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# Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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**ORDINANCE NO. 8 OF 2020**



Carrie LAM  
Chief Executive  
18 June 2020

An Ordinance to amend the Sex Discrimination Ordinance (***SDO***) to make breastfeeding discrimination unlawful; to amend the Race Discrimination Ordinance (***RDO***) to protect an associate of a person from harassment and direct racial discrimination; to expand the meaning of ***race*** and ***racial group*** in the RDO to include a race that is imputed to a person; to amend the SDO, the Disability Discrimination Ordinance (***DDO***) and the RDO to make harassment at a workplace unlawful; to amend the DDO and RDO to strengthen the protection against harassment in relation to the provision of goods etc.; to amend the DDO and RDO to make certain acts of harassment committed outside Hong Kong unlawful; to amend the SDO and DDO to make harassment against a member or an applicant for membership of a club unlawful; and to remove the intention requirement for an award of damages for certain acts of indirect discrimination under the SDO, the Family Status Discrimination Ordinance and the RDO.

[19 June 2020]

Enacted by the Legislative Council.

## **Part 1**

### **Preliminary**

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Part 2 comes into operation on the expiry of 12 months beginning on the day on which this Ordinance is published in the Gazette.

**2. Enactments amended**

The enactments specified in Parts 2 to 9 are amended as set out in those Parts.

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## Part 2

### Amendments to Sex Discrimination Ordinance (Cap. 480) Relating to Discrimination on the Ground of Breastfeeding

3. Long title amended

Long title—

**Repeal**

“status or pregnancy,”

**Substitute**

“status, pregnancy or breastfeeding.”

4. Section 2 amended (interpretation)

(1) Section 2(1), definition of *discrimination*—

**Repeal**

“8 or 9”

**Substitute**

“8, 8A or 9”.

(2) Section 2(1)—

**Add in alphabetical order**

“*breastfeeding* (餵哺母乳) means breastfeeding within the meaning of section 8A(2)(a);”.

5. Section 4 amended (act done because of sex, etc. and for other reason)

Section 4—

**Repeal paragraph (b)**



**Substitute**

- “(b) one of the reasons is—
- (i) a person’s sex;
  - (ii) a person’s marital status;
  - (iii) a woman’s pregnancy; or
  - (iv) that a woman is breastfeeding,  
whether or not it is the dominant or a substantial  
reason.”.

**6. Section 6 amended (sex discrimination against men)**

Section 6(2)—

**Repeal**

“pregnancy or childbirth”

**Substitute**

“pregnancy, childbirth or breastfeeding”.

**7. Section 8A added**

After section 8—

**Add**

**“8A. Discrimination against breastfeeding women**

- (1) A person (*the discriminator*) discriminates against a woman in any circumstances relevant for the purposes of Part 3 or 4 if the discriminator—
- (a) on the ground that the woman is breastfeeding, treats the woman less favourably than the discriminator treats or would treat a person who is not breastfeeding; or

- (b) applies to the woman, who is breastfeeding, a requirement or condition that the discriminator applies or would apply to a person who is not breastfeeding and the requirement or condition—
  - (i) is such that the proportion of women who are breastfeeding and can comply with it is considerably smaller than the proportion of persons who are not breastfeeding and can comply with it;
  - (ii) is one that the discriminator cannot show to be justifiable, irrespective of whether the person to whom it is applied is a woman who is breastfeeding; and
  - (iii) is to the detriment of the woman who is breastfeeding because she cannot comply with it.
- (2) For the purposes of this section—
  - (a) a woman is breastfeeding if she—
    - (i) is engaged in the act of breastfeeding a child or expressing breast milk; or
    - (ii) is a person who feeds a child with her breast milk; and
  - (b) a person who is not breastfeeding is to be construed accordingly.”.

**8. Section 10A added**

Part 2, after section 10—

**Add**

**“10A. Comparison of cases under section 8A**

A comparison of the cases under section 8A of—

- (a) a woman who is breastfeeding; and
- (b) a person who is not breastfeeding,

must be such that the relevant circumstances in the one case are the same as, or not materially different from, those in the other.”.

**9. Section 42 amended (discriminatory practices)**

Section 42—

**Repeal subsection (1)**

**Substitute**

“(1) In this section—

*discriminatory practice* (歧視性的做法) means the application of a requirement or condition—

- (a) that results in an act of discrimination which is unlawful by virtue of any provision of Part 3 or 4 as read with section 5(1)(b), 7(1)(b), 8(b) or 8A(1)(b); or
- (b) that would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of the same sex.”.

**10. Section 48 amended (special measures)**

Section 48(a), (b) and (c)—

**Repeal**

“who are pregnant”

**Substitute**

“women who are pregnant or breastfeeding”.

**11. Section 57 amended (acts done for purposes of protection of women)**

(1) Section 57(2)(a)(i)—

**Repeal**

“maternity; or”

**Substitute**

“maternity;”.

(2) After section 57(2)(a)(i)—

**Add**

“(ia) breastfeeding; or”.

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## Part 3

### Amendments to Race Discrimination Ordinance (Cap. 602) Relating to Discrimination and Harassment on the Ground of Race of Associate

#### 12. Section 2 amended (interpretation)

Section 2(1)—

**Add in alphabetical order**

“*associate* (有聯繫者), in relation to a person, includes—

- (a) a spouse of the person;
- (b) another person who is living with the person on a genuine domestic basis;
- (c) a relative of the person;
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person;

*carer* (照料者) includes—

- (a) the Director of Social Welfare;
- (b) any officer of the Social Welfare Department authorized in writing by the Director of Social Welfare;
- (c) any person specified in Schedule 6;”.

#### 13. Section 5 substituted

Section 5—

**Repeal the section**

**Substitute**

**“5. Discrimination on the ground of race of associate**

In any circumstances relevant for the purposes of any provision of this Ordinance, a person (*the discriminator*) discriminates against another person (*the relevant person*) if, on the ground of the race of an associate of the relevant person, the discriminator treats the relevant person less favourably than the discriminator treats or would treat another person not having an associate of the same racial group as the associate of the relevant person.”.

**14. Section 7 amended (racial harassment)**

(1) Section 7(1)—

**Repeal**

“a near relative”

**Substitute**

“an associate”.

(2) Section 7(2)—

**Repeal**

“near relative”

**Substitute**

“associate”.

**15. Section 8 amended (meaning of *race*, on the ground of *race*, *racial group* and comparison of cases of persons or different racial groups)**

Section 8—

**Repeal subsection (6)****Substitute**

“(6) A comparison of the cases under section 5 of—

- (a) a person having an associate who is of a particular racial group; and
- (b) a person not having an associate who is of that group,

must be such that the relevant circumstances in the one case are the same as, or not materially different from, those in the other.”.

**16. Section 84 amended (amendment of Schedules 1, 2, 3, 4 and 5)**

- (1) Section 84, heading—

**Repeal**

“1, 2, 3, 4 and 5”.

- (2) Section 84—

**Renumber the section as section 84(1).**

- (3) After section 84(1)—

**Add**

“(2) The Secretary for Constitutional and Mainland Affairs may, by notice published in the Gazette, amend Schedule 6.”.

**17. Schedule 6 added**

After Schedule 5—

**Add**

## **“Schedule 6**

[ss. 2 & 84]

### **Persons Specified as Carers”.**

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## Part 4

### Amendments to Race Discrimination Ordinance (Cap. 602) Relating to Discrimination by Imputation

18. **Section 8 amended (meaning of *race*, on the ground of *race*, *racial group* and comparison of cases of persons or different racial groups)**

(1) Section 8(1)(a)—

**Repeal**

“the person”

**Substitute**

“the person, and includes a race, colour, descent or national or ethnic origin that is imputed to the person”.

(2) Section 8(1)(b)—

**Repeal**

“of the race, colour, descent or national or ethnic origin of the person;”

**Substitute**

“of—

(i) the race, colour, descent or national or ethnic origin of the person; or

(ii) the race, colour, descent or national or ethnic origin that is imputed to the person;”.

(3) Section 8(1)(d), after “falls”—

**Add**

“or is imputed to fall”.

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## Part 5

### Amendments Relating to Harassment at Workplace

#### Division 1—Sex Discrimination Ordinance (Cap. 480)

19. **Section 2 amended (interpretation)**

Section 2(1)—

**Add in alphabetical order**

*“intern* (實習人員)—see section 23A(2);

*internship* (實習)—see section 23A(2);

*pupillage* (見習職位)—see section 36(4);

*volunteer* (義工)—see section 23A(2);”.

20. **Section 23A added**

After section 23—

**Add**

**“23A. Sexual harassment at workplace**

(1) It is unlawful for a person who is a workplace participant to sexually harass a woman who is also a workplace participant at a workplace of them both.

(2) In this section—

*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

*internship* (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other work that is usually described as an internship;

**volunteer** (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

**workplace** (工作場所), in relation to a person, means a place—

(a) at which the person works as a workplace participant; or

(b) that the person attends as a workplace participant;

**workplace participant** (場所使用者) means—

(a) an employee;

(b) an employer;

(c) a contract worker;

(d) the principal, within the meaning of section 13(1), of a contract worker;

(e) a commission agent;

(f) the principal, within the meaning of section 20(1), of a commission agent;

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

## 21. Section 46A added

After section 46—

**Add**

**“46A. Liability of persons engaging interns and volunteers**

- (1) This section applies for the purposes of section 23A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
  - (a) by the intern; and
  - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
  - (a) from doing that act; or
  - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
  - (a) by the volunteer; and
  - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.

- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
- (a) from doing that act; or
  - (b) from doing acts of that description in the course of performing volunteer work.”.

**22. Section 47 amended (aiding unlawful acts)**

After section 47(2)—

**Add**

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
- (a) is liable under section 46A for an act done by the intern; or
  - (b) would be liable under section 46A for the act but for section 46A(4),
- the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
- (a) is liable under section 46A for an act done by the volunteer; or
  - (b) would be liable under section 46A for the act but for section 46A(7),
- the volunteer is deemed to aid the doing of the act by that person.”.

**23. Section 76 amended (claims under Part 3 or 4)**

Section 76(1)(d)—

**Repeal**

“46”

**Substitute**

“46, 46A”.

**Division 2—Disability Discrimination Ordinance (Cap. 487)**

**24. Section 2 amended (interpretation)**

(1) Section 2(1), English text, definition of *unjustifiable hardship*—

**Repeal the full stop**

**Substitute a semicolon.**

(2) Section 2(1)—

**Add in alphabetical order**

“*intern* (實習人員)—see section 22A(2);

*internship* (實習)—see section 22A(2);

*pupillage* (見習職位)—see section 33(4);

*volunteer* (義工)—see section 22A(2).”.

(3) Section 2(8), after “22,”—

**Add**

“22A,”.

**25. Section 22A added**

After section 22—

**Add**

**“22A. Harassment at workplace**

(1) It is unlawful for a person who is a workplace participant to harass a person with a disability who is also a workplace participant at a workplace of them both.

(2) In this section—

***intern*** (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

***internship*** (實習) means—

- (a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or
- (b) any other work that is usually described as an internship;

***volunteer*** (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

***workplace*** (工作場所), in relation to a person, means a place—

- (a) at which the person works as a workplace participant; or
- (b) that the person attends as a workplace participant;

***workplace participant*** (場所使用者) means—

- (a) an employee;
- (b) an employer;
- (c) a contract worker;

- (d) the principal, within the meaning of section 13(1), of a contract worker;
- (e) a commission agent;
- (f) the principal, within the meaning of section 20(1), of a commission agent;
- (g) a partner in a firm;
- (h) an intern; or
- (i) a volunteer.”.

**26. Section 48A added**

After section 48—

**Add**

**“48A. Liability of persons engaging interns and volunteers**

- (1) This section applies for the purposes of section 22A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
  - (a) by the intern; and
  - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
  - (a) from doing that act; or



- (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
  - (a) by the volunteer; and
  - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
  - (a) from doing that act; or
  - (b) from doing acts of that description in the course of performing volunteer work.”.

**27. Section 49 amended (aiding unlawful acts)**

After section 49(2)—

**Add**

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
- (a) is liable under section 48A for an act done by the intern; or

(b) would be liable under section 48A for the act but for section 48A(4),  
the intern is deemed to aid the doing of the act by that person.

(2B) For the purposes of subsection (1), if a person who engaged a volunteer—

(a) is liable under section 48A for an act done by the volunteer; or

(b) would be liable under section 48A for the act but for section 48A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

**28. Section 72 amended (claims under Part 3 or 4)**

Section 72(1)(d)—

**Repeal**

“48”

**Substitute**

“48, 48A”.

**Division 3—Race Discrimination Ordinance (Cap. 602)**

**29. Section 2 amended (interpretation)**

(1) Section 2(1), English text, definition of *training*—

**Repeal the full stop**

**Substitute a semicolon.**

(2) Section 2(1)—

**Add in alphabetical order**

“*intern* (實習人員)—see section 24A(2);

*internship* (實習)—see section 24A(2);  
*pupillage* (見習職位)—see section 35(4);  
*volunteer* (義工)—see section 24A(2).”.

**30. Section 24A added**

After section 24—

**Add**

**“24A. Harassment at workplace**

- (1) It is unlawful for a person who is a workplace participant to harass another person who is also a workplace participant at a workplace of them both.
- (2) In this section—

*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

*internship* (實習) means—

- (a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or
- (b) any other work that is usually described as an internship;

*volunteer* (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

*workplace* (工作場所), in relation to a person, means a place—

- (a) at which the person works as a workplace participant; or

- (b) that the person attends as a workplace participant;

*workplace participant* (場所使用者) means—

- (a) an employee;
- (b) an employer;
- (c) a contract worker;
- (d) the principal, within the meaning of section 15(1), of a contract worker;
- (e) a commission agent;
- (f) the principal, within the meaning of section 22(1), of a commission agent;
- (g) a partner in a firm;
- (h) an intern; or
- (i) a volunteer.”.

**31. Section 39 amended (other harassment)**

Section 39(5), after “24,”—

**Add**

“24A,”.

**32. Section 47A added**

After section 47—

**Add**

**“47A. Liability of persons engaging interns and volunteers**

- (1) This section applies for the purposes of section 24A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.

- (3) An act done by an intern in the course of an internship is to be treated as an act done—
  - (a) by the intern; and
  - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
  - (a) from doing that act; or
  - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
  - (a) by the volunteer; and
  - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—

- (a) from doing that act; or
- (b) from doing acts of that description in the course of performing volunteer work.”.

**33. Section 48 amended (aiding unlawful acts)**

After section 48(2)—

**Add**

“(2A) For the purposes of subsection (1), if a person who engaged an intern—

- (a) is liable under section 47A for an act done by the intern; or
- (b) would be liable under section 47A for the act but for section 47A(4),

the intern is deemed to aid the doing of the act by that person.

(2B) For the purposes of subsection (1), if a person who engaged a volunteer—

- (a) is liable under section 47A for an act done by the volunteer; or
- (b) would be liable under section 47A for the act but for section 47A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

**34. Section 70 amended (claims in respect of discrimination, harassment and vilification)**

Section 70(1)(d)—

Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020

Part 5—Division 3  
Section 34

Ord. No. 8 of 2020  
A649

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**Repeal**

“47”

**Substitute**

“47, 47A”.

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## Part 6

### Amendments Relating to Harassment in Relation to Provision of Goods etc.

#### Division 1—Disability Discrimination Ordinance (Cap. 487)

**35. Section 38 amended (harassment in relation to the provision of goods, services and facilities)**

(1) Section 38(1)—

**Repeal**

everything after “disability”

**Substitute**

“who—

- (a) wants to acquire the goods or services;
- (b) is in the course of acquiring the goods or services;
- (c) wants to make use of the facilities; or
- (d) is in the course of making use of the facilities.”.

(2) After section 38(1)—

**Add**

“(1A) It is unlawful for a person who—

- (a) wants to acquire goods or services;
- (b) is in the course of acquiring goods or services;
- (c) wants to make use of facilities; or
- (d) is in the course of making use of facilities,



to harass another person with a disability who, whether for payment or not, provides the goods, services or facilities.”.

## **Division 2—Race Discrimination Ordinance (Cap. 602)**

### **36. Section 39 amended (other harassment)**

(1) After section 39(1)—

**Add**

“(1A) It is unlawful for a person who—

(a) seeks to obtain or use goods, facilities or services; or

(b) is provided with goods, facilities or services, to harass another person who is concerned with the provision of the goods, facilities or services.”.

(2) Section 39(5), after “(1),”—

**Add**

“(1A),”.

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## **Part 7**

### **Amendments Relating to Harassment Committed outside Hong Kong**

#### **Division 1—Disability Discrimination Ordinance (Cap. 487)**

**37. Section 40 amended (extent of Part 4)**

After section 40(5)—

**Add**

- “(6) Section 38(1) and (1A) does not apply to an act of harassment that is committed outside Hong Kong except as provided in subsection (7).
- (7) Section 38(1) and (1A) applies to an act of harassment that is committed on a ship, aircraft or dynamically supported craft referred to in subsection (3)(a), (b) or (c) even if it is outside Hong Kong when the act is committed.”.

#### **Division 2—Race Discrimination Ordinance (Cap. 602)**

**38. Section 40 amended (extent of Part 4)**

After section 40(5)—

**Add**

- “(6) Section 39(1) and (1A) does not apply to an act of harassment that is committed outside Hong Kong except as provided in subsection (7).

- (7) Section 39(1) and (1A) applies to an act of harassment that is committed on a ship, aircraft or dynamically supported craft referred to in subsection (3)(a), (b) or (c) even if it is outside Hong Kong when the act is committed.”.
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## **Part 8**

### **Amendments Relating to Harassment by Clubs**

#### **Division 1—Sex Discrimination Ordinance (Cap. 480)**

**39. Section 39A added**

After section 39—

**Add**

**“39A. Sexual harassment by clubs**

It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to sexually harass a woman who is, or has applied to be, a member of the club.”.

#### **Division 2—Disability Discrimination Ordinance (Cap. 487)**

**40. Section 2 amended (interpretation)**

Section 2(8), after “38,”—

**Add**

“38A,”.

**41. Section 38A added**

After section 38—

**Add**

**“38A. Harassment by clubs**

It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to harass a person with a disability who is, or has applied to be, a member of the club.”

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## **Part 9**

### **Amendments Relating to Award of Damages**

#### **Division 1—Sex Discrimination Ordinance (Cap. 480)**

**42. Section 76 amended (claims under Part 3 or 4)**

After section 76(5)—

**Add**

“(5A) Subsection (5) does not apply in relation to an unlawful act of discrimination falling within section 5(1)(b), 7(1)(b) or 8(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (8 of 2020).”.

#### **Division 2—Family Status Discrimination Ordinance (Cap. 527)**

**43. Section 54 amended (claims under Part III or IV)**

After section 54(6)—

**Add**

“(6A) Subsection (6) does not apply in relation to an unlawful act of discrimination falling within section 5(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (8 of 2020).”.

### **Division 3—Race Discrimination Ordinance (Cap. 602)**

**44. Section 70 amended (claims in respect of discrimination, harassment and vilification)**

After section 70(6)—

**Add**

“(6A) Subsection (6) does not apply in relation to an unlawful act of discrimination falling within section 4(1)(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 (8 of 2020).”.