

《種族歧視 (調查及調停) 規則》
(第 602 章 , 附屬法例 B)

Race Discrimination (Investigation and Conciliation) Rules
(Cap. 602 sub. leg. B)

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制定史

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《種族歧視 (調查及調停) 規則》

(第 602 章，附屬法例 B)

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**Race Discrimination (Investigation and Conciliation)
Rules**

(Cap. 602 sub. leg. B)

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《種族歧視 (調查及調停) 規則》

(第 602 章第 82 條)

(略去制定語式條文 —— 2013 年第 1 號編輯修訂紀錄)

[2009 年 7 月 10 日] 2009 年第 166 號法律公告
(格式變更 —— 2013 年第 1 號編輯修訂紀錄)

編輯附註：

本規則的名稱由《種族歧視 (調查及調解) 規則》修訂為《種族歧視 (調查及調停) 規則》
—— 見 2012 年第 15 號第 11 條。

1. (已失時效而略去 —— 2013 年第 1 號編輯修訂紀錄)
2. **釋義**
 - (1) 在本規則中 ——
代表申訴 (representative complaint) 指本條例第 78(2) 條所提述的代表申訴；
申訴委託人 (class member) 就代表申訴而言，指由他人代為提出該申訴的人；
會議 (conference) 指為施行本條例第 78 條而舉行的會議。
 - (2) 凡平機會已根據《性別歧視條例》(第 480 章) 第 67 條，將其在本條例第 78 條下的職能或權力轉授，則在本規則中提述平機會，即提述已獲轉授該職能或權力的人。

Race Discrimination (Investigation and Conciliation) Rules

(Cap. 602, section 82)

(Enacting provision omitted—E.R. 1 of 2013)

[10 July 2009] L.N. 166 of 2009
(Format changes—E.R. 1 of 2013)

1. (Omitted as spent—E.R. 1 of 2013)
2. **Interpretation**
 - (1) In these Rules—
class member (申訴委託人), in relation to a representative complaint, means any person on whose behalf that complaint is lodged;
conference (會議) means a conference held for the purposes of section 78 of the Ordinance;
representative complaint (代表申訴) means a representative complaint referred to in section 78(2) of the Ordinance.
 - (2) Where, under section 67 of the Sex Discrimination Ordinance (Cap. 480), the Commission has delegated its functions or powers under section 78 of the Ordinance, any reference in these Rules to the Commission is a reference to the delegate to whom the relevant function or power has been delegated.

3. 代表申訴

- (1) 指稱另一人已作出違法作為的代表申訴——
 - (a) 可由因該作為而感到受屈的人，代表該人本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；
 - (b) 可由 2 名或多於 2 名因該作為而感到受屈的人，代表他們本身以及代表另一名或另一些亦因該作為而感到受屈的人提出；或
 - (c) 可由某人代表另一名或另一些因該作為而感到受屈的人提出。
- (2) 代表申訴只可在得到申訴委託人同意下提出，凡有多於一名申訴委託人，則另須符合以下情況方可提出——
 - (a) 各申訴委託人的申訴是針對同一人的；
 - (b) 所有申訴均是關乎同一、相類似或相關情況的，或均是在同一、相類似或相關情況下產生的；及
 - (c) 所有申訴均引起某個實質共通的法律爭議或事實爭議。
- (3) 代表申訴——
 - (a) 須描述或以其他方式識別申訴委託人，並須述明申訴委託人的人數；
 - (b) 須指明代表申訴委託人提出的申訴性質；及
 - (c) 須指明申訴委託人的申訴的共通法律問題及事實問題。

4. 代表申訴的決定

3. Representative complaints

- (1) A representative complaint alleging that another person has done an unlawful act may be lodged by—
 - (a) a person aggrieved by the act, on behalf of that person and another person or other persons also aggrieved by the act;
 - (b) 2 or more persons aggrieved by the act, on behalf of themselves and another person or other persons also aggrieved by the act; or
 - (c) a person on behalf of another person or other persons aggrieved by the act.
- (2) A representative complaint may be lodged only with the consent of the class members and, where there is more than one class member, only—
 - (a) if the class members have complaints against the same person;
 - (b) if all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) if all the complaints give rise to a substantial common issue of law or fact.
- (3) A representative complaint must—
 - (a) describe or otherwise identify and state the number of class members;
 - (b) specify the nature of the complaints made on behalf of the class members; and
 - (c) specify the questions of law and fact that are common to the complaints of the class members.

4. Determination of representative complaints

- (1) 平機會可決定向它提出的某宗申訴不應以代表申訴方式提出。
- (2) 平機會只可在因以下任何理由而信納根據第 (1) 款作出決定是合乎公正原則的情況下，才可如此作出決定——
 - (a) 該申訴作為代表申訴繼續進行，所會招致(不論是平機會或申訴委託人所招致)的開支，相當可能超過如每名申訴委託人各自提出獨立申訴便會招致的開支；
 - (b) 該代表申訴不會為處理有關的申訴委託人的申訴，提供有效率和有成效的方法；
 - (c) 該申訴並不是真誠地作為代表申訴而提出的；或
 - (d) 因其他情由，有關申訴藉代表申訴方式進行，並不適當。

5. 平機會可規定提交資料

- (1) 平機會可為調查某項作為和努力解決該作為所關乎的事項的目的，藉送達予某人的書面通知，規定該人提交該通知所指明的資料，而平機會亦可在該通知中指明提交該等資料的地點、時間、限期或日期。
- (2) 任何人無合理辯解而拒絕或不遵從根據第 (1) 款送達予該人的通知，即屬犯罪，一經定罪，可處第 4 級罰款。

6. 對資料的披露的限制

- (1) 平機會、平機會或委員會的任何成員、平機會的任何僱

- (1) The Commission may determine that any complaint lodged with it should not be a representative complaint.
- (2) The Commission may make a determination under subsection (1) only if it is satisfied that it is in the interests of justice to do so for any of the following reasons—
 - (a) the costs that would be incurred (whether by the Commission or class members) if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
 - (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members;
 - (c) the complaint was not brought in good faith as a representative complaint; or
 - (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint.

5. Commission may require information

- (1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing served on a person require that person to furnish such information as specified in the notice, and in the notice specify a place, time, period or date for furnishing such information.
- (2) A person who, without reasonable excuse, refuses or fails to comply with a notice served on the person under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

6. Restriction on disclosure of information

- (1) The information furnished to the Commission by a person (*the*

員、任何調停人或曾是上述成員、僱員或調停人的人，均不得披露由某人(資料提供者)為回應根據第 5 條送達予該人的通知而向平機會提交的資料，但在以下情況下披露，則不在此限——(2012 年第 15 號第 11 條)

- (a) 在得到資料提供者同意下披露；
 - (b) 以平機會發表的摘要或其他一般陳述方式披露，而資料提供者或資料所關乎的任何其他人的身分，不能從中識辨；
 - (c) 在根據第 8(4) 條提交的報告中披露；
 - (d) 向平機會或委員會的成員、平機會的僱員或調停人披露，或在對妥善執行平機會職能屬必要的範圍內，向其他人披露；或(2012 年第 15 號第 11 條)
 - (e) 在符合本條例第 78(6) 條的規定下，為任何法律程序的目的而披露。
- (2) 任何人在違反第 (1) 款的情況下披露資料，即屬犯罪，一經定罪，可處第 4 級罰款。

7. 出席會議的指令

- (1) 平機會可為調查某項作為和努力解決該作為所關乎的事項的目的，藉書面通知，指令第 (2) 款提述的任何人在該通知指明的時間及地點出席會議。
- (2) 平機會可根據第 (1) 款指令出席會議的人如下——
 - (a) 平機會認為相當可能有能力提供攸關調查的資料的人；或
 - (b) 平機會認為如果出席會議，便相當可能有助解決有關事項的人。

informant) in response to a notice served on the informant under section 5 must not be disclosed by the Commission, any member of the Commission or a committee, any employee of the Commission, any conciliator, or any person who has been such a member, employee or conciliator, except—

- (a) with the informant's consent;
 - (b) in the form of a summary or other general statement published by the Commission which does not identify the informant or any other person to whom the information relates;
 - (c) in a report under section 8(4);
 - (d) to members of the Commission or a committee, employees of the Commission or conciliators or, so far as may be necessary for the proper performance of the functions of the Commission, to other persons; or
 - (e) subject to section 78(6) of the Ordinance, for the purposes of any court proceedings.
- (2) A person who discloses information in contravention of subsection (1) commits an offence and is liable on conviction to a fine at level 4.

7. Directions to attend conference

- (1) The Commission may, for the purposes of investigating into an act and in endeavouring to settle the matter to which the act relates, by notice in writing direct any person referred to in subsection (2) to attend a conference at a time and place specified in the notice.
- (2) The persons the Commission may, under subsection (1), direct to attend a conference are—

- (3) 平機會可支付根據第(1)款被指令出席的人往返會議地點合理和必需的交通費用。
- (4) 凡某團體(不論屬法人團體或並非法人團體)根據第(1)款被指令出席會議,可由該團體的高級人員或僱員,代表該團體出席。
- (5) 任何人無合理辯解而拒絕或不按根據第(1)款作出的指令出席會議,即屬犯罪,一經定罪,可處第4級罰款。

8. 會議的程序

- (1) 會議不得公開進行。
- (2) 主持會議的人,可決定議事程序及進行方式。
- (3) 除非主持會議的人同意,否則——
 - (a) 任何個人無權在會議上由另一人代表(除非《殘疾歧視條例》(第487章)任何條文另有規定,而且該規定適用於該特定個案);
 - (b) 任何團體(不論屬法人團體或並非法人團體)無權在會議上由既不是其高級人員亦不是其僱員的人代表。
- (4) 凡主持會議的人——
 - (a) 認為某事項不能夠藉調停得以解決;
 - (b) 已努力藉調停以解決該事項,但不成功;或
 - (c) 認為以該事項的性質而論,應交由平機會處理,

- (a) any person, who in the opinion of the Commission is likely to be able to provide information relevant to the investigation; or
- (b) any person whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matter.
- (3) The Commission may pay the reasonable and necessary expenses of the journey to and from the place of the conference, of a person directed to attend under subsection (1).
- (4) Where a body of persons, whether corporate or unincorporate, is directed to attend a conference under subsection (1), an officer or employee of that body may attend on behalf of that body.
- (5) A person who, without reasonable excuse, refuses or fails to attend a conference as directed under subsection (1) commits an offence and is liable on conviction to a fine at level 4.

8. Procedure at conference

- (1) A conference is to be held in private.
- (2) The person presiding at a conference may determine its order of proceedings and the manner of conducting it.
- (3) Unless the person presiding at a conference consents—
 - (a) an individual is not entitled to be represented at the conference by another person (unless otherwise provided in any provision in the Disability Discrimination Ordinance (Cap. 487) which is applicable to the particular case);
 - (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.
- (4) Where the person presiding at a conference—

該人須將該事項交由平機會處理，並同時提交一份關於對該事項的調查的報告。(2012 年第 15 號第 11 條)

- (5) 為第 (4) 款的目的而提交的報告，不得包括或描述在會議進行過程中說過的任何說話或作出過的任何作為。

- (a) is of the opinion that a matter cannot be settled by conciliation;
- (b) has endeavoured to settle a matter by conciliation but has not been successful; or
- (c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,

the person must refer the matter to the Commission together with a report relating to any investigation made into the matter.

- (5) A report for the purposes of subsection (4) must not include or describe anything said or done in the course of the conference.