
“sub-contractor” ( ) means a person who enters into a contract with another person (whether or not a contractor) to undertake all or any part of the work that a contractor has undertaken.

Period within which proceedings are to be brought

**64. Period within which proceedings are to be brought**

...

(3) For the purposes of determining the period under subsection (1) within which proceedings may be brought, where an act to which the claim relates was the subject of a complaint lodged under section 62(1), then the period that elapsed between the date when the complaint was lodged and the date when ~~conciliation under section 62 was concluded~~ the complaint was disposed of under section 62(3) or (4), as certified in writing by the Commission, shall be disregarded.