

**HONG KONG EQUAL OPPORTUNITY LAW —
LEGISLATIVE HISTORY ARCHIVE, 1993–1997**

**Document archive
Vol. 3**

**Centre for Comparative & Public Law
Faculty of Law
University of Hong Kong**

June 1999

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LEGCO BILLS COMMITTEE PROCEEDINGS — NOTES OF MEETINGS

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FACSIMILE MESSAGE

TO : Andrew Byrnes

NO. OF PAGES (INCLUDING THIS ONE) : 8

FROM : Adam Mayes

DATE : 29/5/95

IF THE FAX IS INCOMPLETE, PLEASE NOTIFY US IMMEDIATELY.

MESSAGE :

We need to prepare the EOB CSAs for presentation to the Bills Committee on Thursday. We are meeting to discuss them tomorrow at 4:45. This evening I'll fax you any drafts and queries I have; perhaps you could send back your comments in time for tomorrow's discussion.

2. We went over the attached list of SDB amendments with Jonathan Daw and Stephen Lam this morning. They will go ahead and produce a draft of items 1-27 on this list, except:
 - 2.1. ~~Item 6~~, because we haven't discussed it internally yet (I just put it on the agenda).
 - 2.2. items 22 and 24, because we are satisfied with the Admin. CSAs and item ~~23~~ can be worked into those (when making the list I assumed we'd have to junk the Admin. CSAs on 22 and 24 and write our own in order to deal with item 23).
 - 2.3. We ran out of time for discussion before we reached the items on p. 6.

Committee-stage amendments to the Sex Discrimination Bill

CSAs to be taken forward

Part I — Preliminary

<u>REF. #</u>	<u>CLAUSE</u>	<u>STATUS</u>	<u>AMENDMENT PROPOSED</u>	<u>REMARKS / DRAFT</u>
1	1(2)	endorsed by Bills Comm	Amend to bring provisions of Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary for Home Affairs.	
2	2(1)	ancillary to other amendments (ref 4, 12, 21)	New definition, of "relevant international obligations"	<p>“Relevant international obligations’ means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination [on the ground of sex, marital status & pregnancy? relating to equality of opportunity between men & women?], in particular obligations under the Internatnol Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong.”</p> <p>Cf. BOB 2(c).</p>
3	2(1)	ancillary to other amendments (ref 4, 12, 21)	New definition, of “relevant international instruments”	<p>“Relevant international instruments’ means—</p> <p>(a) the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979;</p> <p>(b) the Declaration on the Elimination of Violence Against Women proclaimed by the General Assembly of the United Nations on 20 December 1993; and</p> <p>(c) the International Labour Organisation Recommendations No. 90 on Equal Remuneration for Men and Women Workers for Work of Equal Value and No. 111 on Discrimination in Occupation and Employment.”</p> <p>Cf. BOB 2(f), (g).</p>
4	3A		New clause directing Ordinance to be	“(1) In interpreting this Ordinance, regard shall be had to the fact that a

interpreted to give effect to relevant international instruments and obligations.

principal purpose of this Ordinance is to give effect to relevant international obligations.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to relevant international obligations is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction.

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in relevant international instruments is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction ”
Cf. EOB 7,

New clause repealing prior inconsistent laws to extent of inconsistency with Ordinance.

Cf. EOB 8; need to consider retrospective effect of repeal before taking forward

⑤ 3B

Part II -- Discrimination (none)

Part III -- Employment Field

6 10(8)

Repeal or amend Governor's power to alter expiration date of small employer exemption.

Needs further consideration; has not been previously raised.

Part IV -- Other fields

7 31A

New clause prohibiting discrimination in public elections and appointments.

Copy EOB 28.

Part V -- Other unlawful acts

8 36 & 74 endorsed by Bills Comm

Amend to make unlawfully discriminatory advertisements subject to a fine (of \$30,000 for a first offense and \$100,000 for a second offense).

Cf. EOB 225.

Part VI — General exceptions

- | | | | | |
|----|-----------|------------------------|--|---|
| 9 | 49A | endorsed by Bills Comm | Amend exceptions in relation to Sched. 2 protective regulations to expire in one year, subject to extension by Legco resolution. | “(1) Sections 11(2)(g), 49(1)(ii) and (2)(b), and Schedule 2 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.
(2) The Legislative Council may, by resolution, amend subsection (1) by substituting another anniversary for the anniversary appearing in that subsection.”
Repeal clause 51. |
| 10 | 51 | endorsed by Bills Comm | Repeal. (Exemption for acts done to safeguard the security of Hong Kong.) | “(3) This section and Schedule 4 shall expire on the 1st anniversary of the day on which this Ordinance is enacted. |
| 11 | new 54(3) | | Amend Sched. 4 exceptions to expire in one year, subject to extension by Legco resolution. (Re. further exceptions, including:
— certain discrimination within the disciplinary services;
— marital status discrim. in employment benefits and civil service benefits;
— additional items added by Admin CSAs.) | (4) The Legislative Council may, by resolution, amend subsection (3) by substituting another anniversary for the anniversary appearing in that subsection.”
Cf. SDB 10(6), (8) |

Part VII — Equal Opportunities Commission

- | | | | | |
|----|-----------|--|---|---|
| 12 | 56(1)(ca) | | New subclause giving EOC function of promoting observation of relevant international instruments and obligations as they relate to sex, marital status or pregnancy discrimination. | “promote an understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments,”
Cf. HREOC Bill, cl. 22(e) <i>Need to mention power to make recommendations of steps that need to be taken to implement obligations</i> |
| 13 | 56(1)(ea) | | New subclause giving EOC function of examining any proposed legislation that it considers may affect equality of opportunity and reporting results to legislation's sponsor. | “examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and of the standards contained in relevant international instruments, and report the results of the examination to the person proposing the legislation; and”
(also repeal “and” in subcl. (e))
cf. Personal Data (Privacy) Bill, cl. 8(1)(d); IREOC Bill, cl. 22(c) |

57(3)

Repeat subclause 57(3)

Repeat. (Approval of Secretary for Home Affairs required for any financial assistance by EOC to outside research and educational undertakings.)

15 63(4)

Cf. EqT 4.8 & 4.12*

Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believes unlawful acts have occurred); and to give all named persons a right to make pre-investigation representations to the EOC.

Part VIII Enforcement

16 68(3)-(4)

Copy EOB 234

Amend to empower a court in proceedings under the Ordinance to order any remedy the court considers just and appropriate, including reinstatement.

17 68(5)

Repeat. (No damage awards for indirect discrimination if discrimination unintentional.)

18 [74A?]

(accepted by Admin, but via subsidiary regulations)

New clause empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance.

19 [74B?]

New clause empowering EOC to intervene by leave of court in any proceedings under the Ordinance. Cf. HREOC Bill cl 7

20 [74C? 77?]

Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings.

- 21 76 Amend to enable EOC to conciliate complaints of acts inconsistent with relevant international instruments and obligations as they relate to sex, marital status or pregnancy discrimination.
- 22 78(1)-(2) accepted by Admin (2 yrs); CSAs may need amending Amend to permit proceedings to be brought under the Ordinance for a period of 6 years from the act complained of.
- 23 78(4) Amend period within which proceedings under the Ordinance may be brought, to begin after conclusion of conciliation process.
- 24 78() accepted by Admin (2 yrs); CSAs may need amending New subclause to provide an additional period within which proceedings under the Ordinance may be brought, of one year following publication of a formal investigation report that finds unlawful discrimination, for persons who claim to have suffered from the reported discrimination. Cf. EqT 4.15

Part IX --- Miscellaneous

- 25 82(2) & Sch. 7 Consequentially amend section 5AA of the Legal Aid Ordinance (Cap. 91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the Ordinance (as for proceedings involving claims under the Bill of Rights).

Schedules

- 26 Sch. 4: Pt. 2, item 2 Repeal. (Exemption of the Small House Policy.)
- 27 Sch. 5: 15(2), 16(2)-(3) & 17(2) Repeal. (EOC expenditure, borrowing and investment subject to direction or approval by Secretary of Home Affairs and/or Treasury.)

CSAs accepted by Admin, but further action needed

- 10(4),
14(4) &
15(4) (Admin: var
CSAs) Amend to expire in one year, subject to extension by Legco Cf. ref 7 above.
resolution. (Exceptions for provisions relating to death and
retirement, in connection with employment, partnership and
trade unions, etc.)
- 10(6) endorsed by
Bills Comm
(Admin: 3 yrs) Amend to expire one year after enactment of Ordinance. In Admin CSA, substitute "1st" for "3rd"
(Exemption for small employers.)
- New clause prohibiting discrimination in administration of cf. EOB 27, EqT 3.23
laws and government programmes; Admin CSAs need further
amendment.
- 2(1) **CSAs to be dropped, or to be taken forward only if time permits**
Amend definition of "marital status" to include status of being
de facto spouse.
[cf. EOB 3(1)]
- 2(5) Amend definition of sexual harassment to include sexual
conduct, in fields other than employment, that substantially
interferes with the victim's activities.
[cf. EOB 30(2),(c)]
- New clause defining discrimination against a person to
include discrimination on ground of relative's or associate's
sex, marital status or pregnancy.
[cf. DDB 2(6), 6(c); EOB 6]
- 4(1)(b),
6(1)(b),
& 7(b) Amend definitions of indirect discrimination to include any
practice with a disproportionately adverse impact on one sex /
persons of a particular marital status / pregnant women.
[cf. EqT 3.3]
- 10C New subclause to clarify for avoidance of doubt whether
discrimination in terms and conditions of employment

includes unequal pay for work of equal value.
[cf. EqT 2.20]

Repeal. (Exception for work likely to involve duties outside Hong Kong where discriminatory laws or customs apply.)

11(2)(b)

Committee-stage amendments to the Equal Opportunities Bill

Amendments to all Parts addressing discrimination

<u>REF. #</u>	<u>CLAUSE</u>	<u>STATUS</u>	<u>AMENDMENT PROPOSED</u>	<u>DRAFT</u>
1	all discrim. Parts	endorsed by Bills Comm	Amend indirect discrimination provisions to cover any practice with a disproportionately adverse impact on persons of the relevant status..	Need to consider whether to go forward if comparable amendments to SDB are dropped.
2	all discrim Parts	endorsed by Bills Comm	Repeal exceptions for hiring domestic helpers.	Delete subclauses 44(3), 46(2), 63(3), 65(2), 88(3), 90(2), 148(4), 150(3), 165(3), 167(2), 190(3), 192(2), 207(3), 211(2)
3	all discrim Parts	endorsed by Bills Comm (alternative to ref 5)	Amend work provisions to ensure that work as a barrister or as a barrister's pupil is covered. [cf. SDB 31]	Add (between partnership & qualifications clauses) new clauses 47A, 66A, 91A, 151A, 168A, 193A, 212A: “##. Discrimination by, or in relation to, barristers (1) It is unlawful for a barrister or barrister's clerk, in relation to any offer of pupillage or tenancy, to discriminate against a person on the ground of the person's [status]— (a) in the arrangements which are made for the purpose of determining to whom it should be offered; (b) in respect of any terms on which it is offered; or (c) by refusing, or deliberately omitting, to offer it to the person. (2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's [status] — (a) in respect of any terms applicable to the person as a pupil or tenant; (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person; (c) in the benefits, facilities or services which are afforded or denied to the person; or (d) by terminating the pupillage or by subjecting the person to any pressure to

leave the chambers or other detriment.

(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a person on the ground of the person's [status].

(4) In this section, "pupil" (), "pupillage" (), "tenancy" (), and "tenant" () have the meanings commonly associated with their use in the context of a set of barristers chambers."

[cf. SDB 31]

[further change to comport to EOB drafting style? cf. EOB employment cll.]

Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character.

endorsed by Bills Comm Parts

4 all discrim. Parts

Remember 49, 68, 93, 153, 170, 195 and 214 as subsection (1) of same and add new subsection to each:

"(2) Where an authority or body is required by law to satisfy itself as to a person's good character before conferring on the person an authorisation or qualification which is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to evidence tending to show that the person, or any of the person's employees or agents (whether past or present), has done an act that is unlawful under this Part." [cf. SDB 16(2) & EOB qual. bodies clauses]

Part I — Preliminary

Amend definitions to ensure that work as a barrister or as a barrister's pupil is covered. [cf. SDB 31, 33(6)-(8)]

alternative to ref 3, 9 & 13

5 3(1)

Amend definition of "employment" by adding:

"(d) work as a pupil or tenant [for a barrister or a barrister's clerk] in a barrister's chambers."

[is it clear who the "employer" would be?]

ancillary to ref 3, 11, 14, maybe 5

6 3(1)

New definition:

"'barrister's clerk' includes any person carrying out any of the functions of a barrister's clerk;"
cf SDB 31(5)

Part II — Discrimination on the ground of sex, marital status or pregnancy

7 10-42 endorsed by House Comm Delete entire Part in favour of SDB. Delete clauses 10-42.

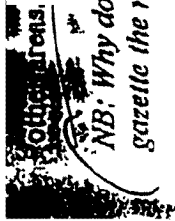
Part III — Discrimination on the ground of family responsibility or family status

8 51 endorsed by Bills Comm Add new subclause exempting family responsibility discrimination in admissions decisions made by private schools in order to accommodate students whose relatives study or work at the same schools. Add new subclause 51(2A): “(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of family status, in connection with admission as a student to an educational institution, if the authority so discriminates in good faith in favour of a relative of another person that is employed by or is a student in that educational institution ” [cf. EOB 229(3)]

Part IV — Discrimination on the ground of sexuality

9 78 endorsed by Bills Comm (alternative to ref 5; cf. ref 13) Amend harassment provisions to ensure that harassment on the ground of race, sexuality or disability in the course of work as a barrister or as a barrister’s pupil is covered. Add new subclause 78(2A): “(2A) It is unlawful for a person to harass— (a) a person who is a pupil or tenant in the chambers in which the harasser is a barrister, barrister’s clerk, employee or a contract worker [or “in which the harasser works”?]; or (b) a person who is seeking to become a pupil or tenant in the chambers in which the harasser is a barrister, barrister’s clerk, employee or a contract worker, on the grounds of the person’s sexuality.” [cf. SDB 33(6)-(8)]

10 78 endorsed by Bills Comm (cf. ref 14) Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment; and (c) to clarify definition of harassment by way of substantial interference with activities in Amend 78 by adding (italic) and deleting (struck out) as follows: “(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employe— *an employee, a commission agent or a contract worker*; or (c) a person who is seeking employment by the harasser or by an employer of th harasser or by a person of whom the harasser is a commission agent or a contract worker, ... (2) ... (a) ...; (b) a commission agent or contract worker of a person of whom th



NB: Why don't we do this before we gazette the new EO Bills?

harasser is an *employee*, a commission agent or a contract worker; or
(c) a person who is seeking to become a commission agent or contract worker or the harasser or of a person of whom the harasser is an *employee*, a commission agent or a contract worker, ...
(3) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
(b) (i) the other person has reasonable grounds for believing that objecting...; or
(ii) as a result of the objection ...; or
(c) the person, alone or together with other persons, ...”

Add new clause 86A:

“86A. Laws relating to marriage or to adoption

(1) Nothing in this Part affects any provision of any Ordinance, or of any subsidiary legislation, in relation to—
(a) marriage; or
(b) the adoption of an infant.

(2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision referred to in subsection (1).”
[is “in relation to” the appropriate connector?]

Add new clause exempting laws and policies governing eligibility for marriage and for adoption.

endorsed by Bills Comm

11 86A

Part V — Discrimination on the ground of race

Add new subclause exempting discrimination on the basis of nationality (i.e. race) in admissions decisions made by private schools in order to accommodate students who previously studied or are likely in future to study in particular educational systems (e.g. in French schools or in Japanese schools).

endorsed by Bills Comm

12 95

Add new subclause 95(3):

“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of race, in connection with admission of the person as a student, if the authority so discriminates in good faith in favour of another person that has previously studied or is likely to study in a particular place or particular places outside Hong Kong.”

- 13 103 endorsed by Bills Comm (alternative to ref 5; cf. ref 9) Amend harassment provisions to ensure that harassment on the ground of race, sexuality or disability in the course of work as a barrister or as a barrister's pupil is covered.
- 14 103 endorsed by Bills Comm (cf. ref 10) Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment; and (c) to clarify definition of harassment by way of substantial interference with activities in other areas.
- NB: Why don't we do this before we gazette the new EO Bills?*
- 15 103 Add new subclause 103(2A):
“(2A) It is unlawful for a person to harass racially —
(a) a person who is a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker [or “in which the harasser works”?]; or
(b) a person who is seeking to become a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker.”
[cf. SDB 33(6)-(8)]
- 15 103 Amend 103 by adding (italic) and deleting (struck out) as follows:
“(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employe...
an employee, a commission agent or a contract worker; or
(c) a person who is seeking employment by the harasser or by an employer of th harasser or by a person of whom the harasser is a commission agent or contract worker. ...
(3) A person shall, for the purposes of this section, be taken to harass racially another person if—
(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of the person's race, and—
(i) the other person has reasonable grounds for believing that objecting...; or
(ii) as a result of the objection ...; or
(b) the person, alone or together with other persons,”

Part VI — Discrimination on the ground of disability

- 15 113-146 endorsed by House Comm Delete entire Part in favour of DDB. Delete clauses 113-146.

Part VII — Discrimination on the ground of religious or political conviction

Part VIII — Discrimination on the ground of age

16	183	endorsed by Bills Comm	Amend the retirement provision (EOB 183) to provide that mandatory retirement ages do not constitute unlawful age discrimination.	Amend 183 by adding (<i>italic</i>) and deleting (struck out) as follows: “Nothing in section 165, 166, 167 or 168 renders it unlawful — (a) to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the age of the person, participation in a voluntary phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, severance scheme, or other like scheme; or (b) during the period of 2 years after the commencement of this Ordinance to discriminate against to require a person referred to in paragraph (a), on the ground of the age of that person, by requiring that person to retire from employment, engagement as a commission agent, contract work or partnership, as the case requires.”
17	184A	endorsed by Bills Comm	Add new clause exempting legal entitlements, obligations or disqualifications of persons under 18, and laws protecting the welfare of persons under 18.	Add new clause 184A: “184A. Legal capacity and welfare of minors Nothing in this Part — (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are under 18 years of age; or (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.” [cf. Anti-Discrimination Act 1977 (NSW), s. 49ZYQ] [what’s the difference between “a law” and “a provision of any Ordinance, or of any subsidiary legislation”?]
18	184B	endorsed by Bills Comm	Add new clause exempting age discriminatory laws and acts done under their authority, to expire in one year unless extended by Legco resolution.	Add new clause 184B: “184B. Laws, and acts done under statutory authority. (1) Nothing in this Part affects the operation of any existing statutory provision (2) Nothing in this Part renders unlawful any act done by a person if it was

necessary for that person to do it in order to comply with a requirement of an existing statutory provision.

(3) Subject to subsection (4), in this section "existing statutory provision" () means any provision of—

(a) any Ordinance enacted before this Ordinance was enacted, and

(b) any subsidiary legislation made—

(i) under an Ordinance enacted before this Ordinance was enacted, and

(ii) before, on or after this Ordinance was enacted

(4) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in Ordinance enacted before this Ordinance was enacted.

(5) This section shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) The Legislative Council may, by resolution, amend subsection (5) by substituting another anniversary for the anniversary appearing in that subsection." [cf. SDB 50; 49(3)-(4); 10(6) & (8)]

Part IX — Discrimination on the ground of spent conviction

Part X — Discrimination on the ground of membership or non-membership of a trade union, etc.

Part XI — Other unlawful acts

Part XII — General exceptions to the Ordinance

19 229A endorsed by Bills Comm Add new clause exempting school admissions in compliance with government-formulated admission schemes.

Add new clause 229A:
"229A. Admission of students in compliance with

(1) Subject to subsection (2), nothing in this Ordinance renders it unlawful for a person to discriminate against another person on any one or more of the ground

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of discrimination referred to in this Ordinance in connection with admission as a student if it was necessary for the first-mentioned person to do so in order to comply with a requirement of—

(a) the Primary One Admission Scheme;

(b) the Secondary School Places Allocation System; or

(c) any other rules made by the Director of Education ??? for the admission of students

(2) [Administration remains liable]

Part XIII — Implementation and enforcement

Part XIV — Miscellaneous

Committee-stage amendments to the Equal Opportunities Bill

Amendments to all Parts addressing discrimination

<u>REF. #</u>	<u>CLAUSE</u>	<u>STATUS</u>	<u>AMENDMENT PROPOSED</u>	<u>DRAFT</u>
1	all discrim. Parts	endorsed by Bills Comm	Amend indirect discrimination provisions to cover any practice with a disproportionately adverse impact on persons of the relevant status.	Need to consider whether to go forward if comparable amendments to SDB are dropped.
2	all discrim. Parts	endorsed by Bills Comm	Repeal exceptions for hiring domestic helpers.	Delete subclauses 44(3), 46(2), 63(3), 65(2), 88(3), 90(2), 148(4), 150(3), 165(3), 167(2), 190(3), 192(2), 207(3), 211(2)
3	all discrim. Parts	endorsed by Bills Comm	Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character.	Renumber 49, 68, 93, 153, 170, 195 and 214 as subsection (1) of same and add new subsection to each: “(2) Where an authority or body is required by law to satisfy itself as to a person’s good character before conferring on the person an authorisation or qualification that is referred to in subsection (1) then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to evidence tending to show that the person, or any of the person’s employees or agents (whether past or present), has done an act that is unlawful under this Part.” [cf. SDB 16(2) & BOB qual. bodies clauses]

Part I—Preliminary

4	3(1)	endorsed by Bills Comm	Amend definitions to ensure that work as a barrister or as a barrister’s pupil is covered. [cf. SDB 31, 33(6)-(8)] [NB if coverage by definition fails, see alternatives 4a-c appended to list.]	Amend definition of “employment” by adding: “(d) work as a pupil or tenant in a barrister’s chambers, and in the case of the employment referred to in paragraph (d) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant.”
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5 3(1) ancillary to ref 4

New definition:
"‘barrister’s clerk’ includes any person carrying out any of the functions of a barrister’s clerk;”
cf SDB 31(5)

Part II — Discrimination on the ground of sex, marital status or pregnancy

6 10-42 endorsed by House Comm Delete entire Part in favour of SDB. Delete clauses 10-42.

Part III — Discrimination on the ground of family responsibility or family status

7 51 endorsed by Bills Comm Add new subclause exempting family responsibility discrimination in admissions decisions made by private schools in order to accommodate students whose relatives study or work at the same schools.

Add new subclause 51(2A):
“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of family status, in connection with admission as a student to an educational institution, if the authority so discriminates in good faith in favour of a relative of another person that is employed by or is a student in that educational institution.”
[cf. BOB 229(3)]

Part IV — Discrimination on the ground of sexuality

8 78 endorsed by Bills Comm (cf. ref 12) Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment; and (c) to clarify definition of harassment by way of substantial interference with activities in other areas.

Amend 78 by adding (italic) and deleting (struck out) as follows:
“(1) ... (A) ...; (b) an employee of a person by of whom the harasser is employed—
an employee, a commission agent or a contract worker; or
(c) a person who is seeking employment by the harasser or by an employer of the harasser or by another person of whom the harasser is a commission agent or a contract worker, ...
(2) ... (A) ...; (b) a commission agent or contract worker of a person of whom the harasser is an employee, a commission agent or a contract worker; or
(c) a person who is seeking to become a commission agent or contract worker of the harasser or of another person of whom the harasser is an employee, a

commission agent or a contract worker, ...

(3) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—

(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—

(a) (i) the other person has reasonable grounds for believing that objecting...; or

(ii) as a result of the objection ...; or

(b) the person, alone or together with other persons,”

Amend 85 as follows:

“ ... commits an offence and is liable to a fine ~~at level 3~~of \$10,000 ”

Add new clause 86A:

“86A. Laws relating to marriage or to adoption

(1) Nothing in this Part affects the operation of any provision of a law, being a provision that relates to—

(a) marriage; or

(b) the adoption of an infant within the meaning of section 2 of the Adoption Ordinance (Cap. 290).

(2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision referred to in subsection (1).”

[cf. Admin SDB CSA to Sch. 4 Item 5; SDB 50(1)]

9 85 technical amendment Changes fines stated in \$ to a fine by reference to a level. [cf. Sch. 8 of Cap. 221]

10 86A endorsed by Bills Comm Add new clause exempting laws and policies governing eligibility for marriage and for adoption.

Part V — Discrimination on the ground of race

11 95 endorsed by Bills Comm Add new subclause exempting discrimination on the basis of nationality (i.e. race) in admissions decisions made by private schools in order to accommodate students who previously studied or are likely in future to study in particular educational systems (e.g. in French

Add new subclause 95(3):

“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of national origin or nationality, in connection with admission of the person as a student, if the authority so discriminates in good faith in favour of another person that has previously studied or is likely to study in a particular place or particular places outside Hong Kong.”

schools or in Japanese schools).

- | | | | | |
|----|-----|------------------------------------|--|---|
| 12 | 103 | endorsed by Bills Comm (cf. ref 8) | Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment; and (c) to clarify definition of harassment by way of substantial interference with activities in other areas. | Amend 103 by adding (italic) and deleting (struck out) as follows:
“(1) ... (a) ...; (b) an employee of a person by <i>of</i> whom the harasser is employe-
<i>an employee, a commission agent or a contract worker</i> ; or
(c) a person who is seeking employment by the harasser or by an employer of th
harasser or by <i>another person of whom the harasser is a commission agent or
contract worker</i>
(3) A person shall, for the purposes of this section, be taken to harass racially
another person if—
(a) the first-mentioned person threatens, abuses, insults or taunts the other
person on the ground of the person's race, and—
(a) (i) the other person has reasonable grounds for believing that objecting...; or
(ii) as a result of the objection ...; or
(b) the person, alone or together with other persons, ...” |
| 13 | 110 | technical amendment | Changes fines stated in \$ to a fine by reference to a level.
[cf. Sch. 8 of Cap. 221] | Amend 110 as follows:
“... commits an offence and is liable to a fine at level 3 of \$10,000.” |

Part VI — Discrimination on the ground of disability

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|----|---------|------------------------|--------------------------------------|-------------------------|
| 14 | 113-146 | endorsed by House Comm | Delete entire Part in favour of DDB. | Delete clauses 113-146. |
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Part VII — Discrimination on the ground of religious or political conviction

Part VIII — Discrimination on the ground of age

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|----|-----|------------------------|---|---|
| 15 | 183 | endorsed by Bills Comm | Amend the retirement provision (BOB 183) to provide that mandatory retirement ages do not constitute unlawful age discrimination. | Amend 183 by adding (italic) and deleting (struck out) as follows:
“Nothing in section 165, 166, 167 or 168 renders it unlawful —
(a) to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the age of the person, participation in a voluntary |
|----|-----|------------------------|---|---|

phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, severance scheme, or other like scheme; or
 (b) ~~during the period of 2 years after the commencement of this Ordinance to discriminate against to require a person referred to in paragraph (a), on the ground of the age of that person, by requiring that person to retire from employment, engagement as a commission agent, contract work or partnership, as the case requires."~~

16	184A	endorsed by Bills Comm	Add new clause exempting legal entitlements, obligations or disqualifications of persons under 18, and laws protecting the welfare of persons under 18.	<p>Add new clause 184A:</p> <p>"184A. Legal capacity and welfare of minors Nothing in this Part — (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are minors; or (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them." [cf. Anti-Discrimination Act 1977 (NSW), s. 49ZYQ]</p>
17	184B	endorsed by Bills Comm	Add new clause exempting age discriminatory laws and acts done under their authority, to expire in one year unless extended by Legco resolution.	<p>Add new clause 184B:</p> <p>"184B. Laws and acts done under statutory authority. (1) Nothing in this Part affects the operation of any existing statutory provision. (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision. (3) Subject to subsection (4), in this section "existing statutory provision" () means any provision of— (a) any Ordinance enacted before this Ordinance was enacted; and (b) any subsidiary legislation made— (i) under an Ordinance enacted before this Ordinance was enacted; and (ii) before, on or after this Ordinance was enacted. (4) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Ordinance</p>

enacted before this Ordinance was enacted.
 (5) This section shall expire on the 1st anniversary of the day on which this Ordinance is enacted or on such later date as the Legislative Council may, by resolution, determine.”
 [cf. SDB 50; 49(3)-(4); 10(6) & (8)]

Part IX — Discrimination on the ground of spent conviction

Part X — Discrimination on the ground of membership or non-membership of a trade union, etc.

Part XI — Other unlawful acts

18 225 technical amendment
 Changes fines stated in § to a fine by reference to a level.
 [cf. Sch. 8 of Cap. 221]

Amend 225(2)(a):
 “...commits an offence and is liable to a fine at level 4 of \$30,000 for a first offence and at level 6 of \$100,000 for a second offence ”

Part XII — General exceptions to the Ordinance

19 229A endorsed by Bills Comm
 Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes).

Add new clause 229A:
 “229A. School admissions
 (1) Subject to section 8, nothing in this Ordinance affects any act done by an educational authority in order to comply with—
 (a) the Primary One Admission Scheme [or any subsequent scheme replacing it];
 (b) the Secondary School Places Allocation System [or any subsequent scheme replacing it]; or
 (c) any provision of a law, being a provision relating to the admission of students.

Part XIII — Implementation and enforcement

Part XIV — Miscellaneous

Alternative coverage of barristers, etc. (if new definition at ref 4 doesn't work)

4a	all discrim. Parts	endorsed by Bills Comm (alternative to ref 5)	Amend work provisions to ensure that work as a barrister or as a barrister's pupil is covered. [cf. SDB 31]	Add (between partnership & qual. bods clauses) new clauses 47A, 66A, 91A, 151A, 168A, 193A, 212A: "##. Discrimination by, or in relation to, barristers (1) It is unlawful for a barrister or barrister's clerk, in relation to any offer of pupillage or tenancy, to discriminate against a person on the ground of the person's [status]— (a) in the arrangements which are made for the purpose of determining to whom it should be offered; (b) in respect of any terms on which it is offered; or (c) by refusing, or deliberately omitting, to offer it to the person. (2) It is unlawful for a barrister or barrister's clerk, in relation to a person who is a pupil or tenant in the chambers concerned, to discriminate against the person on the ground of the person's [status] — (a) in respect of any terms applicable to the person as a pupil or tenant; (b) in the opportunities for training, or gaining experience, which are afforded or denied to the person; (c) in the benefits, facilities or services which are afforded or denied to the person; or (d) by terminating the pupillage or by subjecting the person to any pressure to leave the chambers or other detriment. (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a person on the ground of the person's [status]. (4) In this section, "pupil" (), "pupillage" (), "tenancy" (), and "tenant" () have the meanings commonly associated with their use in the context of a set of barristers chambers." [cf. SDB 31] [further change to comport to EOB drafting style? cf. EOB employment cl]
4b	78	endorsed by Bills Comm	Amend harassment provisions to ensure that harassment on the ground of race or	Add new subclause 78(2A): "(2A) It is unlawful for a person to harass—

[31/05/95]

4c	103	<p>(alternative to ref 5; cf. ref 13)</p> <p>endorsed by Bills Comm (alternative to ref 5; cf. ref 9)</p>	<p>sexuality in the course of work as a barrister or as a barrister's pupil is covered.</p> <p>Amend harassment provisions to ensure that harassment on the ground of race or sexuality in the course of work as a barrister or as a barrister's pupil is covered.</p>	<p>(a) a person who is a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker [or "in which the harasser works"7]; or</p> <p>(b) a person who is seeking to become a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker, on the grounds of the person's sexuality." [cf. SDB 33(6)-(8)]</p> <p>Add new subclause 103(2A):</p> <p>"(2A) It is unlawful for a person to harass racially —</p> <p>(a) a person who is a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker [or "in which the harasser works"7]; or</p> <p>(b) a person who is seeking to become a pupil or tenant in the chambers in which the harasser is a barrister, barrister's clerk, employee or a contract worker." [cf. SDB 33(6)-(8)]</p>
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**Note to Members of the Bills Committee studying
the Equal Opportunities Bill and the Sex Discrimination Bill**

Committee-stage amendments to the Equal Opportunities Bill

DRAFT LANGUAGE

AMENDMENT PROPOSED

STATUS

Part I — Preliminary

- | | | |
|---|--|--|
| 1(2) | Amend to bring Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary of Home Affairs | Amend 1(2) by adding (italic) and deleting (struck out) as follows
“(2) <i>Subject to subsection (3), this Ordinance shall come into operation on 1 January 1996.</i> day to be appointed by the Governor by notice in the Gazette and different days may be appointed for different provisions. ” |
| Add new 1(3): | | |
| “(3) The Governor by notice in the Gazette may appoint an earlier date on which this Ordinance shall come into operation and may so appoint different days for different provisions.” | | |
| 3(1) | Amend definition of employment to ensure coverage of government work. | Amend definition of “employment” by adding:
“(d) work as a Crown servant or a Government servant,” |
| 3(1) | Amend definitions to ensure that work as a barrister or as a barrister’s pupil is covered. | Amend definition of “employment” by adding:
“(e) work as a pupil or tenant in a barrister’s chambers, and in the case of the employment referred to in paragraph (e) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant;” |
| Add new definition:
“‘barrister’s clerk’ includes any person carrying out any of the functions of a barrister’s clerk;” | | |

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Part II — Discrimination on the ground of sex, marital status or pregnancy

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| 10-42 | endorsed by House Comm | Delete entire Part in favour of SDB. | Delete clauses 10-42. |
|-------|------------------------|--------------------------------------|-----------------------|

Part III — Discrimination on the ground of family responsibility or family status

- 44 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 44(3).
- 46 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 46(2).
- 51 endorsed by Bills Comm Add new subclause exempting family responsibility discrimination in admissions decisions made by private schools in order to accommodate students whose relatives study or work at the same schools. Add new subclause 51(2A):
“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of family status, in connection with admission as a student to an educational institution, if the authority so discriminates in good faith in favour of a relative of another person who is employed by or is a student in that educational institution.”

Part IV — Discrimination on the ground of sexuality

- 63 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 63(3).
- 65 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 65(2).
- 78 endorsed by Bills Comm Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment. Amend 78 by adding (italic) and deleting (struck out) as follows:
“(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employed *an employee, a commission agent or a contract worker*; or
(c) a person who is seeking employment by the harasser or by an employer of the harasser *or by another person of whom the harasser is a commission agent or a contract worker*, ...
(2) ... (a) ...; (b) a commission agent or contract worker of a person of whom the harasser is *an employee*, a commission agent or a contract worker; or
(c) a person who is seeking to become a commission agent or contract worker of the harasser or of a *another* person of whom the harasser is *an employee*, a commission agent or a contract worker, ...
(3) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
(a) the first-mentioned person threatens, abuses, insults or taunts the other

person on the ground of that person's sexuality, and—
(a) (i) the other person has reasonable grounds for believing that objecting , or
(ii) as a result of the objection ...; or
(b) the person, alone or together with other persons,

Add 79(1A):

“(1A) It is unlawful for a person who is a student of an educational institution to harass—

- (a) a person who is, or is seeking to be, a student of that educational institution;
- or
- (b) a person who is a member of the staff of that educational institution, on the ground of that person's sexuality.”

Amend 79(2) by adding (italic) and deleting (struck out) as follows

“(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
- (a)-(i) the other person has reasonable grounds for believing that objecting , or
 - (b)-(ii) as a result of the objection ...; or
- (b) ~~the threats, abuses, insults or taunts~~ *substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution on the ground of the other person's sexuality.*”

Amend 80(2) by adding (italic) and deleting (struck out) as follows:

“(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
- (a)-(i) the other person has reasonable grounds for believing that objecting ; or
 - (b)-(ii) as a result of the objection ...; or
- (b) ~~the threats, abuses, insults or taunts~~ *substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of that accommodation on*

79 endorsed by Bills Comm Amend provisions on harassment in education to cover harassment by students of other students, or of staff

79 endorsed by Bills Comm Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

80 endorsed by Bills Comm Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

the ground of the other person's sexuality."

Amend 81(2) by adding (italic) and deleting (struck out) as follows:
 "(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
 (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
 (a)-(f) the other person has reasonable grounds for believing that objecting...; or
 (b)-(ii) as a result of the objection ...; or
 (eb) ~~the threats, abuses, insults or taunts substantially interfere~~ *the person, alone or together with other persons, engages in conduct which substantially interferes* with the other person's access to, use or enjoyment of those goods, services or facilities *on the ground of the other person's sexuality."*

Amend 85 as follows:
 "... commits an offence and is liable to a fine at level 3 of \$10,000."

Add new clause 86A:
 "86A. **Laws relating to marriage or to adoption**
 (1) Nothing in this Part affects the operation of any provision of a law, being a provision that relates to—
 (a) capacity to marry; or
 (b) eligibility to adopt an infant within the meaning of section 2 of the Adoption Ordinance (Cap. 290).
 (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision referred to in subsection (1)."

Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

Changes fine in dollars to fine by reference to a level.
 Add new clause exempting laws and policies governing eligibility for marriage and for adoption

endorsed by Bills Comm

technical amendment

endorsed by Bills Comm

81

85

86A

Part V — Discrimination on the ground of race

Delete subclause 88(3).

Repeal exceptions for hiring domestic helpers.

Delete subclause 90(2).

Repeal exceptions for hiring domestic helpers.

Add new subclause 95(3):

Add new subclause exempting

88

endorsed by Bills Comm

90

endorsed by Bills Comm

95

endorsed by

Bills Comm	discrimination on the basis of nationality (i.e. race) in admissions decisions made by private schools in order to accommodate students who previously studied or are likely in future to study in particular educational systems (e.g. in French schools or in Japanese schools).	“(3) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of national origin or nationality, in connection with admission of the person as a student, if the authority so discriminates in good faith in favour of another person who has previously studied or is likely to study in a particular place or particular places outside Hong Kong.”
103 endorsed by Bills Comm	Technical amendments to harassment provisions. (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment.	Amend 103 by adding (italic) and deleting (struck out) as follows: “(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employed an employee, a commission agent or a contract worker; or (c) a person who is seeking employment by the harasser or by an employer of the harasser or by another person of whom the harasser is a commission agent or contract worker. ... (3) A person shall, for the purposes of this section, be taken to harass racially another person if— (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of the person's race, and— (a) (i) the other person has reasonable grounds for believing that objecting ..., or (ii) as a result of the objection ...; or (b) the person, alone or together with other persons,”
104 endorsed by Bills Comm	Amend provisions on harassment in education to cover harassment by students of other students, or of staff.	Add 104(1A): “(1A) It is unlawful for a person who is a student of an educational institution to harass racially— (a) a person who is, or is seeking to be, a student of that educational institution; or (b) a person who is a member of the staff of that educational institution ”
104 endorsed by Bills Comm	Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.	Amend 104(2) by adding (italic) and deleting (struck out) as follows: “(2) A person shall, for the purposes of this section, be taken to harass racially another person if— (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and— (a)–(i) the other person has reasonable grounds for believing that objecting ..., or

~~(b)-(ii)~~ as a result of the objection ... ; or
~~(eb) the threats, abuses, insults or taunts substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution on the ground of the other person's race "~~
 Amend 105(2) by adding (italic) and deleting (struck out) as follows:
 "(2) A person shall, for the purposes of this section, be taken to harass racially another person if—
 (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and—
~~(a)-(i)~~ the other person has reasonable grounds for believing that objecting ; or
~~(b)-(ii)~~ as a result of the objection . ; or
 (eb) ~~the threats, abuses, insults or taunts substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of that accommodation on the ground of the other person's race "~~
 [cf. EOB 78(3) as amended]
 Amend 106(2) by adding (italic) and deleting (struck out) as follows
 "(2) A person shall, for the purposes of this section, be taken to harass racially another person if—
 (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and—
~~(a)-(i)~~ the other person has reasonable grounds for believing that objecting , or
~~(b)-(ii)~~ as a result of the objection ... ; or
 (eb) ~~the threats, abuses, insults or taunts substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of those goods, services or facilities on the ground of the other person's race."~~
 Amend 110 as follows:
 "... commits an offence and is liable to a fine at level 3 of \$10,000 "

105 endorsed by Bills Comm
 Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

106 endorsed by Bills Comm
 Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

110 technical amendment
 Changes fine in dollars to a fine by reference to a level.

Part VI — Discrimination on the ground of disability

113-146 endorsed by Delete entire Part in favour of DDB Delete clauses 113-146
House Comm

Part VII — Discrimination on the ground of religious or political conviction

148 endorsed by Repeal exceptions for hiring domestic Delete subclause 148(4).
Bills Comm helpers

150 endorsed by Repeal exceptions for hiring domestic Delete subclause 150(3).
Bills Comm helpers

Part VIII — Discrimination on the ground of age

165 endorsed by Repeal exceptions for hiring domestic Delete subclause 165(3).
Bills Comm helpers

167 endorsed by Repeal exceptions for hiring domestic Delete subclause 167(2).
Bills Comm helpers

183 endorsed by Amend the retirement provision (EOB
Bills Comm 183) to provide that mandatory retirement
ages do not constitute unlawful age
discrimination

Amend 183 by adding (italic) and deleting (struck out) as follows
“Nothing in section 165, 166, 167 or 168 renders it unlawful—
(a) to offer to a person who is an employee, commission agent, contract worker
or partner, on the ground of the age of the person, participation in a voluntary
phased-in retirement scheme, voluntary retirement scheme, retirement incentives
scheme, severance scheme, or other like scheme, or
(b) during the period of 2 years after the commencement of this Ordinance to
discriminate against to require a person referred to in paragraph (a), on the
ground of the age of that person, by requiring that person to retire from
employment, engagement as a commission agent, contract work or partnership,
as the case requires.”

184A endorsed by Add new clause exempting legal
Bills Comm entitlements, obligations or
disqualifications of persons under 18, and
laws protecting the welfare of persons

Add new clause 184A:
“184A. Legal capacity and welfare of minors
Nothing in this Part —
(a) affects the operation of a law that relates to the legal capacity or the legal

under 18.

entitlements, obligations or disqualifications of persons who are minors; or (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.”

184B	endorsed by Bills Comm	Add new clause exempting age discriminatory laws and acts done under their authority, to expire in one year unless extended by Legco resolution.	<p>Add new clause 184B:</p> <p>“184B. Laws and acts done under statutory authority</p> <p>(1) Nothing in this Part affects the operation of any existing statutory provision</p> <p>(2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.</p> <p>(3) Subject to subsection (4), in this section “existing statutory provision” () means any provision of—</p> <p>(a) any Ordinance enacted before this Ordinance was enacted; and</p> <p>(b) any subsidiary legislation made—</p> <p>(i) under an Ordinance enacted before this Ordinance was enacted, and</p> <p>(ii) before, on or after this Ordinance was enacted</p> <p>(4) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.</p> <p>(5) This section shall expire on the 1st anniversary of the day on which this Ordinance is enacted or on such later date as the Legislative Council may, by resolution, determine.”</p>
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Part IX --- Discrimination on the ground of spent conviction

190	endorsed by Bills Comm	Repeal exceptions for hiring domestic helpers	Delete subclause 190(3).
192	endorsed by Bills Comm	Repeal exceptions for hiring domestic helpers	Delete subclause 192(2).

Part X — Discrimination on the ground of membership or non-membership of a trade union, etc.

- 207 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers Delete subclause 207(3)
- 211 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers Delete subclause 211(2)

Part XI — Other unlawful acts

- 225 technical amendment Changes fine in dollars to a fine by reference to a level Amend 225(2)(a)
“ commits an offence and is liable to a fine at level 4 of \$30,000 for a first offence and at level 6 of \$100,000 for a second offence ”

Part XII — General exceptions to the Ordinance

- 229A endorsed by Bills Comm Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes)

Add new clause 229A

“229A. Compliance with school admissions schemes

- (1) Subject to section 8, nothing in this Ordinance affects any act done by an educational authority in order to comply with—
(a) the Primary One Admission Scheme [or any subsequent scheme replacing it],
(b) the Secondary School Places Allocation System [or any subsequent scheme replacing it]; or
(c) any provision of a law, being a provision relating to the admission of students

Part XIII — Implementation and enforcement

- 237A endorsed by Bills Comm Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character

Add new clause 237A

“237A. Qualifying bodies to have regard to evidence of discrimination

Where an authority or body is required by law to satisfy itself as to a person's good character before conferring on a person an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on

the authority or body a duty to have regard to evidence tending to show that the person, or any of the person's employees or agents (whether past or present), has done an act that is unlawful under this Part ”

Part XIV — Miscellaneous

- 241A technical amendment
Consequentially amend the Schedule to the Official Languages Ordinance (Cap 5) to permit the use of Chinese language in proceedings under the Ordinance
- 241B
Consequentially amend the Legal Aid Ordinance (Cap 91) to allow the Director of Legal Aid to waive the means test for claims of discrimination under the Ordinance (as for claims of breach of the Bill of Rights)

Amendments deferred

- 43, 62, endorsed by
37, 147, Bills Comm
164, 189,
206
Propose to defer amendments for later review by EOC
- Amend indirect discrimination provisions to cover any practice with a disproportionately adverse impact on persons of the relevant status

Office of Anna Wu
1 June 1995

政 務 司
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修頓中心三十一樓



Secretary for Home Affairs
31st Floor, Southorn Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong

Ref.: HAB/CR/1/2/21 Pt.26

30 May 1995

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The Honourable Anna Wu
Room 415
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Hong Kong

**Equal Opportunities (Race) Bill,
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
and Equal Opportunities (Religious or Political Conviction,
Trade Union Activities and Spent Conviction) Bill**

Thank you for your letter of 26 May 1995 and copies of the draft bills attached to it. We shall seek legal advice on their charging effect. I trust that you will let me have sight of the final versions of the bills once they are ready. Hopefully, there will not be substantial changes.

(Michael M Y Suen)
for Secretary for Home Affairs

31st May 1995

The Hon. Sir John Swaine, KBE, QC, JP
President of the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Sir John,

Private ruling on charging effect of the Equal Opportunities (Race) Bill, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, and the Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill

I would like to seek a private ruling from you on whether the three captioned Bills may have a charging effect for purposes of Standing Order 23.

All the provisions of the captioned Bills are drawn from the Equal Opportunities Bill [EOB], the Private Member's Bill of which I am the sponsor. As discussed and approved 5th May in House Committee, the captioned Bills reorganise the comprehensive EOB into three separate Bills in order to facilitate Members' decision-making process. Two Parts of the EOB (II and VI) are omitted from the captioned Bills because they address matters that overlap with government bills introduced after the EOB (the Sex Discrimination Bill and Disability Discrimination Bill).

The captioned Bills contain no substantive changes to any of the EOB's provisions. Specifically, the provisions of the captioned Bills that define unlawful acts of discrimination are drawn unchanged from the EOB (disregarding corrections of minor spelling or technical errors). The Parts entitled "other unlawful acts," "implementation and enforcement," and "miscellaneous" are also unchanged from the corresponding Parts in the EOB. Finally, the Parts entitled "preliminary" and "general exceptions to the Ordinance" are taken from the EOB with only such changes as are necessary to reflect the narrower scope of each of the captioned Bills (e.g. the EOB's definition of "marital status" has been deleted in the Equal Opportunities (Race) Bill, where it is irrelevant). A chart showing the exact correspondence between Parts of the EOB and Parts of the captioned Bills is appended.

The Secretary for Home Affairs expressed the view last year that the EOB had no charging effect for purposes of SO 23 (a copy of that letter is attached). I trust that the Administration will reach the same conclusion with respect to the captioned Bills, which amount to no more than a reorganisation of the EOB.

The current drafts of the captioned Bills are attached for your information. I am awaiting certification of these drafts by the Law Draftsman, and expect that any revisions required by the Law Draftsman will be essentially typographic ones. I look forward to hearing from you, and thank you for your consideration and advice.

Yours sincerely,

Anna Wu

cc. Legal Adviser

Appendix: Correspondence of EOB Parts to Parts of the captioned Bills

<u>EOB Part</u>	<u>E. O. (Race) Bill Part</u>	<u>E. O. (Family Resp'y, Sexuality & Age) Bill Part</u>	<u>E. O. (Relig. or Pol. Conv., Trade Union Activ. & Spent Conv.) Bill Part</u>
I	I	I	I
II — dropped			
III		II	
IV		III	
V	II		
VI — dropped			
VII			II
VIII		IV	
IX			III
X			IV
XI	III	V	V
XII	IV	VI	VI
XIII	V	VII	VII
XIV	VI	VIII	VIII

**Note to Members of the Bills Committee studying
the Equal Opportunities Bill and the Sex Discrimination Bill**

Committee-stage amendments to the Equal Opportunities Bill

<u>CLAUSE</u>	<u>STATUS</u>	<u>AMENDMENT PROPOSED</u>	<u>DRAFT LANGUAGE</u>
Part I — Preliminary			
1(2)		Amend to bring Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary of Home Affairs.	Amend 1(2) by adding (italic) and deleting (struck out) as follows: “(2) <i>Subject to subsection (3), this Ordinance shall come into operation on 1 January 1996</i> to be appointed by the Governor by notice in the Gazette and different days may be appointed for different provisions. ”
			Add new 1(3): “(3) The Governor by notice in the Gazette may appoint an earlier date on which this Ordinance shall come into operation and may so appoint different days for different provisions.”
3(1)	technical amendment	Amend definition of employment to ensure coverage of government work.	Amend definition of “employment” by adding: “(d) work as a Crown servant or a Government servant;”
3(1)	endorsed by Bills Comm	Amend definitions to ensure that work as a barrister or as a barrister’s pupil is covered.	Amend definition of “employment” by adding: “(e) work as a pupil or tenant in a barrister’s chambers, and in the case of the employment referred to in paragraph (e) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant;”
			Add new definition: “‘barrister’s clerk’ includes any person carrying out any of the functions of a barrister’s clerk;”
Part II — Discrimination on the ground of sex, marital status or pregnancy			
10-42	endorsed by House Comm	Delete entire Part in favour of SDB.	Delete clauses 10-42.

Part III — Discrimination on the ground of family responsibility or family status

- 44 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 44(3).
- 46 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 46(2).
- 51 endorsed by Bills Comm Add new subclause exempting family responsibility discrimination in admissions decisions made by private schools in order to accommodate students whose relatives study or work at the same schools. Add new subclause 51(2A):
“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of family status, in connection with admission as a student to an educational institution, if the authority so discriminates in good faith in favour of a relative of another person who is employed by or is a student in that educational institution.”

Part IV — Discrimination on the ground of sexuality

- 63 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 63(3).
- 65 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 65(2).
- 78 endorsed by Bills Comm Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment. Amend 78 by adding (italic) and deleting (struck out) as follows:
“(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employed *an employee, a commission agent or a contract worker*; or
(c) a person who is seeking employment by the harasser or by an employer of the harasser *or by another person of whom the harasser is a commission agent or a contract worker, ...*
(2) ... (a) ...; (b) a commission agent or contract worker of a person of whom the harasser is *an employee, a commission agent or a contract worker*; or
(c) a person who is seeking to become a commission agent or contract worker of the harasser or of a *another* person of whom the harasser is *an employee, a commission agent or a contract worker, ...*
(3) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
(a) the first-mentioned person threatens, abuses, insults or taunts the other

person on the ground of that person's sexuality, and—
 (a) (i) the other person has reasonable grounds for believing that objecting ...; or
 (ii) as a result of the objection ...; or
 (b) the person, alone or together with other persons, ...”

Add 79(1A):
 “(1A) It is unlawful for a person who is a student of an educational institution to harass—
 (a) a person who is, or is seeking to be, a student of that educational institution;
 or
 (b) a person who is a member of the staff of that educational institution,
 on the ground of that person's sexuality.”

Amend 79(2) by adding (italic) and deleting (struck out) as follows:
 “(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
 (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
 (a)-(i) the other person has reasonable grounds for believing that objecting ...; or
 (b)-(ii) as a result of the objection ...; or
 (eb) ~~the threats, abuses, insults or taunts~~ *substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes* with the other person's access to, use or enjoyment of the facilities of the educational institution *on the ground of the other person's sexuality.*”

Amend 80(2) by adding (italic) and deleting (struck out) as follows:
 “(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—
 (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
 (a)-(i) the other person has reasonable grounds for believing that objecting ...; or
 (b)-(ii) as a result of the objection ...; or
 (eb) ~~the threats, abuses, insults or taunts~~ *substantially interfere the person, alone or together with other persons, engages in conduct which substantially interferes* with the other person's access to, use or enjoyment of that accommodation *on*

79 endorsed by Bills Comm Amend provisions on harassment in education to cover harassment by students of other students, or of staff

79 endorsed by Bills Comm Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

80 endorsed by Bills Comm Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

the ground of the other person's sexuality."

Amend 81(2) by adding (italic) and deleting (struck out) as follows:

"(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—

(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—

(a) ~~(i)~~ the other person has reasonable grounds for believing that objecting ...; or

(b) ~~(ii)~~ as a result of the objection ...; or

(b) ~~(i)~~ the threats, abuses, insults or taunts substantially interfere *the person, alone or together with other persons, engages in conduct which substantially interferes* with the other person's access to, use or enjoyment of those goods, services or facilities *on the ground of the other person's sexuality."*

Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas

endorsed by Bills Comm

81

Amend 85 as follows:

"... commits an offence and is liable to a fine at level 3 of \$10,000."

Changes fine in dollars to fine by reference to a level.

technical amendment

85

Add new clause 86A:

"86A. Laws relating to marriage or to adoption

- (1) Nothing in this Part affects the operation of any provision of a law, being a provision that relates to—
 - (a) capacity to marry; or
 - (b) eligibility to adopt an infant within the meaning of section 2 of the Adoption Ordinance (Cap. 290).
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision referred to in subsection (1)."

Add new clause exempting laws and policies governing eligibility for marriage and for adoption

endorsed by Bills Comm

86A

Part V — Discrimination on the ground of race

Delete subclause 88(3).

Repeal exceptions for hiring domestic helpers.

endorsed by Bills Comm

88

Delete subclause 90(2).

Repeal exceptions for hiring domestic helpers.

endorsed by Bills Comm

90

Add new subclause 95(3).

Add new subclause exempting

endorsed by

95

Bills Comm	discrimination on the basis of nationality (i.e. race) in admissions decisions made by private schools in order to accommodate students who previously studied or are likely in future to study in particular educational systems (e.g. in French schools or in Japanese schools).	“(3) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of national origin or nationality, in connection with admission of the person as a student, if the authority so discriminates in good faith in favour of another person who has previously studied or is likely to study in a particular place or particular places outside Hong Kong.”
103 endorsed by Bills Comm	Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment.	Amend 103 by adding (italic) and deleting (struck out) as follows: “(1) ... (a) ...; (b) an employee of a person by of whom the harasser is employed an employee, a commission agent or a contract worker”; or (c) a person who is seeking employment by the harasser or by an employer of the harasser or by another person of whom the harasser is a commission agent or contract worker. ...
104 endorsed by Bills Comm	Amend provisions on harassment in education to cover harassment by students of other students, or of staff.	(3) A person shall, for the purposes of this section, be taken to harass racially another person if— (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of the person's race, and— (a) (i) the other person has reasonable grounds for believing that objecting ; or (ii) as a result of the objection ...; or (b) the person, alone or together with other persons, ...” Add 104(1A): “(1A) It is unlawful for a person who is a student of an educational institution to harass racially— (a) a person who is, or is seeking to be, a student of that educational institution; or (b) a person who is a member of the staff of that educational institution ”
104 endorsed by Bills Comm	Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas	Amend 104(2) by adding (italic) and deleting (struck out) as follows: “(2) A person shall, for the purposes of this section, be taken to harass racially another person if— (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and— (a)–(i) the other person has reasonable grounds for believing that objecting , or

~~(b)-(ii)~~ as a result of the objection ...; or
~~(eb)~~ the threats, abuses, insults or taunts substantially interfere *the person, alone*
or together with other persons, engages in conduct which substantially interferes
with the other person's access to, use or enjoyment of the facilities of the
educational institution *on the ground of the other person's race.*"

105 endorsed by Bills Comm
Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

Amend 105(2) by adding (italic) and deleting (struck out) as follows:

"(2) A person shall, for the purposes of this section, be taken to harass racially another person if—

(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and—

~~(a)-(i)~~ the other person has reasonable grounds for believing that objecting...; or

~~(b)-(ii)~~ as a result of the objection ...; or

~~(eb)~~ the threats, abuses, insults or taunts substantially interfere *the person, alone*
or together with other persons, engages in conduct which substantially interferes
with the other person's access to, use or enjoyment of that accommodation *on*
the ground of the other person's race."
[cf. EOB 78(3) as amended]

106 endorsed by Bills Comm
Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.

Amend 106(2) by adding (italic) and deleting (struck out) as follows:

"(2) A person shall, for the purposes of this section, be taken to harass racially another person if—

(a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and—

~~(a)-(i)~~ the other person has reasonable grounds for believing that objecting...; or

~~(b)-(ii)~~ as a result of the objection ...; or

~~(eb)~~ the threats, abuses, insults or taunts substantially interfere *the person, alone*
or together with other persons, engages in conduct which substantially interferes
with the other person's access to, use or enjoyment of those goods, services or
facilities *on the ground of the other person's race.*"

110 technical amendment
Changes fine in dollars to a fine by reference to a level.

Amend 110 as follows:
". . . commits an offence and is liable to a fine at level 3 of \$10,000."

Part VI — Discrimination on the ground of disability

113-146 endorsed by House Comm Delete entire Part in favour of DDB. Delete clauses 113-146.

Part VII — Discrimination on the ground of religious or political conviction

148 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 148(4).
150 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 150(3).

Part VIII — Discrimination on the ground of age

165 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 165(3).
167 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 167(2).
183 endorsed by Bills Comm Amend the retirement provision (EOB 183) to provide that mandatory retirement ages do not constitute unlawful age discrimination. Amend 183 by adding (italic) and deleting (struck out) as follows:
“Nothing in section 165, 166, 167 or 168 renders it unlawful—
(a) to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the age of the person, participation in a voluntary phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, severance scheme, or other like scheme; or
(b) during the period of 2 years after the commencement of this Ordinance to discriminate against to require a person referred to in paragraph (a), on the ground of the age of that person, by requiring that person to retire from employment, engagement as a commission agent, contract work or partnership, as the case requires.”

184A endorsed by Bills Comm Add new clause exempting legal entitlements, obligations or disqualifications of persons under 18, and laws protecting the welfare of persons
“184A. Legal capacity and welfare of minors
Nothing in this Part —
(a) affects the operation of a law that relates to the legal capacity or the legal

under 18

entitlements, obligations or disqualifications of persons who are minors; or (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them ”

184B endorsed by Bills Comm Add new clause exempting age discriminatory laws and acts done under their authority, to expire in one year unless extended by Legco resolution

Add new clause 184B

“184B. Laws and acts done under statutory authority

- (1) Nothing in this Part affects the operation of any existing statutory provision.
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.
- (3) Subject to subsection (4), in this section “existing statutory provision” () means any provision of—
 - (a) any Ordinance enacted before this Ordinance was enacted, and
 - (b) any subsidiary legislation made—
 - (i) under an Ordinance enacted before this Ordinance was enacted; and
 - (ii) before, on or after this Ordinance was enacted
 - (4) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.
 - (5) This section shall expire on the 1st anniversary of the day on which this Ordinance is enacted or on such later date as the Legislative Council may, be resolution, determine.”

Part IX — Discrimination on the ground of spent conviction

- 190 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers.
- 192 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers.

Delete subclause 190(3).

Delete subclause 192(2).

Part X — Discrimination on the ground of membership or non-membership of a trade union, etc.

- 207 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 207(3).
- 211 endorsed by Bills Comm Repeal exceptions for hiring domestic helpers. Delete subclause 211(2).

Part XI — Other unlawful acts

- 225 technical amendment Changes fine in dollars to a fine by reference to a level. Amend 225(2)(a):
“...commits an offence and is liable to a fine ~~at level 4ef \$30,000~~ for a first offence and ~~at level 6\$100,000~~ for a second offence.”

Part XII — General exceptions to the Ordinance

- 229A endorsed by Bills Comm Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes).

Add new clause 229A:

“**229A. Compliance with school admissions schemes**

- (1) Subject to section 8, nothing in this Ordinance affects any act done by an educational authority in order to comply with—
(a) the Primary One Admission Scheme [or any subsequent scheme replacing it];
(b) the Secondary School Places Allocation System [or any subsequent scheme replacing it]; or
(c) any provision of a law, being a provision relating to the admission of students.

Part XIII — Implementation and enforcement

- 237A endorsed by Bills Comm Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character.

Add new clause 237A:

“**237A. Qualifying bodies to have regard to evidence of discrimination**

Where an authority or body is required by law to satisfy itself as to a person’s good character before conferring on a person an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on

the authority or body a duty to have regard to evidence tending to show that the person, or any of the person's employees or agents (whether past or present), has done an act that is unlawful under this Part”

Part XIV — Miscellaneous

- 241A technical amendment
Consequentially amend the Schedule to the Official Languages Ordinance (Cap 5) to permit the use of Chinese language in proceedings under the Ordinance.
- 241B
Consequentially amend the Legal Aid Ordinance (Cap. 91) to allow the Director of Legal Aid to waive the means test for claims of discrimination under the Ordinance (as for claims of breach of the Bill of Rights)

Amendments deferred

- 43, 62, endorsed by
87, 147, Bills Comm
164, 189,
206
Propose to defer amendments for later review by EOC.
Amend indirect discrimination provisions to cover any practice with a disproportionately adverse impact on persons of the relevant status.

Office of Anna Wu
1 June 1995

**Note to Members of the Bills Committee studying
the Equal Opportunities Bill and the Sex Discrimination Bill**

Proposed committee-stage amendments to the Sex Discrimination Bill

Amendments struck out have been fully accepted by the Administration.
Amendments checked have been endorsed by the Bills Committee.

<u>CLAUSE</u>	<u>AMENDMENT PROPOSED</u>
	<u>Part I — Preliminary</u>
1(2)	Amend to bring provisions of Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary for Home Affairs.
2(5)	Amend definition of sexual harassment in the employment field to include sexual conduct that creates a sexually hostile work environment. [cf. EOB 29(3)(b)]
—	New clause directing Ordinance to be interpreted to give effect to relevant international obligations (including the ICCPR, ICESCR, and CEDAW). [cf. EOB 7]
—	New clause repealing prior inconsistent laws to extent of inconsistency with Ordinance, with repeal effective from date of final judgement on inconsistency. [cf. EOB 8]
—	New clause providing that an act done for two or more reasons, one of which is sex, marital status or pregnancy, deemed to be done by reason of sex, marital status or pregnancy. [cf. DDB 3; EOB 4]
	<u>Part II — Discrimination</u>
6	Amend definition of marital status discrimination to apply to any provision in Ordinance, rather than only to provisions relating to employment field.
7	Amend definition of pregnancy discrimination to apply to any provision in Ordinance, rather than only to provisions relating to employment field.
8	Amend definition of victimisation to broaden its coverage. [cf. EqT 3.9]
	<u>Part III — Employment Field</u>
10(2)	Amend to expressly prohibit discrimination in terms and conditions of employment [cf. EqT 2.20]
10(6), (8)	Amend to expire one year after commencement of section, and delete Governor's power to vary date of expiry (Exemption for small employers)
10(4), 14(4) & 15(4)	Amend to expire in one year, subject to extension by Legco resolution (Exceptions for provisions relating to death and retirement, in connection with employment, partnership and trade unions, etc) [cf EqT 3 14]*

* EqT = "Equal Treatment for Men & Women - Strengthening the Acts ... Final Proposals of the UK EOC, 1988"

~~— New clause prohibiting discrimination against commission agents (also amend cl. 2(1) to add definition of “commission agent”).
[cf. EOB 3(1), 14, 29(2)]~~

11(2)(g), Amend to expire in one year, subject to extension by Legco resolution.
49 & (Exceptions permitting exclusion of women from jobs covered by Sched. 2 protective
Sch. 2 regulations, and exempting protective legislation and acts done for the protection
of women.)

~~20 — Amend prohibition of sexual harassment to include harassment of a woman employed to
perform domestic duties in the premises in which the harasser resides or is otherwise
present, whether or not the harasser is the employer.
[cf. EOB 29(1)(d)]~~

Part IV — Other Fields

~~— New clause prohibiting discrimination in clubs (and to amend cl. 2(1) to add definitions
of “club” and “committee of management” of a club).
[cf. DDB 2(1), 32; EOB 3(1), 25; EqT 3.26]~~

— New clause prohibiting discrimination in administration of laws and government
programmes.
[cf. EOB 27; EqT 3.23]

— New clause prohibiting discrimination in public elections and appointments.
[cf. EOB 28]

~~32 — Amend prohibition of sexual harassment to include harassment of students by students,
and of educational staff by students.~~

Part V — Other Unlawful Acts

36 & 74 Amend to make unlawfully discriminatory advertisements an offense, subject to a fine of
\$30,000 for a first offense and \$100,000 for a second offense
[cf. EOB 225]

Part VI — General Exceptions

~~— New clause providing general exception for special measures and for measures to
achieve equality.
[cf. DDB 47, EOB 37, CEDAW, Art 4]~~

51 Delete (Exemption for acts done to safeguard the security of Hong Kong)

Sch. 4: Delete (Exemption for Small House Policy)
item 2

54 & Amend to expire in one year, subject to extension by Legco resolution
Sch 4 (Exemption of certain discrimination within the disciplinary services; of marital status
discrimination in employment benefits and civil service benefits, and of additional items
in Admin CSAs)

Part VII — Equal Opportunities Commission

55 & Delete 15(2), 16(2)-(3) and 17(2) of Schedule 5 (EOC expenditure, borrowing and
Sch 5 investment subject to direction or approval by Secretary of Home Affairs and/or
Treasury)

- 56(1)(C) New subclause giving EOC function of promoting observation of relevant international obligations (e.g. the ICCPR, ICESCR and CEDAW) as they relate to sex, marital status or pregnancy discrimination.
- 56(1)(C) New subclause giving EOC function of examining any proposed legislation that it considers may affect equality of opportunity and reporting results to legislation's sponsor.
[cf. Personal Data (Privacy) Bill, cl. 8(1)(d)]
- 57(3) Delete. (Approval of Secretary for Home Affairs required for any financial assistance by EOC to outside research and educational undertakings.)
- 63(4) Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believes unlawful acts have occurred); and to give all named persons a right to make pre-investigation representations to the EOC.
[cf. EqT 4.8]
- New clause empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance.
[cf. EqT 4.17]
- New clause empowering EOC to intervene by leave of court in any proceedings under the Ordinance.
- Part VIII — Enforcement**
- ~~— New clause providing that, in proceedings under Ordinance, District Court not bound by rules of evidence and may inform self as sees fit.
[cf. EOB 235]~~
- ~~— New clause providing that, in proceedings under Ordinance, each party shall pay own costs unless court finds exceptional circumstances justify otherwise.
[cf. EOB 237]~~
- 68(3)-(4) Amend to replace District Court's power to order any remedy obtainable in High Court with a power to order any remedy the court considers just and appropriate, including reinstatement.
[cf. EOB 234]
- 68(5) Delete. (No damage awards for indirect discrimination if discrimination unintentional.)
- ~~68(7) Delete. (Chief Secretary must be given prior notice of claims vs. government schools.)~~
- ~~69(2) Amend to authorise enforcement notices to include, in addition to a requirement that a person cease an act of unlawful discrimination, a requirement that the person cease any specific practice(s) that led to the unlawful discrimination.
[cf. EqT 4.16]~~
- ~~69(5) Delete (EOC must give prior notice to persons against whom enforcement notice to be issued, and hear and take account of such persons' representations opposing issuance of enforcement notice.)
[EqT 4.13]~~
- 76 Amend to enable EOC to conciliate complaints of acts inconsistent with relevant international obligations (e.g. the ICCPR, ICESCR and CEDAW) as they relate to sex, marital status or pregnancy discrimination
- 77 Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings

~~78(1) (2) Amend to extend the period within which proceedings under the Ordinance may be brought.~~

78(4) Amend the period within which proceedings under the Ordinance may be brought to provide that time in conciliation will not be taken into account

~~78() New subclause to provide an additional period within which proceedings under the Ordinance may be brought, of one year following publication of a formal investigation report that finds unlawful discrimination, for persons who claim to have suffered from the reported discrimination
[cf. EqT 4 15]~~

Part IX — Miscellaneous

82(2) & Sch 7 Consequentially amend section 5AA of the Legal Aid Ordinance (Cap. 91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the Ordinance (as for proceedings involving claims under the Bill of Rights)

Proposed amendments to be deferred

Because of time constraints, it is proposed that the following amendments be deferred and forwarded to the EOC for later review

2(1) Amend definition of “marital status” to include status of being de facto spouse
[cf. EOB 3(1)]

2(5) Amend definition of sexual harassment in other fields to include sexual conduct that substantially interferes with the victim’s activities.
{cf. EOB 30(2)(c)}

— New clause defining discrimination against a person to include discrimination on ground of relative’s or associate’s sex, marital status or pregnancy
[cf. DDB 2(6), 6(c), EOB 6]

4(1)(b), 6(1)(b) & 7(b) Amend definitions of indirect discrimination to include any practice with a disproportionately adverse impact on one sex / persons of a particular marital status / pregnant women
[cf. EqT 3 3]

10() New subclause to clarify for avoidance of doubt whether discrimination in terms and conditions of employment includes unequal pay for work of equal value
[cf. EqT 2 20]

11(2)(h) Delete (Exception for work likely to involve duties outside Hong Kong where discriminatory laws or customs apply)

Office of Anna Wu
1 June 1995

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref.</u> <u>No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
Part I - Preliminary		
1 C1(2)	Amend to bring provisions of the Ordinance into operation on 1.1.1996 or any earlier dates to be appointed by the SHA.	Commencement dates of legislation should tie-in with the operational set up. For the SDB, it is necessary to set up the EOC first and the commencement of the Ordinance would depend upon whether the EOC considers itself ready to enforce the provisions in the Ordinance. Stipulating a commencement date pre-empts the discretion of the EOC. It is also necessary to allow time for the EOC to develop the Code of Practice in employment (without which all EOC's advice would have to be made on an ad hoc basis). We have explained to Members that it would take about 9 months (from the establishment of the EOC) for such a code to be developed. We therefore object to such an inflexible approach which is unrealistic and disregards the operational realities of the implementation of the legislation.
2 C2(1)	Definition of 'marital status' should include 'de facto spouse'.	Disagree. BC informed on 28.4.1995 and 19.5.1995. Such a provision would have the effect of giving recognition to 'de facto

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
		spouse' relationships, e.g. extra-marital relationships, concubines. This departs from Government's policy of recognising the principle of monogamous marriages only. We do not think that the community is ready to give recognition to 'de facto spouse' relationships which cover those between persons of the same sex.
3 C2(5)	Amend definition of sexual harassment to include sexual conduct that substantially interferes with the victim's activities.	Disagree. 'Substantial interferences' is too general a term. The present definition, which refers to circumstances in which a reasonable person would be humiliated, intimidated, or offended provides clearer guidance and is preferred.
4	New clause directing Ordinance to be interpreted to give effect to relevant international obligations (including ICCPR, ICESCR and CEDAW)	Disagree. International treaties are not justiciable in the courts of Hong Kong. SDB is a self-contained piece of legislation the terms of which are clear and certain. There is no need to refer to other instruments for interpretation of the SDB. The UK Sex Discrimination Act makes no reference to these international treaties for interpretation of the SDA.

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
Part III Employment		
8 C10(2)	Amend to expressly prohibit discrimination in terms and conditions of employment, and add a new subclause to clarify for avoidance of doubt whether such discrimination includes unequal pay for work of equal value.	Disagree. The principle of equal pay for work of equal value would be addressed in the context of the codes of practice to be developed by the EOC.
9 C10 (3)	Repeal, or amend (the transitional period for small business establishments) to expire on the sooner of 1.1.1997 or one year after the commencement of the section.	Disagree. We propose to shorten the transitional period to three years upon the enactment of the Bill. This is a reasonable period.
10 C11 (2)(g)	Amend the GOQ for work covered by protective legislation to expire in one year, subject to extension by LegCo resolution.	Administration's position explained to Bills Committee on 28.4.1995 and 19.5.1995. EMB will conduct a review on the protective legislation. It is not appropriate to pre-empt the outcome of the review by limiting the life span of the exceptions.

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
5	New Clause defining discrimination against a person to include discrimination on ground of relative's or associate's sex, marital status or pregnancy.	Disagree. We do not see the need for such a provision in the context of sex discrimination. Furthermore, the definition of 'associate' is too wide.
6	Effect on prior inconsistent laws should be made explicit.	There is no need for an explicit provision to state a rule of statutory interpretation that where the provisions of a later enactment directly contradict those of the former, the later enactment should prevail.

Part II - Discrimination

7 C4(1) C6(1)	Amend definitions of indirect discrimination to include practice with a disproportionately adverse impact on one sex.	Disagree. Definition of discrimination in SDB follows that in overseas jurisdiction (UK) which has been established for nearly 20 years. It is undesirable for us to deviate from the established definition which has been tested in the UK courts. Although this proposal was initially put forward by the UKEOC, the UK Government and Parliament has not accepted this proposal. In the HK context, our EOC could review the adequacy of the definition in the light of its operational experience.
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**Sex Discrimination Bill: Proposed Committee Stage Amendments
relected by the Administration**

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
13 C30 (1)(a)	Amend to limit exception for single-sex hospital services and special care facilities to cases where the restriction to one sex is reasonable having regard to the essential character of the restricted services or facilities.	Administration's position explained to the Bills Committee on 5.5.1995. We do not agree with introducing the 'reasonable' test in this clause. This would mean that the service provider would have to justify every time he/she provides a single sex services/ facilities. This creates tremendous uncertainties for the service provider. If we accept that it is reasonable to except such facilities, we should allow a blanket exception.

Part V - Other Unlawful Acts

14	Amend to make unlawful discriminatory advertisements an offence, subject to a fine of \$30 000 for a first offence and \$100 000 for a second offence.	Administration's position explained to the Bills Committee on 5.5.1995. To make the publication of a discriminatory advertisement a criminal offense is a disproportionate penalty for this unlawful act.
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Part VI -General Exceptions

15 C51	The exemption for acts done to safeguard the security of Hong Kong should be deleted.	Administration's position explained to the Bills Committee on 5.5.1995 and to Anna Wu on 11.5.1995.
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Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref.</u> <u>No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
11 C11 (2)(b)	Repeal the GOQ for work likely to involve duties outside HK.	Administration's position explained to Bills Committee on 28.4.1995 and 19.5.1995. A parallel provision is included in the UK Sex Discrimination Act and has not caused difficulties in the past 20 years. Deletion may cause difficulties for employers who need to post employees to work in e.g. Moslem countries, where certain customs forbid women from, e.g., driving.

Part IV Other Fields

12	New Clause prohibiting discrimination in public elections and appointments.	The Administration is of the view that it would be more appropriate to rely on persuasion and administrative measures to foster the principle of one person one vote in village elections. On public appointments, a new provision will be made to provide that Government cannot discriminate on a prohibited ground (e.g. sex) in the performance of its functions and exercise of its powers. Such a provision would cover public appointments.
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Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref.</u> <u>No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
✓ 19 C56 (1)	A new subclause giving the EOC the power to examine any proposed legislation that it considers may affect equality of opportunity and reporting results to legislation's sponsor.	The EOC already has a general function to promote equality of opportunity between men and women. In this connection, it could also examine proposed legislation. We do not see the need to provide explicit provisions in this regard.
✓ 20 C57 (3)	Repeal C57(3) which obliges the EOC to seek SHA's approval before it can provide financial assistance to outside research and undertaking.	The intention of this clause is to ensure that the EOC would not use its funds (public money) to subvent activities of third parties. This is a reasonable requirement and is also provided in other pieces of legislation.
✓ 21 C63 (4)	Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believes unlawful acts have occurred.)	Administration's position explained to the Bills Committee on 5.5.1995. To be named the subject of a formal investigation is a serious matter. Before naming a person in an investigation, the EOC, like any other regulatory bodies in HK should have some grounds (i.e. formed a belief that the person named has committed unlawful acts) for singling out that person. It would be extremely unfair upon the person named if the EOC names a person in a formal investigation without any grounds.

**Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration**

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
16 C54 & Sch 4	The exemption of certain discrimination within the disciplinary services, the small house policy and of marital status discrimination in employment benefits and civil service benefits should be amended to expire in one year, subject to extension by LegCo resolution.	Administration's position explained to the Bills Committee and Anna Wu on 5 and 11.5.1995 All these are reasonable and necessary exceptions. For example, if the exception for employment benefits were to expire at the end of one year, all employers would no longer be able to provide different levels of housing benefits to employees of different marital status. Employees may loose out because everybody would then receive a flat rate.
Part VII- Equal Opportunities Commission		
17 C55 & Sch 5	Repeal 15(2), 16(2)&(3) and 17(2) of Schedule 5. (Provisions which empowers the SHA or S for Tsy to give directions to the EOC as regards its expenditure, borrowings and investments.)	Disagree. These are standard provisions governing the operations of statutory bodies funded by the Government. In giving directions to the EOC, SHA and S for Tsy would take into account the public interest element.
18 C56	New subclause giving EOC function of promoting observation of relevant international obligations (including ICCPR, ICESCR and CEDAW) as they relate to equality of opportunity irrespective of sex, marital status or pregnancy	The EOC is already vested with the responsibility to work towards the elimination of discrimination and to promote equality of opportunity between men and women generally. No need for a reiteration of this function.

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
22 C63 (4)	Amend to give all named persons (irrespective of whether they are believed by the EOC to have committed unlawful acts) a right to make pre-investigation representations to the EOC after receiving notice of the proposed investigation.	This proposed amendment hinges on the above item (21).

Part VIII - Enforcement

23 C68 (5)	To repeal this clause which provides that there shall be no award of damages if the indirect discrimination was unintentional.	Disagree. Administration's position explained to Bills Committee on 12.5.1995. Where the employer can prove that the indirect discrimination is unintentional, the remedy is to order the employer to remove the discriminatory requirement or condition. Such as remedy is considered to be appropriate.
24 C76	Amend to enable the EOC to conciliate complaints of acts inconsistent with relevant international obligations (including ICCPR, ICESCR and CEDAW) as they relate to equality of opportunity irrespective of sex, marital status and pregnancy.	The Administration disagrees with this proposal. International treaties are not justiciable in the Courts of Hong Kong and it is not our intention to set up the EOC to conciliate on disputes relating to international treaties in Hong Kong.

Sex Discrimination Bill: Proposed Committee Stage Amendments
rejected by the Administration

<u>Ref. No.</u>	<u>Outline of proposal</u>	<u>Remarks</u>
25 C68 (3)	District Court should have the power to order appropriate remedy, including reinstatement.	This will be dealt with in the context of the general review of labour relations presently being conducted by EMB.

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6 June 1995

本署編號 OUR REF HAB CR 1/6/2 Pt.7

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Miss Betty MA
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss MA,

**Equal Opportunities (Race) Bill,
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
and Equal Opportunities (Religious or Political Conviction,
Trade Union Activities and Spent Conviction) Bill**

Thank you for your letter of 1 June 1995. I am now seeking legal advice with respect to the charging effect of the three Bills. I note, however, that the bills are still in their draft form and may therefore be subject to further amendments. In this connection, it is relevant to note that Ms Anna Wu is proposing some significant changes to her original Equal Opportunities Bill (EOB). As the provisions of the three bills are drawn directly from the EOB, we are yet to see whether and how these amendments would affect the three bills in question. It would therefore be imprudent of the Administration to give a formal response before we have seen the final version. I should therefore be grateful if you could let me have sight of the final versions of the bills as soon as possible.

Yours sincerely,

(Mrs. Stella Hung
for Secretary for Home Affairs

SH/AC/ctw

The Office of Anna Wu, Legislative Councillor

Rm 415, Central Government Offices (West Wing), Ice House St., Hong Kong.

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FACSIMILE MESSAGE

TO : Andrew Byrnes
Carole Petersen

NO. OF PAGES (INCLUDING THIS ONE) : 12

FROM : Adam Mayes

DATE : 6/6/95

Re. Fri 9 June Bills Committee meeting

Health & Welfare Branch will present the DDB. Anna asked me to remind you that given the current agenda for the meeting, your attendance is entirely optional; Anna will not be presenting and may be seated with the other legislators (relegating the rest of us to exile in the public gallery!).

Re. details of SDB amendments

Eric and I met this morning with Jonathan Daw and Stephen Lam about the SDB amendments. Stephen's partial draft CSAs are attached.

The following matters arose, some of which we need to confirm. Please let me have your comments. Item 1 is rather urgent; I need to draft a note for Anna to send to Dr. Leong before Friday's meeting, inquiring whether and how he wishes to take it forward.

1. Re criminal penalties for unlawful advertisements:

- 1.1. Jonathan said it would be possible to give the EOC the power to impose financial penalties which were not criminal. The Broadcasting Authority, for example, can impose fines for licensing violations, as can the new tunnel authority in connection with the tunnel's operation.
 - 1.2. Existing powers of this sort are different than what would be conferred on the EOC, however. Existing authorities have such a power only with respect to particular parties, e.g. recognised broadcasting companies or the particular tunnel operators, in respect of obligations with particularly applicable to those parties, e.g. broadcast licensing conditions or, in the tunnel case, operating obligations that were negotiated in a private contract before being put into the Ordinance. The EOC, however, would need a general power to fine any person for violating a provision of general application in the SDB.
 - 1.3. It seems preferable, therefore, to stick with a criminal offence, as is common in Hong Kong regulatory law. A criminal offence already exists in subsections (5) of the SDB's advertising clause (SDB 36); it is as much the Administration as we that should be justifying this. Anna suggests restricting the proposed offence to conduct that is intentional or reckless, as in the existing SDB 36(5) offence. Members may also need some reassurance that such criminal offences are in fact common in existing regulatory schemes.
 - 1.4. Unfortunately, the last meeting was supposed to be the final meeting to consider the SDB, and Members expressed strong (if under-informed) opposition to criminal sanctions in that meeting. Dr. Leong may be unwilling to reopen the issue, in which case we may have to take these amendments forward without Bills Committee endorsement.
2. Jonathan raised a new point about advertisements. SDB 36(4) excuses publishers who reasonably relied on a statement from the advertiser that the ad wasn't discriminatory, whereas EOC 225(5) excuses publishers who reasonably believed the ad wasn't discriminatory. The former approach, Jonathan suggested, offers a roadmap to publishers on

how to manufacture a defence. LA's draft CSAs therefore substitute the EOB language. This sounded like a good idea to me; we need to confirm.

3. Re reference to treaty obligations, etc:
 - 3.1. Currently, CEDAW is listed (along with the ILO recommendations and the UN Declaration on violence against women) as one of the (non-binding) "relevant international instruments", not as one of the "relevant international obligations" which are applicable to Hong Kong.
 - 3.2. CEDAW will be made applicable to Hong Kong, however, sometime soon after passage of the SDB. The LA will therefore consider some transitional wording allowing CEDAW to be listed as an "obligation" and dropped as an "instrument" effective from the date it becomes applicable. (This is desirable, but not essential because the "obligations" definition is inclusive and should be taken to include CEDAW anyway once it becomes applicable to Hong Kong.)
 - 3.3. Alternatively, the definitions could be left as they are and the Ordinance could be amended after CEDAW is applied to Hong Kong. The latter approach would save the LA some drafting, but the former seems preferable to me.
4. Re. clauses amended to expire in a year, subject to extension by Legco — Andrew had suggested that this be worded so as to require annual reconsideration by Legco (rather than allowing a multi-year extension on any one occasion). I've asked the LA to draft something to this effect. I presume we want to apply this to all the clauses we are amending to expire, subject to extension? We need to confirm.
5. In the clauses brought into the SDB from Part II of the EOB (re. elections, and re. admin. of laws and gov't programmes), Stephen is taking a middle course on the language, making it "unlawful for a person to discriminate against another person of either sex", etc (see CSA for cl. 30A(3)). Compare the EOB: "against another person" and the SDB: "against a woman". Do we have a preference among these?
6. Stephen pointed out that cl. 14(6) allows the Governor to amend the number of partners needed for a partnership to be covered in the same way in which he is empowered (in cl. 10(8)) to amend the number of year before the small employer exemption expires. As we propose to delete 10(8), did we want to delete 14(6) as well, or transfer it to Legco for exercise by resolution? (See draft CSAs to 14(6).) I suggested that this power didn't particularly concern us (also, it's too late to take it to the Bills Committee). Agreed?
7. I confirmed that the proposed EOC power to bring own-name proceedings was meant to allow the EOC to bring proceedings under cl. 68.
8. I confirmed that the EOC should certify the end of conciliation for purposes of our timing amendments (excluding time in conciliation from the time allowed to file a claim).
9. Re. subsection (1) of the new interpretation clause (cl. 2A), which provides that "a principle purpose of this Ordinance is to give effect to relevant international obligations" — Jonathan's initial (mistaken) impression was that the subsection purported to give effect to non-binding instruments such as the UN Declaration and the ILO recommendations. On that basis, he warned that the Administration might withhold (or threaten to withhold) assent on the ground of inconsistency or interference with its international obligations. I pointed out that it only refers to "obligations" and not to the non-binding "instruments", so there should be no problem; but it's an interesting warning.

SEX DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 1 | <p>(a) In subclause (2), by deleting "This" and substituting "Subject to subsection (3), this".</p> <p>(b) by adding -</p> <p style="padding-left: 40px;">“(3) This Ordinance shall come into operation on a day not later than 1st 1st January 1996.”.</p> |
| 2(1) | <p>By adding←</p> <p>““Relevant international instruments” means -</p> <p>(a) the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979;</p> <p>(b) the Declaration on the Elimination of Violence Against Women proclaimed by the General Assembly of the United Nations on 20 December 1993; and</p> <p>(c) the International Labour Organization Recommendations No. 90 on Equal Remuneration for Men and Women Workers for Work of Equal Value and No. 111 on Discrimination in Occupation and Employment;</p> |

“relevant international obligations” means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination on the grounds of sex, marital status and pregnancy relating to equality of opportunity between men and women, in particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;”.

New

By adding -

“2A Relevance of international instruments

(1) In interpreting this Ordinance, regard shall be had to the fact that a principal purpose of this Ordinance is to give effect to relevant international obligations.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to relevant international obligations is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction.

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in relevant international instruments is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction.”.

10(8) By deleting the subclause [OR]
By deleting “Governor in Council may, by notice in the Gazette” and substituting “Legislative Council may by resolution”.

14(6) By deleting the subclause [OR]
By deleting “Governor in Council may, by notice in the Gazette” and substituting “Legislative Council may by resolution”.

New By adding -

“Advisory bodies

30A. Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies

(1) In this section a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body.

(2) In this section, a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position, and the positions of Village Representative or member or office-holder of a Rural Committee within the meaning of the Heung Yee Kuk Ordinance (Cap. 1097).

(3) It is unlawful for a person to discriminate against another person of either sex on the ground of his or her sex or marital status 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 position;
- (c) determining the eligibility of a person to vote in elections of members of a relevant body or relevant position, or to take part in the selection of 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 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.

(4) This section shall have effect, notwithstanding the provisions of any legislation which provide that a person of a particular sex or marital status is not eligible to stand for election, or to be selected for, a relevant body or position, or to vote in elections for or to take part in the selection of members of a relevant body or the holder of a relevant position.

(5) Notwithstanding anything in the Heung Yee Kuk Ordinance (Cap. 1097) or in any other Ordinance, the Secretary for Home Affairs shall not -

- (a) approve a person as a Village Representative;
- (b) issue a certificate recognizing a body as a Rural Committee;
- (c) approve a person as a Special or Co-opted Councillor,

where that person or body (or any of its members) has been elected or otherwise chosen by a procedure in which women have not been able to participate on equal terms with men, whether as candidates, nominees, electors or in some other relevant capacity.

New

By adding

“Laws and Government programmes**31C Discrimination in the administration of laws and
Government programmes**

It is unlawful for a person who performs any function or who exercises a power under a law/or for the purposes of a government programme, or has any other responsibility for the administration of a law or the conduct of a government programme, to discriminate against another person, on the ground of the other person's sex, marital status or pregnancy, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

36

(a) By renumbering subclause (1) as (1)(a).

(b) By adding after subclause (1)(a) -

“(b) A person who publishes or causes to be published an advertisement that indicates an intention to do an act that is unlawful under this Ordinance commits an offence and shall be liable on conviction in the case of a first conviction for that offence, to a fine at level 4 and in the case of a second conviction for that offence, to a fine at level 6.”.

(c) By deleting subclauses (4) and (5) and substituting -

“(4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that that subsection.

51 By deleting the clause.

54 By adding -

“(3) This section and Schedule 4 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(4) The Legislative Council may, by resolution, amend subsection (3) by substituting another anniversary for the anniversary appearing in that subsection.”.

56(1) (a) By adding -

“(ca) promote an understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments;”.

(b) In paragraph (e) by deleting “and” at the end.

(c) By adding -

“(ea) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and of the standards contained in

relevant international instruments, and report the results of the examination to the person proposing the legislation; and”.

57(3)

By deleting the subclause.

63

(a) In subclause (3)-

- (i) by deleting “of persons” and substituting “of a person or an organisation”;
- (ii) by deleting “those persons” and substituting “such persons”.

(b) By deleting subclause (4) and substituting -

“(4) Where the terms of reference of the formal investigation confine it to activities of a person or an organisation named in them and the Commission in the course of it proposes to investigate any act done by a person or organisation so named, the Commission shall -

- (a) inform that person or organisation of its proposal to investigate the act; and
- (b) offer ~~him~~ or it an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to ~~fit~~ (or both oral and written representation if he or it thinks fit), and a person or organisation so named who avails himself or itself of an opportunity under this subsection of making oral representations may be represented -

- (i) by counsel or a solicitor; or

(ii) by some other person of his or
its choice, not being a person to
whom the Commission objects
on the ground that ~~he~~ is
unsuitable.”

7th June 1995

Mr. K. S. Law
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mr. Law,

Equal Opportunities (Race) Bill,
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, and
Equal Opportunities (Religious or Political Conviction, Trade Union Activities,
and Spent Conviction) Bill

I am writing to clarify the status of the copies of the captioned Bills forwarded to the President and to the Secretary of Home Affairs. These copies should be treated as final for purposes of determining whether the Bills may have a charging effect under SO 39(2) and 23.

In her 6th June letter on behalf of the Secretary for Home Affairs, Mrs. Stella Hung notes that I have proposed several significant changes to the original Equal Opportunities Bill [EOB]. Mrs. Hung refers to my amendment proposals discussed in the Bills Committee considering the EOB. As the captioned Bills derive from the EOB, she suggests that those proposals may affect the Bills' charging effect.

The proposals to which Mrs. Hung refers will be moved as committee-stage amendments to the captioned Bills, not incorporated into the Bills prior to their presentation to the Council. As committee-stage amendments, they are not relevant to the present task of determining the Bills' charging effect in relation to SO 39(2), i.e. for purposes of presentation to the Council.

It is not my intention to make any substantive changes to the EOB's provisions in the course of preparing the captioned Bills for presentation. As approved 5th May in House Committee and explained in my 31st May letter to the President, the Bills are meant merely to reorganise the *existing* provisions of the EOB into three separate Bills in order to facilitate Members' decision-making process.

As outlined in my 31st May letter, the captioned Bills incorporate only the following two sorts of changes to the provisions of the EOB:

- (1) EOB language that is irrelevant in the context of a particular captioned Bill is deleted. For example, the EOB's definition of "race" is relevant only to the Equal Opportunities (Race) Bill and has therefore been omitted from the other two Bills.
- (2) Wherever possible, minor spelling, typographic or technical errors in the EOB have been corrected to avoid the need to move non-substantive amendments at committee-stage.

Most of these changes are incorporated in the copies of the captioned Bills forwarded to the President and to Home Affairs Branch. Some additional changes of the same type will be made before the Law Draftsman certifies the Bills. I do not believe, however, that changes of this type have any bearing on the Bills' charging effect.

Thank you for your assistance.

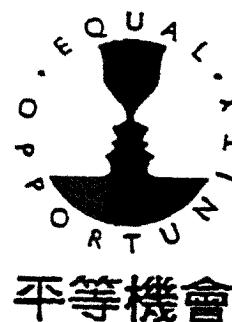
Yours sincerely,

for Anna Wu

cc. Legal Adviser

7th June 1995

Dr. C. H. Leong
Chairman
Bills Committee considering the Equal Opportunities Bill,
the Sex Discrimination Bill and the Disability
Discrimination Bill
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Dr. Leong,

Amendments to the Sex Discrimination Bill

I would like to bring to your attention three matters relating to amendment of the Sex Discrimination Bill [SDB] that remain outstanding.

1. Financial penalties for unlawful advertisements

At the last (1st June) Bills Committee meeting, Members agreed that advertisements made unlawful by cl. 36 should carry a financial penalty in the \$10,000-30,000 range, but objected to treating such advertisements as criminal offences. As the SDB now stands, cl. 74(4) empowers the District Court, on application by the EOC, to enjoin such advertisements but not to impose any other sanctions.

In response to Members' concerns, I suggest that cl. 74 be amended to empower the court additionally to make an order imposing a non-criminal, financial penalty. The penalty imposed would be in the range agreed to by Members, and would be civil in nature. The proposed power is similar to that presently exercised by the Insider Dealing Tribunal under s. 23(1)(c) of the Securities (Insider Dealing) Ordinance (Cap. 395).

2. EOC functions with reference to the Bill of Rights Ordinance [BORO]

Also at the last Bills Committee meeting, I withdrew my proposal to add a new clause into the SDB repealing inconsistent laws. It seemed to me unnecessary to introduce the legal complications that follow from such a clause because discriminatory laws may already be challenged under the BORO.

The withdrawal of that proposal, however, also has the result that the EOC will be unable to challenge discriminatory laws itself because its functions make no reference to the BORO.

The Bills Committee has already agreed to amend the EOC's functions (cl. 56(1)) to incorporate reference to relevant international obligations, including the ICCPR from which the BORO is derived. I suggest that the EOC's functions should be further amended to add a direct reference to the BORO, insofar as it relates to sex, marital status and pregnancy discrimination.

Requests for information

The Equal Opportunities Bill contains several provisions prohibiting discriminatory requests for information, in relation to any of the grounds addressed by that Bill (see, for example, cl. 131). Although the Administration did not include a similar clause in the SDB, it did so in its subsequent Disability Discrimination Bill (cl. 39).

It may be an oversight that the Administration did not propose a committee-stage amendment to the SDB bringing it into parity with the DDB in this respect, as was done in several other respects. In any case, consideration should now be given to inserting such a clause into the SDB.

Yours sincerely,

Anna Wu

The Office of Anna Wu, Legislative Councillor

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FACSIMILE MESSAGE

TO : Anna Wu

NO. OF PAGES (INCLUDING THIS ONE) : 2

FROM : Adam Mayes

DATE : 8/6/95

Re. Disability Discrimination Bill

Some points you may want to raise re. the DDB follow Bob Wilson (the Dep. Sec'y we met before), Anne Shepherd and Royston Griffey (LD) will be presenting. I have not had a chance to talk to Anne Shepherd prior to the meeting.

With regard to amendment proposals that are the same as those made to the SDB, I assume that the Administration and the Bills Committee will take the same positions as before. Therefore I am omitting reference to such amendments unless there is a DDB-specific issue that needs to be clarified.

There are also some good things in the DDB that you may want to pat them on the back for, but I haven't bothered listing them.

The big issue in the DDB:

1. Cl. 24(2)(b) re. discrim. in goods, services and facilities exempts discrim. if the facilities are *designed or constructed to be inaccessible*. It applies to facilities for banking or insurance, education, recreation and transport. This "grandfather clause" entirely undercuts any effort to use the DDB to force improvements in access to most existing buildings and transportation.
2. It seems to me that the unjustifiable hardship provided in the same clause (at 24(2)(a)) would, by itself, adequately limit the access improvements required under the bill.
3. If the problem is uncertainty about what levels of hardship will be required, how about a temporary (1 year) exemption, during which the EOC can produce Codes of Practice setting out the circumstances in which access improvements would or wouldn't be required. The Administration has explained many times in the SDB context how very much can be solved by Codes; Codes can be a business' best friend . . .

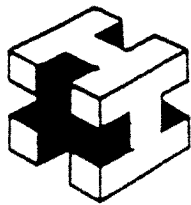
The blank Scheduled exceptions:

1. Cll. 54-5 and 57 are the familiar, impenetrable provisions excepting protective regulations, acts done under their authority, and other acts done for the protection of the disabled. The protective regulations are listed in Sch. 3 — the twist is that the Schedule is blank.
2. Cl. 58 together with Sch. 5 is the equivalent of SDB Sch. 4, a catch-all for miscellaneous exceptions. This exc. in the SDB was aimed particularly at protecting existing administrative practices. In the DDB, the empty Schedule is a blank check for the Administration.
3. NB, however. The good news about all these blank schedules is that, under 84(2), anything added to them requires approval by Legco. Since the DDB Schedules start out empty, this requirement has some teeth, unlike in the SDB where the really nasty stuff was in the Schedules from the start.

Other points:

1. Cl. 12 GOQs could use clarification in several respects.

- 1.1. GOQ 12(b) provides an exc. where an employee would have to live on employer-provided premises which lack necessary accommodation. Two problems:
 - 1.1.1 This appears unnecessarily to undercut a person's usual right to require an employer to make reasonable adjustments to accommodate the person's disability (failure to make such adjustments amounting to indirect discrimination).
 - 1.1.2 It also omits the right of the disabled person to make necessary accommodations at his or her own expense, compare the accommodation clause, DDB 27, which specifically provides that right at (2)(c)
- 1.2 GOQ 12(c) is vague, what's it for?
- 1.3 GOQ 12(d) makes an exc. for personal services where those services can most effectively be provided by a person without a disability. What cases not already covered by the ordinary "inherent requirements" exc. is this meant to cover?
- 1.4 GOQ 12(e) is an exc. in relation to protective regulations in Sch. 3, which is empty.
- 1.5 GOQ 12(f) is the familiar foreign prejudice GOQ; I suppose we're stuck with it.
2. Cl. 30(1) is a special exc. for hospitals in relation to goods, services and facilities and to premises. It follows SDB 30(1)(a), an exception we accepted after our 11 May private meeting with Susie Ho, Jeff Fox and Eliz. Wu. I wonder whether it makes sense in relation to disability as it does to sex, though? Perhaps you could ask what it is meant to achieve. (P.S.: cl. 30(2) & Sch. 4 is just a housekeeping exc. to prevent overlap of different DDB provisions.)



香港工業總會 Federation of Hong Kong Industries

Ref.: A/GD/LD/SH

Date: 8 June 1995

Dr the Hon. Leong Che-hung
Convenor
Bills Committee to Study the Equal Opportunities Bill,
the Sex Discrimination Bill and the
Disability Discrimination Bill
Legislative Council
Legislative Council Building
Jackson Road
Hong Kong

Dear Dr Leong,

Disability Discrimination Bill

Further to our letter dated 3 March 1995 on the Equal Opportunities and the Sex Discrimination Bills, the Federation would like to submit for your consideration our views in relation to the Disability Discrimination Bill.

The Federation supports the spirit of the Bill to eliminate discrimination against persons with a disability. However, we hope amendments could be made to the following two points.

Exemption for small employers

As pointed out in our previous submission, 77% of Hong Kong's industrial establishments are small employers employing less than ten workers. Since many of them may find it difficult to cater for the special facilities that the disabled may require, they should be given a transitional period for them to adjust.

We therefore suggest that companies with not more than ten employees should be ~~exempted~~ for the first five years as from the date of enactment.

Liability of employers

Section 45(1) of the Bill provides that "anything done by a person in the course of his employment shall be treated for the purposes of this Ordinance as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval."

As far as the Federation is concerned, this provision appears to be too harsh to employers as they would be held liable for the conduct of their employees even if they do not have any prior knowledge of it.

We suggest this Clause be amended as:

"Anything done by a person in the course of his employment shall be treated for the purposes of this Ordinance as done by his employer as well as by him, if it was done with the employer's knowledge and approval."

Yours sincerely,

V. C. Davies
Director-General

c.c. Mrs Katherine Fok, Secretary for Health and Welfare
Hon. James P. C. Tien

- (1) **Confirmation of the record of the last meeting held on 26.5.95**
(LegCo Paper No. HB 809/94-95)

The record was confirmed.

- (2) **Matters arising**

- (a) **Resolution under section 31 of the Births and Deaths Registration Ordinance (Cap. 174)**
Resolution under section 7 of the Foreign Marriage Ordinance (Cap. 180)
Resolution under section 3(4) of the Legitimacy Ordinance (Cap. 184)

(LegCo Paper No. LS 102/94-95)

The Legal Adviser said that the Administration had confirmed that with the proposed increases in fees, full cost recovery would be achieved.

Members agreed to support the resolutions.

- (b) **Inland Revenue (Amendment) (No. 2) Bill 1995**

Dr LEONG Che-hung said that he had discussed with the Commissioner of Inland Revenue his queries on the definition of "sufficient records" to be kept for tax assessment purposes. While he still had reservations about the proposal, he would not object to the resumption of Second Reading debate on the Bill or move any amendment to the Bill.

Members agreed to support the Bill.

- (c) **Resumption of Second Reading debate on Sex Discrimination Bill**

The Chairman said that she had met the Acting Chief Secretary (CS) and conveyed Members' concern about the Secretary for Home Affairs (SHA)'s insistence on proposing to resume the Second Reading debate on the Bill on 14.6.95. This was

followed by a letter to the Acting CS requesting a full explanation for the Administration's decision. SHA had subsequently agreed to defer the resumption date to 28.6.95.

(d) Replies to LegCo questions

The Chairman said that, in response to Mr Michael HO's complaint about unsatisfactory replies to LegCo questions, she had raised the matter with the Acting CS. The Acting CS replied that Members could always pursue further if they were not satisfied with the written replies given.

Mr HO noted the response and said that he would consider following up unsatisfactory replies through other means.

(e) Report by Duty Roster Member Meeting to study the Waste Disposal (Charges for Disposal of Waste) Regulation
(LegCo Paper No. CP 144/94-95)

Mr Andrew WONG reported on behalf of the Members who handled the representations on the Regulation. As agreed with the Administration, an amendment would be moved to the Regulation to provide for an alternative charging arrangement to the waste collectors i.e. charging on a per-vehicle basis, in addition to charging on a per-tonne of waste basis. As regards the concern of the waste collectors on payment of charges, it was hoped that this could be resolved administratively. The amendment would be moved by Mr Ronald ARCULLI at the LegCo sitting on 21.6.95.

Members agreed to support the DRM's request that the President be approached to allow Mr ARCULLI to file the notice of motion to amend the Regulation out of time i.e. on 12.6.95.

Mr Ronald ARCULLI said that the construction industry and the drivers had raised some queries on the practicability relating to the proposed alternative arrangement.



10th June 1995

Comments on the proposed Disability Discrimination Bill

Position Statement

AIDS Concern strongly believes that, in its current form, the Disability Discrimination Bill is rendered ineffective as a piece of anti-discrimination legislation because it fails to respect that the rights it is designed to protect are absolute.

We believe that the economic cost of implementing the Bill should be confronted directly with compensatory measures for those most severely disadvantaged. Disabled peoples' rights should not be forced into a play-off with the discriminator's financial resources in order to determine the legality of any particular act of discrimination.

1. Introduction

1.1 Through our 'Buddy Service' AIDS Concern has been providing support services to people living with HIV and AIDS since 1991. Our trained volunteers have witnessed firsthand much of the discrimination experienced by our clients. This discrimination occurs in the provision of medical and social welfare services, in employment, in education and in housing.

1.2 AIDS Concern is keen to see legislation in place which will tackle the problem of discrimination against people living with HIV/AIDS in Hong Kong. Our main concern in evaluating the proposed Disability Discrimination Bill is whether the Bill will have a significant impact on the current status quo. We have to ask ourselves whether it will serve to effectively reduce the discrimination currently experienced by people living with HIV and AIDS in Hong Kong.

1.3 We also have to look towards the future. It is our belief that an effective anti-discrimination bill will not only reduce actual discrimination (which in itself is a significant problem) but also help foster a safer and more caring environment for people living with HIV/AIDS in Hong Kong. There is an enormous potential for discrimination in our community that isn't actualised simply because it is so well anticipated by those whom it would be directed against. People with HIV/AIDS take it for granted that they will be discriminated against, and for that reason do not disclose their HIV status to their employers, their friends and sometimes even their own families. Knowing that the law upheld their right not to be discriminated against on the grounds of their HIV status would enable people to be more confident and less fearful for their lives and their futures. This would be an important first step towards creating a community that can openly accept the fact that many of its members are living with AIDS.

1.4 In view of the above AIDS Concern has the following comments and suggestions which we hope the government and legislative councillors will consider seriously:

2. Comments Specific to HIV/AIDS

2.1 **Employment:** One of the more common forms of employment discrimination is when employees or potential employees are required by their employer/prospective employer to have an HIV antibody test. There have even been cases in Hong Kong where the employee has not been informed of this until being dismissed for being HIV positive. These practices are blatantly discriminatory and wholly ineffective as a means of protection against transmission. If anything, they serve to encourage irrational fears and misconceptions about how HIV is transmitted. It is already well documented that no society can afford to discriminate in this way, since most people with HIV are aged between 20 and 40 and are economically productive for most of the time they have they virus.

2.11 We believe that, in order for these practices to be stopped, the HIV anti-body test should be specifically mentioned in any comprehensive anti-discrimination legislation. It should be made illegal for employers to require employees to take the test with or without their consent. It should also be illegal to pass on the results of

an HIV antibody test without the consent of the person being tested. AIDS Concern would like to see the current bill modified to make these practices illegal.

2.2 Education: There has already been one much publicised case in Hong Kong of an HIV positive school child being denied access to a standard education. Clause 22 of the Disability Discrimination Bill addresses this problem. Clause 22 seems satisfactory but we would like to express a concern about how the exclusion outlined in Subsection (5)(a) will be applied. Our concern here is that schools have actually used the students ability as an excuse for discriminating against them. Thus children with HIV have been refused admission to the school on the grounds that they are too ill to be educated, when in fact the child has been relatively healthy and keen to go back to school. We feel it is important that the child's view of his/her health needs to be taken into account. It should not be left up to the school to decide whether or not the child is well enough to attend school.

2.3 Health and Welfare Services: Discrimination against people with HIV/AIDS is rife in the provision of health and welfare services. Much of this discrimination is based on fear, ignorance and prejudice. People with AIDS are unable to access meal delivery services, home help services, and dental care. Furthermore, where services are available, often the person is discriminated against in the form of excessive and wholly unnecessary 'precautions' against possible transmission, which serve to upset, alienate and seriously inconvenience the person being treated. It should be noted that, while legislation is extremely important here, education is very much needed in order to prevent these practices from continuing.

2.31 Clause 25 of the Bill lists examples of services and facilities which are which are included under the provision of Clause 24. We would like to see non-governmental social services added to this list since there is a significant discrimination problem for people with HIV/AIDS in this area.

2.4 Information Note: We would like to point out that in the Information Note circulated with the Disability Discrimination Bill, there is a sentence which is very alarming because it legitimises the fear which is the cause of most of the discrimination which people with HIV/AIDS face; the fear that people with AIDS are a health threat

to uninfected people. On page 3 it is written:

People with HIV/AIDS will also be covered by the Bill, but where their condition could pose a direct threat to the health of others it will not be unlawful to discriminate against them.

It is precisely the misconception of people with HIV/AIDS as a threat to the health of others that causes other people to discriminate against them. This sentence singles out people with HIV/AIDS as being an exception in virtue of the danger they pose to uninfected people. Yet the whole justification of legislation against discrimination here is that in most situations in life there is no such danger. Furthermore, in situations where there is a possible risk (in the operating room of a hospital for example) it is always possible to take precautions which render unnecessary and unjust any discriminatory practice.

2.41 Therefore, we strongly urge that the exclusion clause in this sentence be deleted lest it be used to perpetuate the very discrimination which the Bill intends to prevent.

3. Concerns about the Effectiveness of the Bill

3.1 A problem with using "Unjustifiable Hardship" as a litmus test for the legality of particular cases of discrimination: The Bill as it stands seems to be juggling two key concerns. The primary concern is, obviously, to combat discrimination. The secondary concern is to minimise the economic cost of the Bill to particular individuals or organisations. It has to be acknowledged that these two concerns are not always easy to reconcile. This is because it is impossible to have an effective piece of anti-discrimination legislation which doesn't cost anybody anything.

3.12 The way the bill works at the moment an act of discrimination is illegal unless the non-performance of that act costs a particular individual/household/company/institution too much, in which case the act is legal. This raises the obviously difficult to answer question of "how much is too much?". The Bill's answer to this question is the "unjustifiable hardship" exclusion detailed in Part I Clause 4. It is clearly intended that the applicability of this criteria be judged on the merits of each case and would be largely at the discretion of the

courts.

3.13 We are seriously concerned that the 'unjustifiable hardship' clause could turn out to diffuse the effectiveness of the Bill as an instrument of social change for two reasons. The first is that the application of this exclusion clause may be too wide or too loose thereby rendering many acts of discrimination legal. The second, and more fundamental point, is that its pivotal function in determining the legality of any given act of discrimination serves to undermine the foundation on which the Bill is constructed, namely, the judgement that *all acts of discrimination are socially undesirable and socially unacceptable.*

3.14 It does not seem just that the law only judge discriminatory acts illegal if the people committing them can afford not to commit them. *Anti-discrimination legislation exists to protect rights, and rights are not relative to other peoples ability to afford to respect them; rights are absolute.* We strongly believe that the law should judge all discriminatory acts illegal and offer appropriate assistance in cases where the application of the law causes "unjustifiable hardship". AIDS Concern strongly recommends that the government recognize the costs of anti-discrimination legislation as being social costs which should be born by all members of society. In order to do this there should be provision in the Bill whereby, if the costs of the Bill prove too high for a particular individual/household/company/institution, the government will step in with assistance. This would serve to demonstrate the sincerity of the government's desire to combat discrimination.

3.2 The 'small firms' exclusion clause: AIDS Concern considers the five years grace period given to small firms to be wholly unnecessary. Since these firms make up 70% of businesses in Hong Kong, this exclusion would amount to postponing the implementation of effective anti-discrimination for five years. This legislation is already long overdue. There can be no justification for postponing it any longer. If the government is concerned to protect small firms from the costs of not discriminating it should include in the Bill a provision for assisting those most severely effective.

3.3 A query about the 'small dwellings' exclusion clause: We would like to know what percentage of Hong Kong households are likely

to fall into this category. If the percentage is large (as in the case of small firms) then this clause will also serve to render the legislation ineffective. The danger of allowing such broad exclusions is that it undermines the integrity of the legislation.

4 Summary

4.1 We urge that the Bill should specify that discriminatory uses of the HIV-antibody test are illegal.

4.2 We urge that the small firms exclusion clause be dropped.

4.3 We urge that the government offer compensation in cases of "unjustifiable hardship" rather than allowing them to over-ride the illegality of discriminatory acts.

4.4 We urge that schoolchildren with HIV/AIDS be consulted on whether they are well enough to attend school.

4.5 We urge that non-governmental social services be specifically mentioned in Clause 25.

4.6 We protest that people with HIV/AIDS pose no "direct threat" to the health of others. In situations where there is a risk of infection there are standard non-discriminatory precautions which can be taken.

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12 June 1995

Mr. LAW Wing-lok
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. LAW,

**Equal Opportunities (Race) Bill,
Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill,
Equal Opportunities (Religious or Political Conviction,
Trade Union Activities and Spent Conviction) Bill**

Thank you for your letter of 8 June 1995.

As clearly pointed out in Miss Anna Wu's letter of 7 June 1995 to the President of the Legislative Council, the present task of determining the draft Bills' charging effect is pursued for the specific purposes of presentation of three private members' bills to the Council. As such, it would indeed be inappropriate for the Administration, without sight of the final versions of the bills, to commit itself to a view which the President may take into consideration in determining the admissibility of the bills into LegCo.

I do take note, however, of Miss Anna Wu's assurance that further changes to the draft bills would only be typographic or technical in nature. On this basis, we have, as I have explained in my letter of 6 June 1995 to you, taken the initiative to seek legal advice on the draft bills. I hope this will enable us to give a prompt response when Miss Wu submits the final version of the Bills to the President.

Yours sincerely,

(Mrs. Stella HUNG)
for Secretary for Home Affairs

1158

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14 June 1995

BY HAND

The Chairman
Bills of Committee to Study the
Disability Discrimination Bill
c/o The Legislative Council Secretariat
8 Jackson Road
Central
Hong Kong

Dear Sir,

DISABILITY DISCRIMINATION BILL

We are solicitors for Hong Kong & Yaumatei Ferry Company.

We have been, on behalf of our clients, corresponding with the Secretary for Health and Welfare since May 1995 on the provisions contained in certain extracts of the Disability Discrimination Bill (the Bill) and in an information note on the Bill, copies of which were sent to our clients for reference in April 1995 by the Secretary for Health and Welfare. Our clients' representatives had also attended a meeting with the Secretary for Health and Welfare on 19th April 1995 to discuss the Bill.

We also learnt from the Secretary of Health and Welfare that the Bill was introduced into the Legislative Council on 3rd May 1995.

We had also, on behalf of our clients, written on 2nd May 1995 to the Secretary for Health and Welfare informing them of our clients' views on the Bill and the difficulties that our clients

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consider that they would encounter in compliance with an Ordinance in terms of the Bill since the Bill is ambiguous and uncertain in various aspects. Our letter was copied to the Secretary for Transport and the Commissioner for Transport. The Secretary for Health and Welfare had replied that they are taking legal advice on the said views.

In the meantime, we were informed by the Secretary for Health and Welfare last week that your committee commenced to consider the above Bill on 9th June and is now inviting members of the public to give comments of the same.

We are instructed to write to express our clients' concern on the difficulties that they anticipate that they will encounter if the Bill (in its present terms) becomes an Ordinance and when the Ordinance is enforced. Our clients wish particularly that the Bill would be improved/amended/elaborated where appropriate to remove ambiguities and to avoid possible future arguments/litigation as far as possible.

Our clients' concern are elaborated below. The Secretary for Health and Welfare and the Secretary and the Commissioner for Transport had already been notified on the same by our said letter to them of 2nd May 1995.

To start with, we must put on record that our clients, as a major transport service operator, fully support the principle that disabled persons should be given the chances to be integrated into the community as far as possible and they also support the intention behind the introduction of the Disability Discrimination Bill. The following comments and concern of our clients on the Bill, should not be interpreted as our clients' reluctance in supporting the Government's move in helping the disabled persons.

The areas of our clients' concern are :

- (1) While apparently what the Bill requires from, inter alia, our clients is that they are to treat people, in general term, equally, the wording of the Bill is unclear and vague to the extent that it is quite easy for a complainant to say that our clients treat him less favourably. The term "less favourably" is repeatedly referred to in Sections 6 to 10 of the Bill. The term is open to interpretation,

firstly, by a complainant, and, if the complaint is escalated to the Commission, by the Commission and, perhaps subsequently even by the court in a judicial review case. We and our clients are of the view that the administrative branch should instruct law draftsman to draft some guidelines or clear provisions and insert them in the Bill/Ordinance or subsidiary legislations as illustration of acts or omissions which would result in a disabled person being considered as having been treated "less favourably". It is not uncommon for written law to incorporate provisions which serve as examples and illustrations of acts or omission which will be caught by it. As our clients deal with the general public in their daily operation, it is reasonable for them to expect some sort of guidelines for them to follow so that they do not have to guess the meaning of and the situation caught by the expression "less favourably".

- (2) The defence of "unjustifiable hardship" should be elaborated and clarified. As the burden of proof of the defence falls on the party who raises the defence, it would be helpful both to our clients and also to the party who is to decide whether a case of "unjustifiable hardship" is established if a set of procedure is prescribed in the Bill/Ordinance (again, either in the main body of the Bill/Ordinance or as subsidiary legislation in the form of Regulations) which state clearly how a Defendant can establish a case of "unjustifiable hardship". This should cover matters like the number of years of accounts, records of recruitment, record of expenses spent on modifying the existing facilities and the purchasing of new facilities and transportation equipments, the administrative and management expenses incurred that a Defendant have to at least produce and prove before they will succeed in establishing such a defence. Our clients also anticipate, quite reasonably, that very often a complainant would be a legally aided person (if legal representation is allowed when he presents his complaint) and, therefore, our clients have to make the necessary reserve of legal expenses for defending such kind of complaints as well, which reserve has to take into account the legal expenses which may be incurred to defend cases and, which legal costs, would not be recoverable. With the guidance of a set of clear procedures, our clients (and, we believe, other transport service operators) will understand how they should operate

so that, on the one hand, they would be able to comply with the legal requirements and, on the other hand, to protect their interest. We appreciate that it may be the intention of the Administrative Branch to leave the evidence required to prove the defence of "unjustifiable hardship" undefined for flexibility purpose. However, the wording of Section 4 of the Bill, as it is, is too loose and ambiguous and, if remains unamended, would prejudice our clients' interest.

- (3) As regards the provisions of equal opportunities to disabled persons in employment, our clients are very concerned about the fact that disabled persons are unable to cope with the work of certain posts in the operation of ferry services. Such posts include, for example, the post of masters, inspectors and sailors who work on board ferries. Could the law clarify that it does not amount to an infringement of the law if our clients state clearly in their recruitment advertisements that the applicants of such posts must not be disabled persons? This is crucial because it will increase efficiency if our clients can do so since otherwise, they will have to spend time to deal with the application of disabled persons for such posts, and, perhaps, even have to interview them and explain to them why they cannot take them so as to avoid any complaint from them.

It must be accepted that even if a disabled person is recruited to perform the jobs of certain posts which are also held by other employees who are not disabled, the standard of his performance may not commensurate with that of his other colleagues. As an employer, it is reasonable for our clients to assign works and duties according to the capability of their employees and then to promote them on the basis of their performance. The Bill, as it is, is not clear as to whether an employer, in exercising such kind of reasonable and normal discretion in promoting employees who are not disabled in priority to disabled employees, would infringe the provisions of the Bill. The wording of Section 11 (2)(a) is so ambiguous that an employer who assigns less duties to a disabled employee in order to accommodate him (which, naturally and correspondently, will result in his reduced opportunities for promotion) could run the risk of infringing the law and be complained of that they treat their disabled employees "less favourably". This is most undesirable.

- (4) The Bill also expect employers to take such steps as a reasonably practicable, for example, to issue general guidance to their employees not to take discriminate behaviour towards applicants for employment or their fellow employees. This is, again, an area which would easily become a subject of argument. How detailed such kind of guidance notes have to be? How regular such kind of guidance notes have to be circulated/recirculated? The law should state the minimum requirement clearly.
- (5) Another area of concern is the provision of access for people with a disability to the pier and to the ferries, the provision of facilities such as ramps and specially designed toilets for the physically disabled persons. We understand that the Government will not now impose on transport services operators the duty to modify all existing buses or ferries to provide better access to buses or ferries. Could the Government indicate at this stage whether it intends to introduce compulsory requirements within a short period of time that all such special facilities must exist in places like ferry piers?
- (6) Section 13 is on discrimination against contract workers. The text of this section, when construed in general, requires a principal to treat his contract workers more or less like an employee so far as the provision of benefits, services or facilities to the contract workers is concerned. This is too onerous a burden on the principal or the sub-principal. This is, in our view, not correct because the main purpose of contracting work out is to have someone to take up the responsibility for the principal and they (the contractors) should also look after their (the contractors') own employee so far as the provision of benefits and welfare is concerned.

It is obvious that the Bill has room for improvement. We note that the Government refers to the provisions in similar law in Australia but hope that the Government would also appreciate that unless the parties who are subject to the future disability discrimination law are also backed up and supported by the Government in the same way as their overseas counterparts are supported by their government, the Government should be cautious in distinguishing the local circumstances from those of the overseas and in the introduction of new laws and, should not put too onerous a burden on transport service operators such as our

clients. The experience of the Labour Department in their running of the "Selective Placement Services" since 1980s is self-evident on that a lot of the employers do have difficulties in responding positively to the Government's advocating the employment of disabled citizens as employees and treating them in ways which the latter expect, particularly at times when the economy is not booming.

Our clients wish to have the opportunity to meet with your committee and discuss further on the Bill and the above. We would appreciate if you would revert to confirm when would be convenient for you to hold such a meeting.

Yours faithfully,

Law & Co.
(Rosita Lau)

RL139.95

cc Secretary for Health and Welfare - Ms. Anne Shepherd
(by fax: 2840 0467 and by post)

The Office of Anna Wu, Legislative Councillor

Rm 415, Central Government Offices (West Wing), Ice House St., Hong Kong.

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FACSIMILE MESSAGE

TO : Andrew Byrnes

NO. OF PAGES (INCLUDING THIS ONE) : 1

FROM : Adam Mayes

DATE : 14/6/95

IF THE FAX IS INCOMPLETE, PLEASE NOTIFY US IMMEDIATELY.

MESSAGE :

SDB amendments

"68A Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 68(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) The Commission may bring proceedings in the High Court seeking a declaration that an enactment or part of an enactment is inconsistent with—

(a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the grounds of sex, marital status and pregnancy;
or

(b) article VII(5) of the Hong Kong Letters Patent 1917-1994 as it relates to discrimination on the grounds of sex, marital status and pregnancy.

(3) In this section, "discrimination" means—

(a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and

(b) for the purposes of subsection (2)(b), discrimination within the meaning of the International Covenant on Civil and Political Rights;

and is not limited to discrimination falling within section 4, 5, 6, 7 or 8."

HONG KONG AIDS FOUNDATION

Position Paper on Disability Discrimination Bill

INTRODUCTION

1. The Hong Kong AIDS Foundation has participated in the deliberation of the Bill by the Joint Council for the Physically and Mentally Disabled of the Hong Kong Council of Social Service. The Position Paper of the Joint Council therefore includes most of the viewpoints of the Foundation. In this paper the Foundation's position is presented more clearly in AIDS specific terms.

THE NEED FOR LEGISLATION

2. Since the first case of HIV infection was diagnosed in the territory in 1984, for a decade people with HIV/AIDS in Hong Kong have been living void of basic human rights and dying without dignity. They face so much discrimination in employment, education, travelling, receiving social services and participation in social activities that only very few of them have to-date had the courage to admit to others that they have the infection. While education is no doubt the most important work needed to remove misconceptions and discrimination towards people with HIV/AIDS, legislation is necessary to protect these members of our community from being deprived of their basic rights and to support the education efforts to eliminate discrimination.

3. The Disability Discrimination Bill, which includes HIV infection as one of the disabilities covered by it, aims to protect people with disabilities from discrimination, harassment and vilification in a number of major aspects of a person's social life. The Hong Kong AIDS Foundation believe that the Bill is a major breakthrough in providing legal protection to the disabled and fills a major gap in our legislation. We hope that the Bill, already long over due, is passed within the current Legislative session, with the amendments suggested below incorporated.

SPECIFIC COMMENTS ON THE BILL

(a) Inclusion of HIV infection in the Bill

4. We endorse the general approach in the Bill of including HIV infection in the definition of disability but feel that clarification is needed on whether the meaning of the word "organisms" in the definition of "disability" in clause 2 includes HIV.

(b) The Chinese terminology for disability

5. The Chinese term "弱能" used in the Bill for "disability" has the meaning of lower ability. This certainly is not the case of people with HIV/AIDS who, especially in their asymptomatic stage, are as fully capable as a non-infected person. We are concerned that the use of the Chinese term "弱能" will reinforce public misconceptions against these people and support the use of the term "殘疾" in its stead.

but would like to make two points. First, the right of a person, with or without disability, not to be discriminated is fundamental to the values of our community. Second, our present society has been one dominated by people without disabilities and is hostile or discriminatory to people with disabilities in many ways. To change these hostile environments it may not be always reasonable to put the burden on individual persons or organizations. In such circumstances we should treat the costs of effecting such changes a social costs to be taken up by the government or the community as a whole.

11. Based on the above views, we feel that, while the provision of the "unjustifiable hardship" defence is necessary to avoid the situation where individual persons or organizations are required to bear an unacceptably high cost, the law should not allow the disabled person to continue to suffer the discrimination merely because of that. We recommend that the Equal Opportunities Commission and the court, as the adjudicating authority, should be empowered to recommend to the government, either to provide assistance to the person committing the discriminatory act to rectify the situation or to rectify the situation by itself directly.

Requests for information and HIV testing

12. Clause 39 makes it unlawful to request information from persons with a disability that is not required of persons without a disability. The reverse of this provision will be: where information is requested from people both with or without a disability it will not be unlawful, even if the information can be used for discriminatory purposes. Some people have argued that this is reasonable because the information may or may not be used for discrimination and that litigation should only be called for when the information has been so used.

13. We contend that any information requested to identify who has a disability and who has not has a potential for being used to discriminate against people with disabilities. In the real world it is very difficult to prove conclusively whether, for example, an employer has used the information to discriminate against job seekers with disabilities. For the law to be effective it is important that requests for information which has no apparent connection with the act for which the information is requested, and which can be used to identify who has or has not a disability, should be made illegal. Where there is a genuine need for such information to be requested the burden of proof should lie with the requester.

14. We are particularly concerned about the request for information on a person's HIV status. Such information is irrelevant, in most circumstances, for the offer of employment, training opportunities, provision of services or facilities or other acts relevant to the Bill. Yet the potential of using the information for discriminatory purposes is great. As stated in our Foundation's submission to the Bills Committee on 27 October 1994 on the Equal Opportunities Bill, in the present discriminatory climate, "a requirement to take an HIV antibody test as a precondition for any offer would effectively eliminate almost all HIV positive candidates for the offer or candidates who believe or suspect themselves to be HIV positive." In the submission we proposed that the law should regard a requirement or condition as discriminatory and hence unlawful, if it (a) aims to identify persons with a disability; and (b) is not reasonable having regard to the circumstances of the case. We are disappointed that our views have not been taken into consideration in drafting the Bill.

Ref HB/C/61/1

Report to the House Committee on 16 June 1995

**Bills Committee to study
the Equal Opportunities Bill
the Sex Discrimination Bill
and the Disability Discrimination Bill**

Purpose

This paper reports on the deliberations of the captioned Bills Committee on the **Sex Discrimination Bill** and seeks Members' agreement for the Bill to resume Second Reading debate on 28 June 1995.

Background

2. An interim report of the Bills Committee to study the Equal Opportunities Bill (EOB) and Sex Discrimination Bill (SDB) was presented to the House Committee on 5 May 1995 on the progress of the scrutiny of the two Bills generally, and on the proposed restructuring of the EOB in particular (LegCo Paper No. HB 586/94-95 refers). Another verbal report was made by Dr Hon LEONG Che-hung, Chairman of the Bills Committee, to the House Committee on 26 May 1995 on the Administration's proposal to resume Second Reading debate of the SDB on 14 June 1995, which was unacceptable to the Bills Committee. The Bills Committee requested to defer the proposed resumption date for two weeks so that there should be sufficient time to enable the Legal Service Division to draft the CSAs proposed by the Bills Committee, to report to the House Committee and Members, particularly non-Bills Committee Members, to consider the merits of the proposed amendments made by the Bills Committee and the Administration. Failing that, the Chairman would move a motion to adjourn the resumption of the Second Reading debate on the Bill. The Administration finally agreed to defer the resumption to 28 June 1995.

The Bill

3. The Sex Discrimination Bill (SDB) was introduced by the Administration. It is substantially based on the provisions of the Sex Discrimination Act 1975 of the United Kingdom.

4. The main objects of the Bill are :

- (a) to render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; and
- (b) to establish an Equal Opportunities Commission (EOC) with the function, inter alia, of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally.

The Bills Committee

5. The House Committee decided on 28 October 1994 that the Bills Committee to study the EOB formed on 8 July 1994 should also study the SDB. Dr Hon LEONG Che-hung was elected Chairman of the re-constituted Bills Committee. A membership list is at Appendix I of the interim report of the Bills Committee referred to in paragraph 2.

6. The Bills Committee has held a total of 34 meetings to study the EOB and SDB, including 16 with the Administration and two rounds of meetings with 34 deputations. Views from 10 written submissions have also been considered. Lists of deputations/written submissions and summary of their areas of concerns are at Appendix II to IV of the interim report referred to in paragraph 2.

Deliberations of the Bills Committee

Comparison between the SDB and EOB

7. The Bills Committee noted that the subject matter of the SDB overlaps, in substance, Part II of the EOB. They both cover similar scope of grounds of discrimination, namely sex, marital status and pregnancy.

However, the application of the scope of grounds of discrimination between the two Bills is different. Under the SDB, sex discrimination is relevant for the purposes of any provisions of the Bill; while discrimination on the ground of marital status or pregnancy is only relevant for the purposes of any provisions of Part III (discrimination and sexual harassment in employment field). Under the EOB, the scope of ground of discrimination, namely sex, marital status and pregnancy, is applicable to a wider range of discriminating activities.

8. To oversee the implementation of the sex discrimination legislation the SDB provides for the establishment of a statutory body, the Equal Opportunities Commission (EOC). The Commission is empowered to issue codes of practice, and investigate complaints filed by the public and required parties concerned to attend conferences to resolve the matter by conciliation. Public reports would be issued for any formal investigations. The Commission is further empowered to issue enforcement notices, which are not legally binding, against anyone deemed to have committed discriminatory acts or sexual harassment. When a person has persistently committed such acts, the Commission could apply to the District Court for an injunction. When conciliation fails, it may provide assistance in respect of proceedings before the District Court. The EOB does not make provision for the establishment of any similar body (principally because of the difficulties faced by a Private Member under SO 23).

9. The SDB proposes setting up a special court at District Court level to hear all sex discrimination and sex harassment cases under the Bill. The public can put cases directly to the court in the form of civil litigation to seek compensation. However, it is to be noted that proceedings under the SDB in respect of "discriminatory practices" under clause 35 may only be brought by the Commission in accordance with clauses 69 to 72 (issue of enforcement notices by the Commission). The SDB further proposes to relax the requirements relating to legal representation and costs. The EOB proposes to make discriminatory acts or practices, in general, civil wrongs, triable in District Court. The EOB proposes that the court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit. The EOB also proposes that each party to litigation will ordinarily bear that party's own costs. The court may, however, award costs as it thinks fit in exceptional circumstances.

10. Members of the Bills Committee, the Administration and deputations all support, in principle, the spirit of anti-sex discrimination

legislation. Having thoroughly studied the provisions of the SDB and Part II of the EOB, and taking into account views expressed by deputations and written submissions, the majority of Members of the Bills Committee accepts the wider scope of Part II of the EOB. On this basis, the Bills Committee proposes to amend the SDB to bring in some provisions along the lines of Part II of the EOB.

11. After extensive discussion, the Administration agrees to some of the proposed amendments. A list of these accepted amendments, together with its response, is at **Appendix I**. Those rejected by the Administration, together with views from the Bills Committee and the Administration, is at **Appendix II**.

Committee Stage Amendments (CSAs)

12. The CSAs on the proposed amendments accepted and rejected by the Administration are at **Appendices III and IV** respectively. The Administration will move those at Appendix III while the Bills Committee will move those at Appendix IV.

(Note: Appendix IV will be forwarded to Members later.)

Recommendation

13. The Bills Committee recommends that the Second Reading debate of the Bill be resumed at the LegCo sitting on 28 June 1995.

Advice Sought

14. Members are invited to support the recommendation of the Bills Committee at paragraph 13 above.

LegCo Secretariat
14 June 1995

**Sex Discrimination Bill
Proposed Committee Stage Amendments
ACCEPTED by the Administration**

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Response
Part I - Preliminary			
A1	2(5)	Amend definition of sexual harassment to include sexual conduct in the employment field, create a sexually hostile working environment. [cf EOB 29(3)(b)]	Agreed.
A2		New clause (Cl.3A) providing that an act done for two or more reasons, one of which is sex, marital status or pregnancy, deemed to be done by reason of sex, marital status or pregnancy. [cf EOB 4]	Agreed. The Administration will adopt the approach in the Disability Discrimination Bill.
Part II - Discrimination			
A3	6	Amend definition of marital status discrimination to apply to any provision in Ordinance, rather than only to provisions relating to employment field.	Agreed. Exceptions will be needed to cover Home Ownership Schemes applications; and provision of reproduction technology services.
A4	7	Amend definition of pregnancy discrimination to apply to any provision in Ordinance, rather than only to provisions relating to employment field.	Agreed. Exception will be needed to cover the provision of recreation facilities which may be hazardous to the health of the pregnant person.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Response
A5	8	Amend definition of victimisation to include not only less favourable treatment, but any detriment as a result of anything done under or by reference to the Ordinance.	Agreed, to the extent that the definition will be extended to cover circumstances where a person is victimised because of proceedings etc. taken out by another person under the SDB.
Part III - Employment			
A6	10(2)	Amend to expressly prohibit discrimination in terms and conditions of employment.	Agreed.
A7	10(3) 10(6) 10(8)	Repeal or amend the transitional period (5 years) for small business establishments to expire one year after the commencement of this section and delete Governor's power to vary date of expiry.	Agree only to reduce the transitional period to 3 years [Please also see Appendix II (ref. No. R3)]
A8	10(4) 14(4) 15(5)	To 'grandfather' the exception for death or retirement benefits, in connection with employment, partnership and trade unions etc.	Agreed. [Please also see Appendix II (ref. No. R4)]
A9	-	New clause (Cl 18A, 18B) prohibiting discrimination against 'commission agents.' [cf EOB 3(1), 14, 29(2)]	Agreed.
A10	-	To make sexual harassment of an employer by an employee unlawful.	Agreed.
A11	19	To improve the drafting of Clause 19 which provides exceptions for employment matters in relation to organised religion.	Agreed. Replace 'religious susceptibilities of a significant number of followers of that religion' by '... susceptibilities common to that religion'.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Response
A12	20	Amend prohibition of sexual harassment to include harassment of a woman employed to perform domestic duties in the premises in which the harasser resides or is otherwise present, whether or not the harasser is the employer. [cf EOB 29(1)(d)]	Agreed. The employer will not be made liable for the harasser's unlawful act
A13		New clause (Cl. 31A) prohibiting discrimination in clubs. [cf EOB 3(1) 125]	Agreed.
Part IV - Other Fields			
A14		New clause (Cl. 31B) to make provisions covering the administration of laws and Government programmes.	Agreed. The Government would not discriminate in the performance of its functions and the exercise of its powers [Please also see Appendix II (ref. No. R7)]
A15	32	Amend prohibition of sexual harassment to include harassment of students by students, and of educational staff by students.	Agreed.
Part VI - General Exceptions			
A16		New clause (Cl. 40A) providing general exception for special measures and for measures to achieve equality. [cf EOB 37]	Agreed.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Response
Part VII - Equal Opportunities Commission.			
A17		EOC should be empowered to bring proceedings in its own name.	Agreed in principle. In this regard, provisions will be made to empower SHA to make regulations, subject to LegCo approval. [Please also see Appendix II (ref. No. R17)]
Part VIII - Enforcement			
A18		New clause providing that, in proceeding under the Ordinance, the District Court may relax the rules of evidence. [cf EOB 235]	Agreed. (New sub-clause 3A in S.73B of item 14 in Schedule 7 refers)
A19		District Court's power to vary the rule of costs should be made explicit, with no award of costs as the general rule. [cf EOB 237]	Agreed. (New sub-clause 2A in S.73B of item 14 in Schedule 7 refers)
A20	68(7)	To delete this clause. (Chief Secretary must be given prior notice of claims vs government schools.)	Agreed.
A21	69(2)	Amend to authorise enforcement notices to include, in addition to a requirement that a person cease an act of unlawful discrimination, a requirement that the person cease specific practices that led to the unlawful discrimination.	Agreed.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Response
A22	69(5)	To delete this clause. The right of a person to make representation to the EOC opposing the issuance of enforcement notice duplicates the right of appeal against the notice once issued.	Agreed.
A23	78(1)	Amend to permit proceedings to be brought under the Ordinance for a period of 2 years from the act complained of.	Agreed
A24	78(1)	To extend the time period to institute proceedings after the EOC publishes a formal investigation report.	Agreed. The time period will be extended to 2 years after the EOC has published a formal investigation report.
A25		To eliminate 'sexist' drafting.	Reference to 'Chairman' will be replaced by 'Chairperson.'
A26	Sch 5, S 19	To expand the scope of the Director of Audit's power to examine the 'effectiveness' with which the EOC has expended its resources in performing its functions and exercising its powers.	Amendment proposed by the Administration. This is a standard provision which applies to all new statutory bodies funded by Government.

**Sex Discrimination Bill
Proposed Committee Stage Amendments
REJECTED by the Administration**

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
Part I - Preliminary				
R1	1(2)	Amend to bring provisions of the Ordinance into operation on 1.1.1996 or any earlier dates to be appointed by the SHA.	Members of the Bills Committee are generally concerned about the time required for the establishment of the EOC and issue of the codes of practice. They consider it necessary to set an operational date as proposed for the Ordinance.	Commencement dates of legislation should tie-in with the operational set-up. For the SDB, it is necessary to set up the EOC first and the commencement of the Ordinance would depend upon whether the EOC considers itself ready to enforce the provisions in the Ordinance. Stipulating a commencement date pre-empt the discretion of the EOC. It is also necessary to allow time for the EOC to develop the Code of Practice in employment (without which all EOC's advice would have to be made on an ad hoc basis). It would take about 9 months (from the establishment of the EOC) for such a code to be developed. The Administration objects to such an inflexible approach which is unrealistic and disregards the operational realities of the implementation of the legislation.

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R2	2	New clause (Cl.2A) directing Ordinance to be interpreted to give effect to relevant international obligations (including ICCPR, ICESCR and CEDAW). [of EOB7]	One of the purposes of the Bill is to fulfil in part certain international obligations, such as the obligation under CEDAW to legislate against discrimination. The new clause directs the courts to have regard to this purpose, and to follow internationally-accepted interpretations of discrimination law to the extent the SDB itself allows. Similar provisions exist in the equal opportunity laws of other Commonwealth jurisdictions, for example in most such Australian laws.	Disagree. International treaties are not justiciable in the courts of Hong Kong. SDB is a self-contained piece of legislation the aims of which are clear and certain. There is no need to refer to other instruments for interpretation of the SDB. The UK Sex Discrimination Act makes no reference to these international treaties for interpretation of the Sex Discrimination Act.
Part III - Employment				
R3	10(3), 10(6), 10(8)	Amend the transitional period of five years for small business establishments to expire one year after enactment of the Ordinance, subject to extension by LegCo resolution for another year. Delete Governor's power to vary date of expiry.	A grace period of five years or three years, as proposed by the Administration, is too lengthy.	Disagree. The Administration proposes to shorten the transitional period to three years upon the enactment of the Bill. This is a reasonable period. (Please see Appendix I (ref A7))

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R4	10(4), 14(4), 15(5)	Amend to expire in one year, subject to extension by LegCo resolution for another year. (Exceptions for provisions relating to death and retirement, in connection with employment, partnership and trade unions, etc.)	The Administration's proposed CSAs to 'grandfather' the exception are unsatisfactorily complex, unclear in effect and contain additional exemptions. The proposed amendment allows one year for review of death and retirement benefits after which LegCo may decide on advice from the Administration and the LDC whether to renew the exception (or whether to substitute limited permanent exceptions if needed).	The Administration proposes to 'grandfather' the exception for death or retirement benefits in connection with employment, partnership and trade unions etc. [Please see Appendix I (ref A8)]
R5	11(2)(g), 49 & Sch 2	Amend to expire in one year, subject to extension by LegCo resolution for another year. (Exceptions permitting exclusion of women from jobs covered by Sched.2 protective regulations, and exempting protective legislation and acts done for the protection of women.)	Regulations intended to protect women may be outdated and might have become inadvertent restrictions. Some regulations should apply equally to both men and women. A time-limit should be set for the Administration to review the exceptions; one year in the first instance, subject to extension by LegCo resolution.	The legislative provisions listed in Schedule 2 aims at protecting the safety, health and welfare of women by limiting or prohibiting their employment in certain trades, tasks or certain periods of time. The Administration agrees to delete item 5 of Regulation 36 of the Dangerous Goods (General) Regulation which 'provides where work is being carried on in any danger building, there shall be present on duty in the building at least one male supervisor.' The Administration will conduct a review on the protective legislation. It is not appropriate to pre-empt the outcome of the review by limiting the life span of the exceptions.

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
Part IV - Other Fields				
R6		New clauses (Cl.30A and 80(1)) prohibiting discrimination in public election and appointments. [cf.EOB 28]	The Bills Committee prefers to adopt the version in EOB (Cl.28) on "discrimination in eligibility to vote for and to be elected or appointed to advisory bodies". One of the key issues concerns Village Representatives and Heung Yee Kuk. These may not be covered by a clause that prohibits discrimination by Government in general terms because the courts may hold that rural elections and the like are private activities, not Government activities.	The Administration is of the view that it would be more appropriate to rely on persuasion and administrative measures to foster the principle of one person one vote in village elections. On public appointment, a new provision (Cl.31B) will be made to provide that Government cannot discriminate on a prohibited ground (e.g. sex) in the performance of its functions and exercise of its powers. Such a provision would cover public appointments.
R7		New clause (Cl.31C) prohibiting discrimination in administration of laws and government programmes.	The Administration's proposed CSAs incorporate new and unnecessary exceptions. The wording in EOB (Cl.27) is preferred.	[Please see Appendix I (ref. A14 refers.)]
Part V - Other Unlawful Act				
R8	36, 74	Amend to empower the court additionally to make an order imposing a non-criminal financial penalty of \$10,000 for the first contravention and \$30,000 for a second and subsequent contraventions.	The SDB (Cl.36) makes discriminatory advertisements unlawful, but no penalty is provided for. The EOC can only apply to the court for an injunction to restrain a person from publishing more unlawful advertisements (Cl.74(4)). On application by the EOC the court	Disagree. The provisions in the Bill suffices.

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
			<p>should also be able to impose a penalty as a deterrent. The proposed civil penalty is similar to that presently imposed by the Insider Dealing Tribunal under S.23(1)(c) of the Securities (Insider Dealing) Ordinance (Cap.395).</p>	
Part VI - General Exceptions				
R9	51	<p>The exemption for acts done to safeguard the security of Hong Kong should be deleted.</p>	<p>This clause should have no bearing on sex discrimination. This should be a matter of staff deployment within the disciplinary services. Disagree with Administration that, unless excepted, "any differential treatment will be regarded as discrimination. Under the SDB (Cl.9), differential treatment will not be unlawful if justified by materially different circumstances.</p>	<p>Under the SDB any differential treatment will be regarded as discrimination and the definition does not take into account whether or not the differential treatment is reasonable. There is therefore a need for exemption in this respect when for example, male police officers have to be deployed to deal with male rioters.</p>
R10	Sch.4 : item 2	<p>Delete. (Exception for Small House Policy)</p>	<p>The Small House Policy is totally against the spirit of SDB. Moreover, the Policy may already be unlawful under the BORO and its legality should not be revived by the SDB.</p>	<p>A review of the Small House Policy is being conducted. Pending result of this review, exception for this Policy is required.</p>

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R11	54 & Sch.4	The exemption of (i) certain discriminatory services and (ii) of marital status discrimination in employment benefits and civil service benefits should be amended to expire in one year, subject to extension by LegCo resolution for another year.	The Bills Committee consider complete exemption of discrimination in these matters unnecessary, unreasonable and subject to abuse. It is therefore proposed to allow one year, subject to extension by LegCo resolution, for necessary adjustments to be made before expiry of these exceptions. With regard to (ii), following expiry of the exception, employers may still provide differential benefits based on non-discriminatory criteria e.g. household size.	All these are reasonable and necessary exceptions. Exceptions for (i) are required whereby the operation of disciplinary forces will not be hampered. With regard to (ii), if the exception for employment benefits were to expire at the end of one year, all employers would no longer be able to provide different levels of housing benefits to employees of different marital status. Employees may lose out because everybody would then receive a flat rate.
Part VII - Equal Opportunities Commission				
R12	56	New subclause (Cl.56(1)(ca)) giving EOC function of promoting observation of relevant international obligations (including ICCPR, ICESCR and CEDAW) as they relate to sex, marital status or pregnancy discrimination.)	Despite apparent breadth, the EOC's functions are limited to discrimination as defined in the SDB. In its roles other than law-enforcement (such as research, promotion and conciliation) the EOC should be clearly empowered to address any matters connected with discrimination under broad international non-discrimination standards.	The EOC is already vested with the responsibility to work towards the elimination of discrimination and to promote equality of opportunity between men and women generally. No need for a reiteration of this function.

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R13		New subclause giving EOC function of applying to court for declaration that legislation has been repealed by reason of inconsistency with the Bill of Rights Ordinance as it relates to sex, marital status or pregnancy discrimination.	Unlike the BORO, the SDB does not expressly repeal inconsistent laws. The proposed amendment therefore empowers the EOC to challenge discriminatory laws by using the BORO.	Disagree.
R14	56(1)	A new subclause (Cl.56(1)(ea)) giving the EOC the power to examine any proposed legislation that it considers may affect equality of opportunity and reporting results to legislation's sponsor.	The subclause is to give the EOC an advisory role. Similar provisions are provided in the Personal Data (Privacy) Bill.	The EOC already has a general function to promote equality of opportunity between men and women. In this connection, it could also examine proposed legislation. The Administration does not see the need to provide explicit provisions in this regard.
R15	57(3)	Repeal C57(3) which obliges the EOC to seek SHA's approval before it can provide financial assistance to outside research and undertaking.	Cl.57(3) unnecessarily restricts the EOC's independence. The Administration has adequate financial controls over the EOC in Schedule 5 (S.15(2), 16(2) and 17(2) of that Schedule).	The intention of this clause is to ensure that the EOC would not use its funds (public money) to subvert activities of third parties. This is a reasonable requirement and is also provided in other pieces of legislation.
R16	63(4)	Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions (irrespective of whether it believes unlawful acts have occurred.).	The proposed amendment is in line with the key recommendations of the UK EOC. The EOC is unlikely to investigate a person unless it believes the person has discriminated. Cl.63(4), however, requires the EOC to incorporate that belief expressly in the	To be named the subject of a formal investigation is a serious matter. Before naming a person in an investigation, the EOC, like any other regulatory bodies in HK, should have some grounds (i.e. formed a belief that the person named has committed unlawful acts) for singling out that

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R17		New clause (Cl.68A) empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance.	investigation's terms of reference. This undesirably restricts investigations: if the investigation uncovers discrimination outside the EOC's initial belief the EOC must redraft the terms of reference and restart the investigation. This has caused unreasonable delay to the UK EOC's investigations.	person. It would be extremely unfair upon the person named if the EOC names a person in a formal investigation without any grounds.
R18		New clause (Cl.68 B) empowering EOC to act by leave of court as amicus curiae in relation to claims under S.68(1) of the Ordinance.	It will be more proper to make a new clause for this provision in the principal Ordinance since the Administration has accepted this in principle. Related to R17. Where an individual is litigating an important test case under the SDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions exist in Australian equal opportunity laws.	To empower SHIA to make regulations, subject to I.egCo's approval. (Please refer to Appendix I (ref.A17)). Disagree
Part VIII - Enforcement				
R19	68(3)-(4)	District Court should have the power to order appropriate remedy, including reinstatement. [cf EOB234]	Since the Administration has accepted this in principle, the Bill should be amended accordingly without delay.	This will be dealt with in the context of the general review of labour relations presently being conducted by the Administration

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
R20	68(5)	To repeal this clause which provides that there shall be no award of damages if the indirect discrimination was unintentional.	Similar provision in UK law has been deleted. It is preferable to leave the court flexibility to take account of intentions by varying the size of awards.	Disagree. Where the employer can prove that the indirect discrimination is unintentional, the remedy is to order the employer to remove the discriminatory requirement or condition. Such remedy is considered appropriate.
R21	76	Amend to enable EOC to conciliate complaints of acts inconsistent with relevant international obligations (e.g. the ICCPR, ICESCR and CEDAW) as they relate to sex, marital status or pregnancy discrimination.	Related to item R12. The EOC should be able to provide a non-binding conciliation service for complaints concerning acts covered by international non-discrimination standards but not actually unlawful under the SDB.	Disagree.
R22	77	Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings.	Related to item R17. Where the EOC has already provided assistance to a person litigating an important case under the SDB, the EOC should be able to pursue the case in its own name if the person withdraws.	Disagree.
R23	78	Amend the period within which proceedings under the Ordinance may be brought to provide that time in conciliation will not be taken into account.	SDB should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant undergoing conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation	Disagree.

Ref. No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views	Administration's Response
Part IX - Miscellaneous	82(2) & Sch.7	Consequentially amend section 5AA of the Legal Aid Ordinance (Cap.91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the SDB (as for proceedings involving claims under the Bills of Rights).	The SDB restores important inter-citizen rights deleted from the original Bill of Rights Bill. In principle, therefore, provision should be made for the SDB on the same basis as for the BORO	The Administration will conduct a review on the Legal Aid Ordinance to see, inter alia, whether the waiver should be extended to sex discrimination cases

LegCo Secretariat
13 June 1995

SEX DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 2(1) | <p>(a) By deleting the definition of "Chairman" and substituting -</p> <p style="padding-left: 40px;">""Chairperson" (主 席) means the Chairperson of the Commission appointed under section 55(3)(a);".</p> <p>(b) In the definition of "educational establishment" by deleting "of Part 1".</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">""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 -</p> <p style="padding-left: 80px;">(a) provides and maintains its facilities, in whole or in part, from the funds of the association; and</p> <p style="padding-left: 80px;">(b) sells or supplies liquor for consumption on its premises;</p> |

"commission agent" (傭 全 經 紀 人) means
commission agent as construed in accordance
with section 15A.

"committee of management" (管 理 委 員 會),
in relation to a club, means the group or
body of persons (howsoever described) that
manages the affairs of that club;

"dynamically supported craft" (藉 動 力 而 獲
得 支 承 的 航 行 器) has the same meaning
as in the Shipping and Port Control
Ordinance (Cap. 313);".

(a) By deleting subclause (5) and substituting -

"(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.

(5A) For the avoidance of doubt, it is hereby declared that paragraph (b) of subsection (5) shall not apply for the purposes of sections 32 and 33."

(b) By adding -

"(8) Subject to subsection (9), in this Ordinance "existing statutory provision"

(現有法例條文) means any provision of -

(a) any Ordinance enacted before this Ordinance was enacted;

(b) any subsidiary legislation made -

(i) under an Ordinance enacted before this

Ordinance was enacted;

and

(11) before, on or after
this Ordinance was
enacted.

9. Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (8) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted."

New By adding -

"3A. Act done because of sex, etc.
and for other reason

If -

(a) an act is done for 2 or more reasons;

and

(b) one of the reasons is the sex, marital status or pregnancy of a person

(whether or not it is the dominant or a substantial reason for doing the act),

then, for the purposes of this Ordinance, the act shall be taken to be done for the reason specified in paragraph (b)."

6(1) and By adding "or IV" after "Part III".
(2) and
7

- 8(1) (a) By adding "or any other person ("the third person)" after "that the person victimised".
- (b) By adding "or the third person, as the case may be," after -
- (i) "knows the person victimised";
- (ii) "suspects the person victimised".
- 10(2)(a) By deleting "; or" and substituting a semicolon.
- 10(2) By adding -
- "(aa) in the terms of employment he affords her; or".
- 10(4) By deleting "Subsections" and substituting "Subject to, subsection (4A), subsections".
- 10 By adding -
- "(4A) Subsections (1)(b) and (2) shall apply to provision in relation to death or retirement specified in Part 1 of Schedule 1A except in so far as any such provision made for a woman before the commencement of this section continues for that woman on and after that commencement.".
- 10(6) By deleting "5th" and substituting "3rd".
- 13(2)(b) By deleting "hovercraft" and substituting "dynamically supported craft".

14(4) By deleting "Subsection" and substituting "Subject to subsection (4A) subsection".

14 By adding -

"(4A) Subsection (1)(b) and (d) shall apply to provision made in relation to death or retirement specified in Part 2 of Schedule 1A except in so far as any such provision made for a woman before the commencement of this section continues for that woman on and after that commencement."

15 By deleting subclause (4) and substituting

"(4) Subject to subsection (5), this section shall not apply to provision made in relation to the death or retirement from work of a member.

(5) This section shall apply to provision -

(a) made in relation to the death or retirement from work of a member; and

(b) specified in Part 3 of Schedule 1A, except in so far as any such provision made for a member before the commencement of this section continues for that member on and after that commencement."

New By adding -

"18A. Discrimination against commission agents

(1) This section applies to any work for a person ("the principal") which is available for doing

by individuals ("commission agents") as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

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

- (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 commission agents.

Government

18B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

19(1)
and (2)

By deleting "of a significant number of" and substituting "common to".

20 . By adding -

"(9) It is unlawful for the principal, in relation to work to which section 18A applies, to sexually harass a woman who is a commission agent.

(10) It is unlawful for a commission agent to sexually harass a woman who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a woman at an establishment in Hong Kong to sexually harass her.

(12) It is unlawful for a person residing in any premises to sexually harass a woman -

- (a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and
- (b) carrying out in those premises all or part of her work in relation to her employment (and whether or not she also resides in those premises)."

26 By adding -

"(4) In this section in relation to premises, "power to dispose" (有 權 處 置) includes the power to sell, rent, let, sub-let or otherwise part with possession of those premises."

New . By adding -

"28A. Exceptions from section 25(1) for health and safety considerations

Section 25(1) shall not be construed as rendering unlawful discrimination falling within section 7 if the discrimination is imposed in order to comply with health and safety considerations which are reasonable in the circumstances."

30(1)(b) By deleting "of a significant number of" and substituting "common to".

31 By deleting subclause (4).

New By adding -

"Clubs

31A. Discrimination by clubs

(1) 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 discriminate against a woman who is not a member of the club -

(a) by refusing or failing to accept her application for membership; or

(b) in the terms or conditions on which the club is prepared to admit her to membership.

(2) 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 discriminate against a woman who is a member of the club -

- (a) in the terms or conditions of membership that are afforded to her;
- (b) by refusing or failing to accept her application for a particular class or type of membership;
- (c) by denying her access, or limiting her access, to any benefit, service or facility provided by the club;
- (d) by depriving her of membership or varying the terms of membership; or
- (e) by subjecting her to any other detriment

(3) Nothing in subsection (1)(b) or (2) renders it unlawful to discriminate against a woman if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where -

- (a) it is not practicable for the benefit to be used or enjoyed -
 - (i) simultaneously; or
 - (ii) to the same extent, by both men and women; and
- (b) either -
 - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other;
 - or

- (ii) men and women are each entitled to a fair and reasonable proportion of use and enjoyment of the benefit.

Government

31B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a woman in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

(a) as regards a woman not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or

(b) any act done in relation to a woman if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

32

By adding -

"(3) It is unlawful for a person who is a student of an educational establishment to sexually harass a woman who is seeking to be, or who is, a student of the establishment.

(4) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to sexually harass a woman -

(a) who is, or is a member of, the responsible body for; or

(b) who is a member of the staff of, the establishment."

34(2)
and (3)

By deleting "hovercraft" wherever it appears and substituting "dynamically supported craft".

New

By adding before clause 41 -

"40A. Special measures

Nothing in Part III, IV or V shall render unlawful an act that is reasonably intended to -

(a) ensure that persons of a particular sex or marital status, or who are pregnant, have equal opportunities with other persons in circumstances in relation to which a provision is made by this Ordinance;

(b) afford persons of a particular sex or marital status, or who are pregnant, goods or access to services,

facilities or opportunities to meet their special needs in relation to -

- i. employment, education, clubs or sport; or
- ii. the provision of premises, goods, services or facilities;

(c) afford persons of a particular sex or marital status, or who are pregnant, grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to -

- (i) employment, education, clubs or sport; or
- (ii) the provision of premises, goods, services or facilities."

49 By deleting subclauses (3) and (4).

50(1) By deleting "within the meaning of section 49".

55(3)(a) By deleting "Chairman" and substituting "Chairperson".
and (5)

59(2) By adding -

"(aa) any provisions of any regulations made under section 80A which are specified in the regulations as provisions which shall not be subject to subsection (1);".

68 By deleting subclause (7).

69(2) (a) By adding after "act" -

"(which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof)".

69 By deleting subclause (5).

77(3) By adding "except to the extent permitted under rules made in accordance with section 73B of the District Court Ordinance (Cap. 336)" after "in, any proceedings".

78 By deleting subclause (1) and substituting -

"(1) The District Court shall not consider a claim under section 68 unless proceedings in respect of the claim are instituted before the end of 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 65,

whichever is the later."

78(2) (a) By deleting "12" and substituting "24".

- 78(6) (a) By deleting "(a) or (b)".
(b) By deleting "any" and substituting "the".

78 By adding -

"(7) 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 65; and
- (b) from which it can reasonably be
construed (and whether or not the
report mentions, or 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 III, IV or
V."

New By adding -

**"80A. Regulations to empower Commission
to bring certain proceedings**

(1) The Secretary for Home Affairs may make
regulations -

- (a) where any person may bring proceedings
under section 68(1) 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 6(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."

81(1) By adding "1A," after "Schedule 1,".

Schedule 1 By deleting Part 2.

New By adding -

"SCHEDULE 1A [ss. 10(4A), 14(4A), 15(5) & 81]

PROVISION IN RELATION TO DEATH OR RETIREMENT
TO WHICH THIS ORDINANCE
SHALL APPLY

PART 1

PROVISION TO WHICH SECTION 10(1)(b)
AND (2) SHALL APPLY

PART 2

PROVISION TO WHICH SECTION 14(1)(b)
AND 15 SHALL APPLY

PART 3

PROVISION TO WHICH SECTION 15
SHALL APPLY

Schedule 2 By deleting item 5.

Schedule 4,
Part 1, section 1 By adding -

"reproductive technology procedure" (生 育
科 技 程 序) means any medical treatment or
scientific intervention directed at assisting
human reproduction by artificial means, and
includes in vitro fertilisation, artificial
insemination, gender selection and manipulation
of gametes or embryos outside the body."

Schedule (a) In item 3. by adding "(but excluding any
4,
Part 2 discrimination against a person who is not single as
compared with a person who is single)" after "status".

(b) By adding -

"4. Parts Any discrimination between
IV and V persons of different marital
status arising from the provision
of any reproductive technology
procedure.

5. Parts III, Any discrimination between
IV and V persons of different marital
status arising from the provision
of any facilities or services
relating to the adoption of any
infant within the meaning of
section 2 of the Adoption
Ordinance (Cap. 290).

6. Parts IV Any discrimination between
and V persons of different marital
status arising from the public
housing scheme known as the Home
Ownership Scheme or Private
Sector Participation Scheme.

7. Parts III, Any discrimination between men
IV and V and women arising from -

- (a) section 2(5)(a) of the
Surviving Spouses' and
Children's Pensions
Ordinance (Cap. 79);
- (b) section 18(1A) of the
Pensions Ordinance
(Cap. 89);
- (c) section 19 of the
Widows and Orphans
Pension Ordinance (Cap.
94);
- (d) section 19(4) of the
Pension Benefits
Ordinance (Cap. 99); or
- (e) section 20(4) of the
Pension Benefits
(Judicial Officers)
Ordinance (Cap. 401).

8. Parts III,
IV and V Any discrimination between persons
of different marital status
arising from the proviso to

regulation 4(1) of the Royal Hong
Kong Auxiliary Police Force
(Pensions) Regulations (Cap. 233
sub. leg.)."

Schedule 5, sections 1, 3(3)(a), 6(2) and 7(b)(i) By deleting "Chairman" wherever it appears and substituting "Chairperson".

Schedule 5, section 13(3)(a) By deleting "chairman" and substituting "chairperson".

Schedule 5, section 19 (a) In subsection (1), by deleting "and efficiency" and substituting ", efficiency and effectiveness".

(b) By adding -

"(5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Commission."

Schedule 7 (a) By adding -

**"Dangerous Goods (General)
Regulations**

12A. Supervisors to be employed
in danger buildings

Regulation 36 of the Dangerous Goods
(General) Regulations (Cap. 295 sub. leg.) is
amended by repealing "male" where it twice
appears."

(b) In item 14, in the proposed section 73B -

(i) in subsection (2), by deleting "rules as to proceedings by or against the Crown." and substituting -

"rules -

(a) as to proceedings by or against the Crown;

(b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;

(c) to make special provision for any proceedings in the Court where regulations made under section 80A of the Sex Discrimination Ordinance (of 1995) apply to the proceedings.";

(ii) by adding -

"(2A) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (of 1995) shall bear its own costs unless

the Court otherwise orders on the ground that -

(a) the proceedings were brought maliciously or frivolously; or

(b) there are special circumstances which warrant an award of costs.";

(iii) in subsection (3) -

(A) in paragraph (c), by deleting the semicolon at the end and substituting a full stop;

(B) by deleting paragraph (d);

(iv) by adding -

"(3A) The Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.";

(v) in subsection (4), by deleting "Any" and substituting "Subject to subsection (3A) any";

(vi) in subsection (6), by adding -

"aa, where there is any conflict or inconsistency between -

(i) any rules made under subsection (2)(b); and

(ii) any law and practice regulating the

description of persons

who may appear in,

conduct, defend and

address the Court, in

any proceedings therein,

then those rules shall, to the

extent of that conflict or

inconsistency, as the case may

be, prevail over that law and

practice;".

(b) **Report by the Bills Committee to study the Equal Opportunities Bill, the Sex Discrimination Bill and the Disability Discrimination Bill**

(LegCo Paper No. HB 910/94-95)

Dr LEONG Che-hung, Chairman of the Bills Committee, referred Members to the report and informed Members that the Administration would move some amendments which had been agreed in the Bills Committee. He would also move amendments which had not been accepted by the Administration. He informed Members that Mrs Peggy LAM would also move some amendments. The Bills Committee recommended that the Second Reading debate on the Bill be resumed on 28.6.95.

Dr LEONG expressed his gratitude to the Secretariat, members of the Administration, Ms Anna WU and Members of the Bills Committee.

The Legal Adviser urged Members to study the papers carefully as the amendments were quite complex.

Ms Anna WU supplemented that she would be readily available to meet any Members to explain the various amendments. She would distribute a letter to Members highlighting the key points of the amendments.

Members agreed to resume the Second Reading debate on the Bill on 28.6.95.

(c) **Report by the Bills Committee to study the Banking (Amendment) Bill 1995**

(LegCo Paper No. HB 893/94-95)

Mr Eric LI, Deputy Chairman of the Bills Committee, reported that the banking and financial sectors had agreed to the amendment. The Bills Committee recommended that, subject to the Committee Stage amendment to be moved by the Administration, the Bill should have its Second Reading debate resumed on 28.6.95.

Members agreed.

By Fax & By Post

來函編號 Your Ref: HB/C/24/94
+ 函檔號 Our Ref: 2869 9252
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圖文傳真 Fax:

立法局秘書處

Legislative Council Secretariat

16 June 1995

Law Drafting Division
8/F High Block
Queensway Government Offices
Hong Kong
(Attn: Mr Geoffrey Fox)
Senior Assistant Law Draftsman)

Dear Geoffrey,

**Bills Committee to study the
the Equal Opportunities Bill and
the Sex Discrimination Bill**

Further to my letter of 15 June 1995, attached is the copy of the 'blue' of the CSAs to be moved by the Chairman of the Bills Committee.

Yours sincerely,

(Mrs Anna LO)

Clerk to the Bills Committee to study the
the Equal Opportunities Bill,
Sex Discrimination Bill and
Disability Discrimination Bill

c.c. Secretary for Home Affairs
(Attn: Miss Susie HO)
Dr Hon LEONG Che-hung
Hon Ms Anna WU

SEX DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by

Dr. the Hon LEONG Che-hung, O.B.E., J.P.

Clause

Amendment Proposed

1

(a) In subclause (2), by deleting “This” and substituting “Subject to subsection (3), this”.

(b) By adding -

“(3) This Ordinance shall come into operation on a day not later than 1 January 1996.”.

2

(a) In subclause (1), by adding after the definition of “profession” -

““relevant international instruments”(有關國際文書)
means -

(a) the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979;

(b) the Declaration on the Elimination of Violence Against Women proclaimed by the General Assembly of the United Nations on 20 December 1993;

(c) the International Labour Organisation Recommendation No. 90 on Equal Remuneration for Men and Women Workers for Work of Equal Value; and

(d) the International Labour Organisation Recommendation No. 111 on Discrimination in Occupation and Employment as it relates to sex, marital status or pregnancy;

“relevant international obligations” (有關國際義務) means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination, on the grounds of sex, marital status and pregnancy, in particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;”.

(b) By adding -

“(10) With effect from the day on which the obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979, are applied to Hong Kong that Convention shall be deemed to be removed from the definition of “relevant international instruments” and shall for the purposes of this Ordinance be treated instead as being included within the definition of “relevant international obligations”.

(11) For the purposes of the definition of “relevant international obligations” (有關國際義務), “discrimination” means discrimination within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 4, 5, 6, 7, or 8 is not limited to discrimination so falling.

New

By adding -

“2A. Relevant international obligations and instruments

(1) In interpreting this Ordinance, regard shall be had to the fact that a principal purpose of this Ordinance is to give effect to relevant international obligations.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to relevant international obligations is to be preferred to any other interpretation, so far as the provisions of this Ordinance permit such a construction.

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in relevant international instruments is to be preferred to any other interpretation, so far as the provisions of this Ordinance permit such a construction.”.

10

(a) By deleting subclause (6) and substituting -

“(6) Subject to subsection (6A), subsection (3) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6A) Prior to the expiry of subsection (3) under subsection (6) the Legislative Council may, by resolution, amend subsection (6) to extend subsection (3) for a period of one year.”.

(b) By deleting subclause (8) and substituting -

“(8) Subject to subsection (9), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(9) Prior to the expiry of subsection (4) under subsection (8) the Legislative Council may, by resolution, amend subsection (8) to extend subsection (4) for a period of one year.”.

14 By adding -

“(4A) Subject to subsection (4B), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(4B) Prior to the expiry of subsection (4) under subsection (4A) the Legislative Council may, by resolution, amend subsection (4A) to extend subsection (4) for a period of one year.”.

15 By adding -

“(5) Subject to subsection (6), subsection (4) shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) Prior to the expiry of subsection (4) under subsection (5) the Legislative Council may, by resolution, amend subsection (5) to extend subsection (4) for a period of one year.”.

New By adding -

“Advisory bodies

30A. Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies

(1) In this section a reference to a relevant body means a public body, a public authority, a statutory advisory body, or a prescribed body.

(2) In this section, a reference to a relevant position includes membership of a public body, a public authority, and a prescribed position, and the positions of Village Representative or member or office-holder of a Rural Committee within the meaning of the Heung Yee Kuk Ordinance (Cap. 1097)

(3) 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, or to take part in the selection of 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.

(4) This section shall have effect, notwithstanding the provisions of any Ordinance which provide that a person of a particular sex or marital status is not eligible to stand for election, or to be selected for, a relevant body or position, or to vote in elections for or to take part in the selection of members of a relevant body or the holder of a relevant position.

(5) Notwithstanding anything in the Heung Yee Kuk Ordinance (Cap. 1097) or in any other Ordinance, the Secretary for Home Affairs shall not -

- (a) approve a person as a Village Representative;
- (b) issue a certificate recognizing a body as a Rural Committee;
- (c) approve a person as a Special or Co-opted Councillor,

where that person or body (or any of its members) has been elected or otherwise chosen by a procedure in which women have not been able to participate on equal terms with men, whether as candidates, nominees, electors or in some other relevant capacity.”.

New

By adding -

“Laws and Government programmes

31C. Discrimination in the administration of laws and government programmes

It is unlawful for a person who exercises a prerogative power, who performs a function or exercises a power under a law or for the purposes of a government programme, or who has any other responsibility for the administration of a law or the conduct of a government programme, to discriminate against another person in the performance of that function, the

exercise of that power or the fulfilment of that responsibility.”.

49 By adding -

“(5) Subject to subsection (6), the provisions of section 11(2)(g), subsections (1)(ii) and (2)(b) and Schedule 2 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) Prior to the expiry of the provisions referred to in subsection (5), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of one year.”.

51 By deleting the clause.

54 By adding -

“(3) Subject to subsection (4), the provisions of subsections (1) and (2) and Schedule 4 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(4) Prior to the expiry of the provisions referred to in subsection (3), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of one year.”.

56(1) (a) By adding -

“(ca) promote an understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments:”.

(b) In paragraph (e) by deleting “and” at the end.

(c) By adding -

“(ea) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between men and women or affect understanding and acceptance of relevant international obligations and of the standards contained in relevant international instruments, and report the results of the examination to the person proposing the legislation and to the Legislative Council; and”.

57(3) By deleting the subclause.

63 (a) In subclause (3)-

(i) by deleting “of persons” and substituting “of a person or an organisation”;

(ii) by deleting “those persons” and substituting “such person or organisation”.

(b) By deleting subclause (4) and substituting -

“(4) Where the terms of reference of the formal investigation confine it to activities of a person or an organisation named in them and the Commission in the course of it proposes to investigate any act which a person or organisation so named may have done, the Commission shall

(a) inform that person or organisation of its proposal to investigate the act; and

(b) offer him or it an opportunity of making oral or written representations, within 28 days after the notification of the proposal

to investigate, with regard to it (or both oral and written representation if he or it thinks fit),

and a person or organisation so named who avails himself or itself of an opportunity under this subsection of making oral representations may be represented -

- (i) by counsel or a solicitor; or
- (ii) by some other person of his or its choice, not being a person to whom the Commission objects on the ground that he is unsuitable.”.

64(2)(b) By deleting everything after “formal investigation” and substituting “confine it to activities of a named person or an organisation.”.

68 (a) In subclause (3), by deleting everything after “District Court” and substituting “and where the court is satisfied that the respondent has committed an unlawful act of discrimination or sexual harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.”.

(b) By deleting subclause (4) and substituting -

(4) Without limiting the generality of 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 should not repeat or continue such unlawful conduct or act:

- (b) order that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;
- (c) order that the respondent should employ or re-employ the claimant;
- (d) order that the respondent should promote the claimant;
- (e) order that the respondent 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 pay to the claimant **punitive or exemplary damages;**
or
- (g) **make an order declaring void in whole or part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Ordinance."**

(c) By deleting subclause 68(5).

New

By adding -

"68A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 68(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) The Commission may bring proceedings in the High Court seeking a declaration that an enactment or part of an enactment is inconsistent with -

(a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the grounds of sex, marital status and pregnancy;
or

(b) article VII (5) of the Hong Kong Letters Patent 1917-1994 as it relates to discrimination on the grounds of sex, marital status and pregnancy.

(3) In this section, “discrimination” means -

(a) for the purposes of subsection (2)(a),
discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and

(b) for the purposes of subsection (2)(b),
discrimination within the meaning of the International Covenant on Civil and Political Rights,

and, although including every form of discrimination falling within section 4, 5, 6, 7 or 8 is not limited to discrimination so falling.

68B. Commission may intervene in proceedings

The Commission may, where it considers it to be appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, intervene in proceedings in which -

(a) a claim under section 68(1): or

(b) a declaration of the kind referred to in section 68A(2);
is an issue.”.

74 By adding -

“(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 36, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”.

76(1) By adding after “Ordinance” “or which is inconsistent with a relevant international instrument or obligation.”.

77 (a) By adding -

“(6)(a) Where any person, who has received assistance in respect of proceedings under this Ordinance under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.

(b) As from the date of any such taking over of proceedings under paragraph (a) the Commission shall be deemed to be a party to those proceedings in lieu of the person who has withdrawn therefrom”.

(b) By renumbering subclause (b) as (7)

78

By adding -

“(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 76(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 76 was concluded, as certified in writing by the Commission, shall be disregarded.”.

80(1)

By adding -

“(aa)prescribing the bodies and positions for the purposes of section 30A;”.

Schedule
4
Part 2

By deleting item 2.

Consequential Amendment

New

By adding in Schedule 7 -

“Legal Aid Ordinance

15. Director may waive upper limit of means test

Section 5AA of the Legal Aid Ordinance (Cap. 91) is amended by adding “or claim of unlawful discrimination or sexual harassment under the Sex Discrimination Ordinance (of 1995)” before “is an issue.” ”.

URGENT — BY HAND

20th June 1995

Mr. Michael Suen, JP
Secretary for Home Affairs
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road
Wanchai, Hong Kong



Dear Mr. Suen,

Equal Opportunities (Race) Bill,
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and
Equal Opportunities (Religious or Political Conviction, Trade Union Activities
and Spent Conviction) Bill

Attached please find the captioned Bills, certified by the Law Draftsman.

For your convenience, I am also separately attaching a set of marked pages for each Bill. The marks indicate all textual revisions made to the Bills since they were last forwarded to you on 26th May. As expected, the revisions are essentially mechanical and have no relation to the Bills' financial implications.

It would be desirable for the Council to proceed with these more manageable Bills rather than with the original Equal Opportunities Bill. It is my understanding, however, that the timetable for substituting the captioned Bills is now extremely tight. For a 2nd Reading resumption at the next-to-last Council sitting (19th July), the Bills ought to be gazetted this Friday, which would require immediate clearance in regard to charging effect.

I hope, therefore, that you will be able to rely principally on advice already taken on the Bills to make your assessment of their charging effect as a matter of urgency.

Yours sincerely,

for Anna Wu

cc. Mr. K. S. Law, Clerk to Legco

Discrimination in other areas

18. **Education**
19. **Access to places and vehicles**
20. **Goods, services and facilities**
21. **Accommodation**
22. **Land**
23. **Clubs**
24. **Application forms, etc.**
25. **Discrimination in the administration of laws and government programmes**

Discrimination involving racial harassment

26. **Racial harassment in employment**
27. **Racial harassment in education**
28. **Racial harassment related to accommodation**
29. **Racial harassment in the provision of goods, services and facilities**
30. **Harassment by reference to the race of an person, associate or relative**

Racial vilification

31. **Definition of public act**
32. **Racial vilification**
33. **Offence of serious racial vilification**

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OTHER UNLAWFUL ACTS

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35. **Advertisements**

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GENERAL EXCEPTIONS TO THE ORDINANCE

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37. **Measures intended to achieve equality**
38. **Charities**
39. **Voluntary bodies**
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42. **Establishment providing housing accommodation for aged persons, etc.**

- (d) services of the kind provided by members of any profession or trade; and
- (e) services of the kind provided by a government body or public authority,

"vehicle" () includes a ship and an aircraft;

"voluntary body" () means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include--

- (a) a club;
- (b) a body established by a law; or
- (c) an association that provides grants, loans, credit or finance to its members;

(2) For the purposes of this Ordinance, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

4. Act done for 2 or more reasons

A reference in this Ordinance to the doing of an act on the ground of a particular matter includes a reference to the doing of an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

5. Ordinance binds the Crown

This Ordinance binds the Crown.

6. Discrimination on the basis of the characteristics of an associate or relative of a person

For the purposes of this Ordinance, a person ("the discriminator") shall be taken to treat another person ("the aggrieved person") less favourably on the ground of that person's race if the discriminator treats the aggrieved person less favourably on the basis of the race of an associate or relative of the aggrieved person.

7. Relevance of international instruments

(1) In interpreting this Ordinance regard shall be had to the fact that a principal purpose of this Ordinance is to give effect to international obligations applicable to Hong Kong.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to international obligations applicable to Hong Kong is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in the international instruments referred to in section 2(e) is to be preferred to any other interpretation, so far as the provisions of the Ordinance permit such a construction.

(2) This section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

23. Clubs

(1) 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 discriminate against a person who is not a member of the club on the ground of the person's race--

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) 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 discriminate against a person who is a member of the club on the ground of the person's race--

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

(3) Nothing in subsection (1) or (2) applies to or in respect of a club that has as its principal object the provision of benefits for persons of a specified race if those persons are described otherwise than--

- (a) by reference to colour; or
- (b) in a manner which has the effect of excluding persons of that race who are of a different colour from those persons, or the majority of those persons, who come within that description.

(4) In determining whether the principal object of a club is as referred to in subsection (3), regard shall be had to--

- (a) the essential character of the club;
- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the race specified in the principal object; and
- (c) any other relevant circumstance.

24. Application forms, etc.

Where, by virtue of a provision of this Part, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's race, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons of a different race would not, in circumstances that are the same or not materially different, be requested or required to provide.

- (a) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with access to or the provision of goods, services or facilities, of the other person;
- (b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities; or
- (c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities.

30. Harassment by reference to the race of an person, associate or relative

A reference to harassment on the ground of the race of a person includes harassment on the ground of or in relation to--

- (a) the race;
- (b) a characteristic that appertains generally to persons of the race; or
- (c) a characteristic that is generally imputed to persons of the race,

of that person or of a relative or associate of that person.

Racial vilification

31. Definition of public act

In sections 32 and 33, "public act" () includes--

- (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; and
- (c) the distribution or dissemination of any matter to the public.

32. Racial vilification

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

(2) Nothing in this section renders unlawful--

- (a) a fair report of a public act referred to in subsection (1);
- (b) a communication or the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or

- (c) a public act, 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.

33. Offence of serious racial vilification

A person who, by a public act, incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include--

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons,

commits an offence and is liable to a fine of ~~\$10,000~~ at level 3.

PART III

OTHER UNLAWFUL ACTS

34. Victimization

(1) It is unlawful for a person ("the victimizer") to subject, or threaten to subject, another person ("the person victimized") to any detriment on the ground that the person victimized or an associate of that person--

- (a) has brought, or proposes to bring, proceedings under this Ordinance against the victimizer or any other person;
- (b) has furnished, or proposes to furnish, any information, or has produced or proposes to produce, any documents in relation to proceedings under this Ordinance;
- (c) has appeared, or proposes to appear as a witness in any proceedings under this Ordinance;
- (d) has reasonably asserted, or proposes to assert, any rights of the person victimized or the rights of any other person under this Ordinance; or
- (e) has made an allegation that a person has done an act that is unlawful by reason of this Ordinance,

or on the ground that the victimizer believes that the person victimized has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (e).

(2) Subsection (1)(e) does not apply if it is proved that the allegation was false and was not made in good faith.

(3) Subject to subsection (2), the application or continued application of subsection (1) in a particular case shall not be affected by--

- (a) the failure of the person victimized to do any proposed act or thing referred to in any of the paragraphs of subsection (1); or

- (b) the withdrawal, failure to pursue, or determination of any proceeding or allegation under this Ordinance.

35. Advertisements

- (1) In this section--
 - (a) "advertisement" (), without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing, but which, by reason of the form or context in which it appears, conveys a message;
 - (b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means, including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.
- (2) (a) A person who publishes or causes to be published an advertisement that indicates an intention to do an act that is unlawful under this Ordinance commits an offence and is liable to a fine of ~~\$30,000~~ at level 5 for a first offence and ~~\$100,000~~ at level 6 for a second offence.
 - (b) Where a court has convicted a person of an offence against paragraph (a), the court may, in addition to or in substitution for any fine imposed, order the person to take such steps as are appropriate in the circumstances to remedy the effects of the advertisement and ensure that the person does not publish such advertisements again.
- (3) Any person may bring a private prosecution under this section.
- (4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

PART IV

GENERAL EXCEPTIONS TO THE ORDINANCE

36. Genuine occupational qualification

Nothing in section 11(1)(a) or (b), 12(1)(a) or (b) or 13(1)(a) or (b) applies to or in respect of any work or employment where that work or employment involves any one or more of the following--

- (a) participation in a dramatic performance or other entertainment in a role for which a person of a particular race is required for reasons of authenticity;
- (b) participation as an artist's or photographic model in the production of a work of art; visual images or sequence of visual images for

- (b) an act that is unlawful under this Ordinance,

this Ordinance applies in relation to the employer as if that employer had also done the act.

(3) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of subsection (1) done by an employee or agent of a person, if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in those paragraphs.

(4) Subsection (2) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of subsection (2) done by a person purporting to act on behalf of an employer, if it is established that the employer took all reasonable steps to prevent the person from doing acts of the kind referred to in those paragraphs.

52. Acts done on behalf of bodies

Where, for the purposes of this Ordinance, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.

53. Regulations

The Governor may make regulations prescribing matters--

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for the carrying out or giving effect to this Ordinance.

Consequential Amendments

Hong Kong Bill of Rights Ordinance

54. Effect on pre-existing legislation

Section 3 of the Hong Kong Bill of Rights Ordinance (Cap. 383) is amended by adding--

"(3) For the avoidance of doubt, it is hereby declared to be the intention of the legislature that the provisions of this Ordinance, including the guarantees contained in the ~~Hong Kong~~ Bill of Rights, apply to all legislation, whether that legislation affects legal relations between the Government, public authorities and private persons, or whether it affects only relations between private persons."

- (c) to promote recognition and acceptance within the community of the equality of all persons regardless of their their sexuality or age;
- (d) to give effect to obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination, in particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;
- (e) to give effect to the standards contained in the Convention on the Elimination of All Forms of Discrimination Against Women, as adopted by the General Assembly of the United Nations on 18 December 1979; and
- (f) to give effect to relevant provisions of International Labour Organisation Recommendations No. 111 on Discrimination in Occupation and Employment and No. 165 on the Rights of Workers with Family Responsibilities.

3. Interpretation

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

"accommodation" () includes residential and business accommodation;

"age" () in relation to a person, means the chronological age of the person;

"associate" (), 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;
- (e) another person who is in a business, sporting or recreational relationship with the person;

"charitable benefits" () means benefits for purposes that are exclusively charitable according to the law in force in Hong Kong;

"club" () means an association (whether incorporated or unincorporated) 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;

"commission agent" () means a person who does work for another person as the agent of that person and who is remunerated, whether in whole or in part, by commission;

"committee of management" () in relation to a club, organization or incorporated association, means the group or body of persons (however described) that manages the affairs of that club, organization or incorporated association, as the case may be;

"relative" (), in relation to a person, means a person who is related to the first-mentioned person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first-mentioned person;

"services" () includes--

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of the kind provided by members of any profession or trade; and
- (e) services of the kind provided by a government body or public authority;

"sexuality" () means heterosexuality, homosexuality (including lesbianism) or bisexuality;

"vehicle" () includes a ship and an aircraft;

"voluntary body" () means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include--

- (a) a club;
- (b) a body established by a law; or
- (c) an association that provides grants, loans, credit or finance to its members;

(2) For the purposes of this Ordinance, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

4. Act done for 2 or more reasons

A reference in this Ordinance to the doing of an act on the ground of a particular matter includes a reference to the doing of an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

5. Ordinance binds the Crown

This Ordinance binds the Crown.

6. Discrimination on the basis of the characteristics of an associate or relative of a person

For the purposes of this Ordinance, a person ("the discriminator") shall be taken to treat another person ("the aggrieved person") less favourably on the ground of that person's family responsibility or family status, sexuality, or age, if the discriminator treats the aggrieved person less favourably on the basis of the family responsibility or family status, sexuality or age of an associate or relative of the aggrieved person.

7. Relevance of international instruments

(1) In interpreting this Ordinance, regard shall be had to the fact that a principal purpose of this Ordinance is to give effect to international obligations applicable to Hong Kong.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to international obligations applicable to Hong Kong is to be preferred to any other interpretation, so far as the provisions of this Ordinance permit such a construction.

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in the international instruments referred to in section 2(e) and (f) is to be preferred to any other interpretation, so far as the provisions of this Ordinance permit such a construction.

8. Effect of Ordinance on legislation and common law

(1) Except as provided for by this Ordinance, where a law which permits or requires a person to do an act which is unlawful under this Ordinance does not admit of a construction that is consistent with this Ordinance, it is hereby repealed to the extent of the inconsistency with this Ordinance.

(2) For the avoidance of doubt a rule of the common law which permits or requires a person to do an act which is unlawful under this Ordinance is hereby abrogated.

9. Ordinance not to affect operation of Part III of Hong Kong Bill of Rights Ordinance, etc.

(1) This Ordinance has no effect in relation to legislation, policies or acts which fall within the exceptions and savings contained in sections 9 to 13 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

(2) In particular, nothing in this Ordinance--

- (a) applies to or has effect in relation to restrictions which apply in relation to members of and persons serving with the armed forces of the government responsible for the foreign affairs of Hong Kong and persons detained in legal establishments of whatever character and which are authorized by law for the preservation of service or custodial discipline;
- (b) applies to or has effect in relation to the failure to accommodate juveniles who are detained separately from adults;
- (c) applies to or has effect in relation to any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation;
- (d) has the effect of conferring a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before the competent authority; or
- (e) has the effect of requiring the establishment of an elected Executive or Legislative Council in Hong Kong.

- (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; and
- (c) the distribution or dissemination of any matter to the public.

51. Vilification on the grounds of sexuality

(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the sexuality of the person or members of the group.

(2) Nothing in this section renders unlawful--

- (a) a fair report of a public act referred to in subsection (1);
- (b) a communication or the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act, 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.

52. Offence of serious vilification on the ground of sexuality

A person who, by a public act, incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the sexuality of the person or members of the group by means which include--

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons,

commits an offence and is liable to a fine of ~~\$10,000~~ \$10,000 at level 3.

Exceptions to this Part

53. Measures intended to meet special needs

Nothing in this Part renders it unlawful to do an act a purpose of which is to afford a person with a particular sexuality access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare, or any ancillary benefits.

PART IV

DISCRIMINATION ON THE GROUND OF AGE

(2) 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 discriminate against a person who is a member of the club on the ground of the member's age--

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

(3) Nothing in subsection (1) or (2) applies to or in respect of a club--

- (a) that has as its principal object the provision of benefits for persons who are of a particular age; or
- (b) so as to prevent--
 - (i) the retention by the club of different categories of membership for members of different ages; or
 - (ii) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.

(4) In determining whether the principal object of a club-~~or~~ is as referred to in subsection (3)(a), regard shall be had to--

- (a) the essential character of the club;
- (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the relevant age; and
- (c) ~~other relevant circumstances~~ any other relevant circumstance.

68. Discrimination in sport on the ground of age

(1) It is unlawful for a person to discriminate against another person on the ground of the other person's age by excluding that person from a sporting activity.

(2) In subsection (1), the reference to a sporting activity includes a reference to an administrative, coaching, refereeing or umpiring activity in relation to any sport.

(3) Subsection (1) does not apply to discrimination against a person if--

- (a) the relevant sporting activity is--
 - (i) a competitive sporting activity; and
 - (ii) so conducted that competition is only permitted between persons of a particular age; or
- (b) the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity.

(4) Subsection (3)(a) does not apply to or in relation to persons participating or wishing to participate in--

- (a) an administrative, coaching, refereeing or umpiring activity in relation to any sport; or
- (b) any prescribed sporting activity.

- (e) has made an allegation that a person has done an act that is unlawful by reason of this Ordinance,

or on the ground that the victimizer believes that the person victimized has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (e).

(2) Subsection (1)(e) does not apply if it is proved that the allegation was false and was not made in good faith.

(3) Subject to subsection (2), the application or continued application of subsection (1) in a particular case shall not be affected by--

- (a) the failure of the person victimized to do any proposed act or thing referred to in any of the paragraphs of subsection (1); or
- (b) the withdrawal, failure to pursue, or determination of any proceeding or allegation under this Ordinance.

79. Advertisements

(1) In this section--

- (a) "advertisement" (), without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing, but which, by reason of the form or context in which it appears, conveys a message;
- (b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means, including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.

(2) (a) A person who publishes or causes to be published an advertisement that indicates an intention to do an act that is unlawful under this Ordinance commits an offence and is liable to a fine of ~~\$30,000~~ at level 5 for a first offence and ~~\$100,000~~ at level 6 for a second offence.

- (b) Where a court has convicted a person of an offence against paragraph (a), the court may, in addition to or in substitution for any fine imposed, order the person to take such steps as are appropriate in the circumstances to remedy the effects of the advertisement and ensure that the person does not publish such advertisements again.

(3) Any person may bring a private prosecution under this section.

(4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

PART VI

GENERAL EXCEPTIONS TO THE ORDINANCE

(3) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of subsection (1) done by an employee or agent of a person, if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in those paragraphs.

(4) Subsection (2) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of subsection (2) done by a person purporting to act on behalf of an employer, if it is established that the employer took all reasonable steps to prevent the person from doing acts of the kind referred to in those paragraphs.

94. Acts done on behalf of bodies

Where, for the purposes of this Ordinance, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.

95. Regulations

The Governor may make regulations prescribing matters--

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for the carrying out or giving effect to this Ordinance.

Consequential Amendments

Hong Kong Bill of Rights Ordinance

96. Effect on pre-existing legislation

Section 3 of the Hong Kong Bill of Rights Ordinance (Cap. 383) is amended by adding--

"(3) For the avoidance of doubt, it is hereby declared to be the intention of the legislature that the provisions of this Ordinance, including the guarantees contained in the ~~Hong Kong~~ Bill of Rights, apply to all legislation, whether that legislation affects legal relations between the Government, public authorities and private persons, or whether it affects only relations between private persons."

- (d) services of the kind provided by members of any profession or trade; and
- (e) services of the kind provided by a government body or public authority;

"vehicle" () includes a ship and an aircraft;

"voluntary body" () means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include--

- (a) a club;
- (b) a body established by a law; or
- (c) an association that provides grants, loans, credit or finance to its members;

(2) For the purposes of this Ordinance, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

(3) For the purposes of this Ordinance, religious or political conviction shall be construed so as to include a lack or absence of religious or political conviction.

4. Act done for 2 or more reasons

A reference in this Ordinance to the doing of an act on the ground of a particular matter includes a reference to the doing of an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

5. Ordinance binds the Crown

This Ordinance binds the Crown.

6. Discrimination on the basis of the characteristics of an associate or relative of a person

For the purposes of this Ordinance, a person ("the discriminator") shall be taken to treat another person ("the aggrieved person") less favourably on the ground of that person's religious or political conviction, membership or non-membership of a trade union, or spent conviction, if the discriminator treats the aggrieved person less favourably on the basis of the religious or political conviction, or membership or non-membership of a trade union of an associate or relative of the aggrieved person, or because an associate or relative of the aggrieved person has a conviction which is to be considered a spent conviction for the purposes of this Ordinance.

7. Relevance of international instruments

(1) In interpreting this Ordinance, regard shall be had to the fact that a principal purpose of this Ordinance is to give effect to international obligations applicable to Hong Kong.

(2) In interpreting the provisions of this Ordinance, an interpretation which gives effect to international obligations applicable to Hong Kong is to be preferred to

any other interpretation, so far as the provisions of thes Ordinance permit such a construction.

(3) Subject to subsection (2), in interpreting the provisions of this Ordinance, an interpretation which is consistent with the standards contained in the international instruments referred to in section 2(d) is to be preferred to any other interpretation, so far as the provisions of thes Ordinance permit such a construction.

8. Effect of Ordinance on legislation and common law

(1) Except as provided for by this Ordinance, where a law which permits or requires a person to do an act which is unlawful under this Ordinance does not admit of a construction that is consistent with this Ordinance, it is hereby repealed to the extent of the inconsistency with this Ordinance.

(2) For the avoidance of doubt a rule of the common law which permits or requires a person to do an act which is unlawful under this Ordinance is hereby abrogated.

9. Ordinance not to affect operation of Part III of Hong —Kong Bill of Rights Ordinance, etc.

(1) This Ordinance has no effect in relation to legislation, policies or acts which fall within the exceptions and savings contained in sections 9 to 13 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

(2) In particular, nothing in this Ordinance--

- (a) applies to or has effect in relation to restrictions which apply in relation to members of and persons serving with the armed forces of the government responsible for the foreign affairs of Hong Kong and persons detained in legal establishments of whatever character and which are authorized by law for the preservation of service or custodial discipline;
- (b) applies to or has effect in relation to the failure to accommodate juveniles who are detained separately from adults;
- (c) applies to or has effect in relation to any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation;
- (d) has the effect of conferring a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before the competent authority; or
- (e) has the effect of requiring the establishment of an elected Executive or Legislative Council in Hong Kong.

PART II

DISCRIMINATION ON THE GROUND OF RELIGIOUS OR POLITICAL CONVICTION

PART III

DISCRIMINATION ON THE GROUND OF SPENT CONVICTION

General

27. Person with spent conviction

(1) In this Part a person shall be considered to have a "spent conviction" where--

- (a) the person has been convicted in Hong Kong of an offence in respect of which the person has not been sentenced to death, imprisonment or to a fine exceeding \$5,000;
- (b) the person has not been previously convicted in Hong Kong of any offence; and
- (c) a period of 3 years has elapsed without that ~~individual person~~ being again convicted in Hong Kong of an offence.

(2) In determining whether a period of 3 years has elapsed for the purposes of subsection (1)(c), section 2(2) of the Rehabilitation of Offenders Ordinance (Cap. 297) shall apply.

(3) The payment or recovery of a fixed penalty, or any additional penalty, under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) or the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) is a conviction for the purposes of ~~paragraph (a)~~ subsection (1)(a) but not for the purposes of any other provision of that subsection.

(4) For the purposes of subsection (1)(a)--

- (a) "imprisonment" () does not include detention in a reformatory school, in a detention centre, in a place of detention or in a training centre;
- (b) a sentence of imprisonment or a fine shall be such a sentence, whether or not it is suspended or postponed;
- (c) ~~an individual person~~ is not sentenced to imprisonment where ~~he~~ the person is detained as a consequence of failing to pay a fine;
- (d) conviction of an offence in respect of which ~~an individual person~~ is not sentenced to imprisonment or to a fine exceeding \$5,000 includes convictions on the same day of more than one offence in respect of which ~~he~~ the person is not sentenced to imprisonment or to fines exceeding \$5,000 in total; and
- (e) "offence" () does not include an offence of contravening section 20(2) or 24 of the Societies Ordinance (Cap. 151) or of contravening section 19, 20(1), 21, 22 or 23 of that Ordinance in circumstances in which the unlawful society is, or is deemed to be, a Triad Society.

- (c) the right to associate with other persons for the purpose of forming or applying for the registration of a trade union in accordance with the provisions of the Trade Unions Ordinance (Cap. 332);
- (d) the right to freedom of association guaranteed by article 22 of the International Covenant on Civil and Political Rights, as applied to Hong Kong.

(2) It is unlawful for any employer or any person acting on behalf of an employer to--

- (a) prevent or deter, or do any act calculated to prevent or deter, an employee from exercising any of the rights conferred on the employee by subsection (1); or
- (b) terminate the contract of employment of, penalizes or subjects or subject to any detriment, an employee, by reason of the employee's exercise of any such right or by reason of the employee's expressing an intention to exercise such rights.

(3) In this section--

"appropriate time" () means, in relation to an employee taking part in any activities of a trade union, time which either--

- (a) is outside the employee's working hours; or
- (b) is a time within the employee's working hours at which, in accordance with arrangements agreed with or consent given by or on behalf of the employer, it is permissible for the employee to take part in those activities;

"working hours" () means, in relation to an employee, ~~at~~ any time when, in accordance with the employee's contract with the employer, the employee is required to be at work.

(4) Nothing in this section limits the liability to criminal prosecution under section 21B of the Employment Ordinance (Cap. 57) of an employer or person acting on behalf of an employer.

48. Offer of employment conditional on offeree not being —member of trade union

(1) It is unlawful for a person who, acting on his own or another's behalf, in the engagement of persons for employment includes in an offer of employment to any person a condition or requirement that the person to whom the offer is made ("the offeree") shall undertake--

- (a) if the offeree is a member or officer of such a trade union, that the offeree will relinquish membership of the union or any office in the union;
- (b) not to become a member of, or officer in, such a trade union; or
- (c) not to associate with other persons for the purpose of forming or applying for registration of a trade union in accordance with the provisions of the Trade Unions Ordinance (Cap. 332).

(2) Nothing in this section limits the liability to criminal prosecution under section 21C of the Employment Ordinance (Cap. 57) of an employer or person acting on behalf of an employer.

- (a) "advertisement" (), without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing, but which, by reason of the form or context in which it appears, conveys a message;
 - (b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means, including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.
 - (2) (a) A person who publishes or causes to be published an advertisement that indicates an intention to do an act that is unlawful under this Ordinance commits an offence and is liable to a fine of ~~\$30,000~~ at level 5 for a first offence and ~~\$100,000~~ at level 6 for a second offence.
 - (b) Where a court has convicted a person of an offence against paragraph (a), the court may, in addition to or in substitution for any fine imposed, order the person to take such steps as are appropriate in the circumstances to remedy the effects of the advertisement and ensure that the person does not publish such advertisements again.
- (3) Any person may bring a private prosecution under this section.
- (4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

PART VI

GENERAL EXCEPTIONS TO THE ORDINANCE

65. Charities

Nothing in this Ordinance affects--

- (a) a provision of a deed, will or other document, whether made before or after the commencement of this Ordinance, that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Ordinance; or
- (b) an act that is done in order to give effect to such a provision.

66. Voluntary bodies

Nothing in this Ordinance renders it unlawful for a voluntary body to discriminate against a person, on any one or more of the grounds of discrimination referred to in this Ordinance, in connection with--

- (a) the admission of persons as members of the body; or
- (b) the provision of benefits, facilities or services to members of the body.

Consequential Amendments

Hong Kong Bill of Rights Ordinance

81. Effect on pre-existing legislation

Section 3 of the Hong Kong Bill of Rights Ordinance (Cap. 383) is amended by adding--

"(3) For the avoidance of doubt, it is hereby declared to be the intention of the legislature that the provisions of this Ordinance, including the guarantees contained in the ~~Hong Kong~~ Bill of Rights, apply to all legislation, whether that legislation affects legal relations between the Government, public authorities and private persons, or whether it affects only relations between private persons."

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT
Lower Albert Road
Hong Kong.

Our Ref.: HW CR 2/5091/94

Your Ref.

Tel: 2810 3195
Fax: 2840 0467
2869 4376

21 June 1995

Ms Anna Lo
Bills Committee
Legislative Council Chamber
8 Jackson Road
Hong Kong.

Dear *Anna*

I promised at the Bills Committee meeting on 9 June to let Members have a note on what the MTRC has done to improve its service for people with a disability.

I attach for this purpose :-

- (a) a table of improvements and progress made in 1994 and proposed improvements in 1995 ;
- (b) extracts of two speeches made at the Governor's Summit on Transport Facilities for People with a Disability held on 3 May 1995 and
- (c) the remarks made by the Chairman of MTRC at the Summit Meeting, as well as the script (in English only) of the video presented by the MTRC.

Yours sincerely,

(Ms A E Shepherd)
for Secretary for Health and Welfare

Enc.

MTRC

Items of Improvement in 1994

Progress as at end 1994

For the Visually Impaired

Provision of tactile platform yellow line and self adhesive type rubber tactile guide path	Have been put on trial at Shek Kip Mei Station.
Provision of audible devices for escalators	Have been put on trial at both Shek Kip Mei and Lok Fu Stations.
Provision of tactile and braille information.	Samples received from overseas were assessed by concerned parties including the visually impaired groups.
Modification of litter bins, telephone booths and information units to avoid causing obstruction to people with a disability.	Design was finalised.

For the Mobility Handicapped

Provision of "Wheelchair aids" at stations.	Have been put on trial at Tsim Sha Tsui, Admiralty and Lok Fu stations.
Provision of entrance ramps at Tsuen Wan, Lok Fu, Lam Tin, Kwai Fong, Kwai Hing, Ngau Tau Kok and Quarry Bay stations	Design work is being finalized.
Provision of cash lifts between concourse and platform	Modification and trial have been carried out.

For the Audibly Impaired

Provision of "Mind the platform Gap" warning sign	Completed.
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Proposed improvements in 1995

Expected Date of Completion

For the Visually Impaired

Provision of tactile platform yellow line	From mid 1995 to late 1995.
Provision of tactile guide path	Full implementation from late 1995 to late 1996
Provision of audible devices for escalators	From late 1995 to late 1996
Provision of tactile and braille information	From late 1995 to late 1996
Modification of litter bins, telephone booths and information units to avoid causing obstruction to people with a disability.	From mid 1995 to early 1996.

For the Mobility Handicapped

Provision of "Wheelchair aids" at stations.	Implementation subject to trial results.
Provision of entrance ramps at Tsuen Wan, Lok Fu, Lam Tin, Kwai Fong, Kwai Hing, Ngau Tau Kok and Quarry Bay stations	From mid 1995 to late 1995.
Provision of cash lifts between concourse and platform	From late 1995 to late 1996.
Stairlift trial	From mid 1995 to late 1995.

For the Audibly Impaired

Installation of induction loop	Subject to study result
Provision of electronic information display	From 1995 to 1999

地下鐵路公司主席在一九九五年五月三日會上講辭全文

督憲閣下、各位嘉賓

在上一次討論為傷殘人士提供交通設施的高峯會議上，上任主席曾代表公司承諾在新建的路綫上為傷殘人士提供合適的設施。換言之，當正在興建中的機場鐵路啓用時，便會有特別設施以全面照顧傷殘人士的需要。

此外，在過去兩年，我們發展了一系列的構思，改善現有地鐵車站，以方便傷殘人士使用，並同時在運作上確保乘客安全。我們已將上述構思進行試驗，以為各種不同的傷殘的人士改善設施。在試驗期間更充份諮詢各傷殘人士團體，我們很高興得到他們的鼎力協助。

在過去一年，上述計劃進展良好。現在我將會播出一套短片，讓大家瞭解這方面的最新動向及本公司日後的各項計劃。

多謝各位。

現在請大家細心欣賞這套短片。

CHAIRMAN'S SPEECH AT GOVERNOR'S SUMMIT MEETING ON 3 MAY 1995

Your Excellency the Governor, Ladies and gentlemen

At the last forum on Transport Facilities for Disabled passengers, my predecessor gave you the MTRC's commitment to providing appropriate facilities on any new lines. That means the new Airport Railway which is being built, will be fully accessible for the disabled groups when it opens for public use.

On the other hand, we have also developed a number of ideas to improve the accessibility of the existing railway stations for disabled passengers during past two years, whilst at the same time ensuring the safe operations of the railway for all passengers. These have been put in trial in full consultation with the respective disabled groups with a view to improving facilities for different groups of disabled passengers.

Good progress has been made over the past 12 months and I would like to show you a video which will give you a flavour of the progress to date and our plans for the future.

Thank you.

Now, let us look at the video.

/a:summit

Remarks by Mr Kevin Hyde, Chairman of Kowloon-Canton Railway Corporation at Governor's Summit Meeting - Transport for People with a Disability on 3 May 1995

Ladies and Gentlemen.

The KCR and LRT serve more than a million people every day in Hongkong. It is our pledge to make our systems more easier to travel for passengers, especially for those with special needs.

It is the second year for the Corporation to take part in this conference and I am pleased to share with you in a moment in a video presentation, the new facilities included in the past year in the Heavy Rail and Light Rail systems in enhancing services to those whose mobility is impaired.

In Heavy Rail, audible signals at escalators have been installed on a trial basis to indicate which escalator is safe to step on to for the blind and the visually impaired.

Work is underway to install an audible train door opening indicator at all trains for the convenience of the visually impaired.

Additional entrance at platform level has been provided at Kowloon Tong, Sheung Shui stations and will be provided at Fanling Station.

In Light Rail, a programme has just been completed to install benches at 36 platforms for passengers in need. A bright-coloured grabpole has also been tried out on one of the vehicles. A digital announcer and an information display board have been introduced on a trial basis.

Our efforts in catering for the needs of the disabled cannot be achieved without the valuable comments from people like you who are actually using the service. Let me first introduce the video and then I am happy to have your comments on how we can do better after this video presentation.

HONG KONG SOCIETY FOR THE BLIND

Speech To Be Presented at
the Governor's Summit Meeting on
Transport Facilities for the Disabled
To Be Held on ~~3rd~~ May, 1995

by Fred Leung

Supervisor (CBPC)*

Adaptive Technology Coordinator (TASC)*

Governor, ladies and gentlemen :

I am honoured to be among you on this summit again. The entire community of Hong Kong by now is fully aware of the needs of the visually disabled in terms of public transportation and accessibility. I am much obliged to the Right Honourable, Mr. Patten, for your far-reaching initiative of convening what have become annual meetings since 1992, and it is for sure that the community as a whole is fully aware of the needs of the visually impaired in public transport and access. It is time for us to focus on action rather than words.

For the second year running, we are still happy to report that we are satisfied with the progress in improving access facilities, made by MTRC, followed by KCRC. Both of them have been conducting studies and field trials in collaboration with the target user groups. And for more than two years, we urge other operators to incorporate improved facilities, most of which not only just benefit the disabled minority, but also the majority public.

Issues of Concern :

- 1) Although the Government has been giving concession to disabled drivers, e.g., on license fees and parking privileges in restricted areas, vehicle owners who are disabled but cannot drive, such as the visually impaired, have not been able to take advantage of the policy due to administrative reasons. Transport Department had not followed this up since it was brought up in the last meeting.
- 2) The work on compiling and implementing design standards etc. on road and building access facilities for the visually impaired should be stepped up.

* CBPC - Centralized Braille Production Centre

* TASC - Technical and Advisory Services Centre

Speech of Mr LEUNG Sai-cheong in Summit Meeting on 3.5.95

Dear Mr Governor, ladies and gentlemen,

1993 and 1994 are harvest years for persons with disabilities in solving their mobility problems. Following the summit meetings chaired by the Governor, Mr Chris Patten, the public transport operators have adopted a more positive approach in meeting the special requirements of people with disability. Turning from the avoidance and rejection, Mass Transit Railways Corporation (MTRC) has enthusiastically modified their systems or carriages to facilitate the uses of this special group of users.

During the last two years, Rehabus has also improved its services for its users. Besides the introduction of Dail-A-Ride Service, Rehabus has also improved a few scheduled routes. Due to their limited carrying capacity, these improvements only brought marginal gain to the majority of people with disability in meeting their needs in public transport. At present, there are about 100 Rehabuses which serves about 400 users every day. These only constitute a very small percentage amongst persons who are wheelchair bound. Furthermore segregation of people with disabilities in the use of mainstream public transport is contrary to the Government's policy of integrating people with disabilities into the society.

However, the remarkable improvements in the rail services will be of limited use without corresponding changes in other mode of public transport. Wheelchair bound persons will not be able to use MTR, KCR or the LRT if they are denied from the use of the feeder services. Unlike the mass transit systems which massively carry passengers along the railway network, the franchised bus network can provide an intensive coverage for passengers from point to point. This is ideal in providing a cheap service for people with disabilities through the integration with the railway systems for movement away from the railway systems. The improvement of franchised bus services which is accessible to all is the only way in providing a realistic solution to the transport problem of people with disabilities.

To meet this prime objective, we strongly recommend that the government should pursue the following:

1. Franchised bus services should be integrated with the three railway systems to provide a coordinated transport system for all disabled persons;
2. All franchised buses routes should at least have one or more bus which is accessible by wheelchair bound users through the acquisition of new buses by phases; and
3. Standing Liaison Committee should be set up with representatives of self help groups for people with disabilities, franchised bus companies and Transport Department to oversee the planning and implementation of a wheelchair accessible bus service.

Script for the Video on Disabled Facilities
for the Government Summit on 3/5/95

The Corporation is committed to making all new lines and extensions "barrier free". The New Airport Railway will be fully accessible for disabled passengers. As for the existing railway system, we are doing the following for them:

Mobility handicapped

Ramps provide an ideal solution to allow wheelchair users to have direct access from street level to station concourses. They will be installed in 7 stations in 1995.

3 stair climbing machines which can carry wheelchairs up and down stairs, have been on trial at Tsim Sha Tsui, Admiralty and Lok Fu Stations.

Consideration is being given to extending this service to other stations.

At Prince Edward Station, a trial stairlift will be operational in 1995.

A new entrance to Tai Koo Station from City Plaza will open later in 1995 and this will incorporate specially designed passenger lifts.

Kwun Tong Station will be refurbished during 1996 and it is planned to install a passenger lift giving access to street level.

Kowloon Bay Station will be modified to provide a wheelchair accessible link between the station and podium level transport interchange via the Telford Centre Commercial Complex in 1996.

During the period 1995-1996, existing cash lifts in 17 stations will be converted for public use and this will give the elderly and disabled passengers a useful alternative to stairs linking concourse & platform.

Visually Impaired

A full scale trial of a tactile guide path has been carried out at Shek Kip Mei Station which is very similar to that widely used in Japan & Australia.

These paths will identify a safe and consistent route from street level, all the way to the platform.

The user groups have found the system very useful.

The tactile guide paths will be installed in all MTR Stations in 1995/1996.

Braille signage systems which provide station information such

as train direction, are being studied.

Audible signal devices have been installed at escalators in Shek Kip Mei and Lok Fu Station to make it easy for the visually impaired customers to identify their location and direction. During 1995/1996, these devices will be installed in all MTR stations.

Obstructions along passenger routes are being modified to make them detectable to the partially sighted and the blind. This work will be completed in 1995.

Hearing Impaired

For passengers who are deaf or suffer from some loss of hearing, the introduction of induction loops at critical areas will be installed to improve hearing aid reception.

Trials at Shek Kip Mei and Choi Hung Stations in collaboration with the user groups will be conducted in 1995.

Passenger Information Display units which give basic visual information on incidents will be installed at all underground station entrances in 1995.

Improved signage will benefit all passengers including disabled passengers and will be gradually introduced as design develops.

To conclude, MTR reiterates its committed to upgrade the overall infrastructure to give disabled passengers better opportunities for mobility.

End

29.4.95

Anna Wu
c/o 17/F & 18/F
Nine Queen's Road Central
Hong Kong
Tel: 2843 7353 Fax: 2845 2504



平等機會

Our Ref. G/AW/81E

22nd June 1995

The Hon Michael Sze, ISO, JP
Secretary for Civil Service
Civil Service Branch
10/F Central Government Offices
West Wing
Ice House Street
Hong Kong

BY FAX AND BY HAND

Dear

Re: Sex Discrimination Bill
Housing Allowance

I understand from members that you are concerned with the impact of a proposed amendment to the Sex Discrimination Bill. You have indicated to members that it would double the housing allowance bill.

Let me first point out that the proposal is to provide a one-year period for review extendible by another year. The government has accepted that marital status discrimination should be made unlawful. Any exclusion from the Bill is on the face of it discriminatory and therefore should be reviewed. I trust you would agree with this proposition.

The proposal has no financial implication. No doubt the government would not hesitate to raise any significant charging effect as a ground to veto the proposal if it had the financial effect you suggested.

I also wish to point out that the Bill does not make unlawful any difference in treatment that is reasonable. The government agrees with this interpretation. Therefore many of the problems perceived by government are really not problems at all and do not require exclusion.

The Hon Michael Sze, ISO, JP
22nd June 1995
Page 2

I would be happy to clarify any points to you. I have offered to brief different government departments from 1¹/₂ years ago. The Bills Committee has similarly invited attendance by all government departments concerned.

Yours sincerely,

Anna Wu

/pk
c.c. All Members of the Legislative Council

公務員事務司
布政司署
香港下亞厘畢道
中區政府合署西座



SECRETARY FOR THE CIVIL SERVICE
GOVERNMENT SECRETARIAT
CENTRAL GOVERNMENT OFFICES
WEST WING
LOWER ALBERT ROAD
HONG KONG

Fax No 2868 5069

Tel. No. 2810 2342

Ref.

23 June 1995

The Hon Anna Wu
c/o 17/F & 18/F
Nine queen's Road Central
Hong Kong

**Sex Discrimination Bill
Benefits for Civil Servants**

Thank you for your letter of 22 June 1995.

First of all, let me say that I am fully in support of this Bill : indeed I would venture to say that the civil service terms of appointment and career possibilities are amongst the fairest and most equal in Hong Kong. You only need to look at our line up of senior officials. But I am very concerned at your proposed Committee Stage Amendment regarding benefits for civil servants. If the existing practice of preventing double benefits and of granting different rates of allowances to single and married staff were to be abandoned, it would have major financial implications and would, I think be viewed with astonishment by the public, whose taxes fund our remuneration package.

To illustrate the case in point, the payment of Private Tenancy Allowance to civil servants is a good example. At the moment an officer on Master Pay Scale point 34 married with children receives \$23,560 per month, married without children \$21,200 per month, and a single officer \$18,840 per month. Your proposed amendment would have the following results. First because of the quashing of the prevention of double benefits, a married civil service couple (quite common) would each claim the allowance in their own

capacity. Second, only one rate could apply, irrespective of family circumstance. Which rate? If we chose the lowest rate, I would face severe morale problems. If we chose a high rate, the public would pay for the financial consequences

The same position would apply to other benefits such as education allowances and passages. Further we would no longer be able to give priority to the provision of departmental quarters for married junior officers in the disciplined services a critical element in maintaining their confidence and keeping them in the services. I cannot believe such results are in the interests of Hong Kong.

Our rationale for granting civil servants variable benefits and restricting double benefits according to marital status is that these benefits are financed under public funds; they should be provided according to individual needs, where eligible. I suggest it is not appropriate to pay a higher rate or grant the same benefit twice, purely to remove 'discrimination on ground of marital status'.

If we all agree that the different treatment for staff of different marital status is indeed reasonable and justifiable, then this is all the more reason specifically to provide an exclusion in the Bill. I cannot run an organisation as large as the civil service if my time and resources are constantly being diverted to defend, in the courts, matters which should be beyond doubt.

I very much hope that you will now understand why I do not believe removing the exemption is the right way to proceed.

(Michael C C SZE)
Secretary for the Civil Service

c.c. Members of Legislative Council

**Note to Members of the Bills Committee studying
the Equal Opportunities Bill, the Sex Discrimination Bill
and the Disability Discrimination Bill**

Possible amendments to the Disability Discrimination Bill
(Discussed with Health & Welfare Branch on 15 and 22 June 1995)

Part I — Preliminary

<u>REF. #</u>	<u>CLAUSE</u>	<u>STATUS</u>	<u>AMENDMENT PROPOSED</u>	<u>REMARKS</u>
1	1(2)	(SDB: endorsed by Bills Comm)	Amend to bring provisions of Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary for Health & Welfare.	Members have been concerned about the time required for the establishment of the EOC and issue of the Codes of Practice, delaying commencement of employment provisions. Proposed amendment sets an operational date.
2	new	(SDB: endorsed by Bills Comm)	New clause directing Ordinance to be interpreted to give effect to relevant international instruments and obligations.	One of the purposes of the Bill is to meet in part certain international standards or obligations, e.g. under the ICCPR or the UN Declaration on the Rights of Disabled Persons. The new clause directs the courts to have regard to this purpose, and to follow internationally-accepted interpretations of discrimination law to the extent the DDB itself allows. Similar provisions exist in the equal opportunity laws of other Commonwealth jurisdictions, for example in most such Australian laws.

Part II — Discrimination (none)

3	7	(SDB: accepted by Admin)	Amend to extend definition of victimisation to cover circumstances where a person is victimised because of proceedings, etc. taken out by another person under the DDB. [cf. EqT 3.9]*	Accepted by Admin for SDB.
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* EqT = "Equal Treatment for Men & Women: Strengthening the Acts." Formal Proposals of the UK EOC, 1988.

Part III — Employment Field

4	new (SDB: accepted by Admin)	New clause prohibiting discrimination against commission agents	Accepted by Admin for SDB
5	11(2) (SDB: accepted by Admin)	Amend to expressly prohibit discrimination in terms and conditions of employment [cf. EqT 2 20]	Accepted by Admin for SDB
6	11(3), (5), (7) (SDB: endorsed by Bills Comm)	Amend exemption for small employers to expire one year after enactment of Ordinance (and delete Governor's power to vary year of expiry).	Admin CSAs propose 3 years for SDB. Proposed amendment provides grace period of 1 year that can be extended annually by Legco to a maximum of 3 years.
7	12(3)(b)	Amend GOQ relating to employer-provided premises to limit it to cases where modification of the premises would impose unjustifiable hardship	To bring GOQ relating to premises in line with other provisions relating to premises.
8	12(3)(b)	Amend GOQ relating to employer-provided premises to give the applicant the right to make necessary modifications at the applicant's own expense.	To bring GOQ relating to premises in line with other provisions relating to premises. (Cf. DDB 27(2)(c))
9	12(3)(c)	Delete GOQ based on the essential character of the establishment.	Appears to duplicate effect of exception recognising inherent requirements of the job.
10	12(3)(d)	Delete GOQ for personal services best provided by person without disability.	Purpose of GOQ is unclear.
11	12(3)(e), 54-5 & Sch. 3 (SDB: endorsed by Bills Comm)	Delete GOQ and other exceptions in relation to Sched. 3 protective regulations to expire in one year, subject to extension by Legco resolution.	Protective regulation scheduled in SDB considered out-of-date and either unfounded, or best extended to cover both sexes Need more information about function of Sched. 3 in DDB.
12	12(3)(f)	Delete GOQ recognising prejudice against the disabled outside Hong Kong.	Purpose of GOQ in relation to disability is unclear.

13 20 (SDB: Admin) To make harassment of an employer by an employee unlawful. Accepted by Admin for SDB.

Part IV — Other fields

14 new (SDB: Bills Comm) New clause prohibiting discrimination in administration of laws and government programmes. [cf. EqT 3.23] Accepted by Admin for SDB. Admin's proposed CSAs incorporate new and unnecessary exceptions. The Bills Committee endorsed the wording in EOB.

15 29(3)-(4) Delete exception for voluntary bodies' discrimination in the provision of services to the public. Voluntary bodies' service to the public should not be exempt. Voluntary bodies are already exempt in relation to their own membership (DDB 29(2)), and other legitimate differential treatment is adequately covered by exceptions for special measures and for charitable benefits (DDB 47-8)

16 30(1) Delete exception for facilities for special care in hospitals. Purpose of exception is unclear.

17 34 (SDB: Admin) Amend prohibition of harassment to include harassment of students by students, and of educational staff by students. Accepted by Admin for SDB.

Part V — Other unlawful acts

18 40 & 76 (SDB: Bills Comm) Amend to make unlawfully discriminatory advertisements subject to a civil penalty (of \$10,000 for a first contravention and \$30,000 for additional contraventions). DDB cl. 40 makes discriminatory advertisements unlawful, but no penalty is provided for. The EOC can only apply to the court for an injunction to restrain a person from publishing more unlawful advertisements (cl. 76(4)). On application by the EOC, the court should also be able to impose a penalty as a deterrent. The proposed civil penalty is similar to that presently imposed by the Insider Dealing Tribunal under s. 23(1)(c) of the Securities (Insider Dealing) Ordinance (Cap. 395).

Part VI — General exceptions

19	56	(SDB endorsed by Bills Comm)	Delete exemption for acts done to safeguard the security of Hong Kong	Disagree with Admin that, unless excepted, any differential treatment will be regarded as discrimination. Under SDB cl 9/DDB cl 6, differential treatment will not be unlawful if justified by materially different circumstances. Further exemptions are therefore unnecessary
20	58 & Sch 5	(SDB endorsed by Bills Comm)	Amend further exceptions in Sched. 5 to expire in one year, subject to extension by Legco resolution.	Same remarks as for DDB.cl. 56, at ref no. 19 above

Part VII — Equal Opportunities Commission

21	60(1)	(SDB endorsed by Bills Comm)	New subclause giving EOC function of promoting observation of relevant international instruments and obligations as they relate to disability discrimination.	Despite apparent breadth, the EOC's functions are limited to discrimination as defined in the DDB. In its roles other than law-enforcement (such as research, promotion, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad, international non-discrimination standards.
22	60(1)	(SDB endorsed by Bills Comm)	New subclause giving EOC function of examining any proposed legislation that it considers may affect equality of opportunity in relation to disability and reporting results to legislation's sponsor.	The proposed subclause gives the EOC an express, statutory role in respect of proposed legislation. A similar role is conferred on the Privacy Commissioner under cl. 8(1)(d) of the Personal Data (Privacy) Bill
23	65(4)	(SDB endorsed by Bills Comm)	Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions, irrespective of whether it believes unlawful acts have occurred. [Cf. EqT 4.8 & 4.12]	The proposed amendment is in line with key recommendations of the UK EOC. The EOC is unlikely to investigate a person unless it believes the person has discriminated. Cl. 63(4), however, requires the EOC to incorporate that belief expressly in the investigation's terms of reference. This undesirably restricts investigations: if the investigation uncovers discrimination outside the EOC's initial belief, the EOC must redraft the terms of reference and restart the investigation. This has caused unreasonable delay to the UK EOC's investigations.

Part VIII — Enforcement

24	new	(SDB: accepted by Admin)	New clause providing that, in proceedings under Ordinance, District Court not bound by rules of evidence and may inform self as sees fit.	Accepted by Admin for SDB.
25	new	(SDB: accepted by Admin)	New clause providing that, in proceedings under Ordinance, each party shall pay own costs unless court finds exceptional circumstances justify otherwise.	Accepted by Admin for SDB.
26	70(3)-(4)	(SDB: endorsed by Bills Comm)	Amend to empower a court in proceedings under the Ordinance to order any remedy the court considers just and appropriate, including reinstatement.	Admin initially accepted in principle, then proposed to consider in the course of the general review of labour relations presently being conducted. Since the Admin has accepted this in principle, the Bill should be amended accordingly without delay.
27	70(5)	(SDB: endorsed by Bills Comm)	Delete bar against damage awards for indirect discrimination in cases of unintentional discrimination.	Similar provisions in UK law have been repealed after being found inconsistent with European human rights standards. It is preferable to leave the court flexibility to take account of intentions by varying the size of awards.
28	71(2)	(SDB: accepted by Admin)	Amend to authorise enforcement notices to include, in addition to a requirement that a person cease an act of unlawful discrimination, a requirement that the person cease any specific practice(s) that led to the unlawful discrimination. [cf. EqT 4.16]	Accepted by Admin for SDB.
29	69(5)	(SDB: accepted by Admin)	Delete. (EOC must give prior notice to persons against whom enforcement notice to be issued, and hear and take account of such persons' representations opposing issuance of enforcement notice.) [cf. EqT 4.13]	Accepted by Admin for SDB.

30	(SDB: endorsed by Bills Comm)	New clause empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance [cf. EqT 4.17]	Accepted by Admin for SDB Admin CSAs empower SHIA to provide by subsidiary legislation It will be more proper to provide this power in the principal Ordinance
31	(SDB: endorsed by Bills Comm)	New clause empowering EOC to bring proceedings seeking a declaration that legislation has been repealed by reason of inconsistency with the Bill of Rights Ordinance as it relates to disability discrimination.	DDB (unlike EOB) has no clause repealing inconsistent legislation EOC is therefore unable to seek judicial declarations repealing discriminatory laws. This function is restored by the proposed amendment
32	(SDB: endorsed by Bills Comm)	New clause empowering EOC to intervene by leave of court in any proceedings under the Ordinance.	Where an individual is litigating an important test case under the DDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions exist in Australian equal opportunity laws.
33	(SDB: endorsed by Bills Comm)	Amend to enable EOC to conciliate complaints of acts inconsistent with relevant international instruments and obligations as they relate to disability discrimination.	The EOC should be able to provide a non-binding conciliation service for complaints concerning acts covered by international non-discrimination standards, but not actually unlawful under the DDB
34	(SDB: endorsed by Bills Comm)	Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings.	Where the EOC has already provided assistance to a person litigating an important case under the DDB, the EOC should be able to pursue the case in its own name if the person withdraws.
35	(SDB: accepted by Admin)	Amend to permit proceedings to be brought under the Ordinance for a period of 2 years from the act complained of.	Accepted by Admin for SDB.
36	(SDB: endorsed by Bills Comm)	Amend period within which proceedings under the Ordinance may be brought, to provide that time in conciliation will not be taken into account.	DDB should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant in conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation fails.

Accepted by Admin for SDB.

New subclause to provide an additional period within which proceedings under the Ordinance may be brought, of 2 years following publication of a formal investigation report that finds unlawful discrimination, for persons who claim to have suffered from the reported discrimination
[Cf EqT 4 15]

(SDB accepted by Admin)

37 80

Part IX — Miscellaneous

Consequently amend section 5AA of the Legal Aid Ordinance (Cap 91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the Ordinance (as for proceedings involving claims under the Bill of Rights).

(SDB endorsed by Bills Comm)

38 82(2) & Sch 7

The DDB restores important, inter-citizen rights deleted from the original Bill of Rights Bill In principle, therefore, provision should be made for the DDB on the same basis as for the BORO

Office of Anna Wu
22 June 1995

(b) Equal Opportunities Bill

Ms Anna WU reported that the President had ruled that three bills on the subject of equal opportunities would not have a charging effect. If arrangement could be made for an extraordinary gazettal of the bills early next week, they would be introduced into LegCo on 28.6.95. Otherwise, the bills would be gazetted on 30.6.95 and introduced into LegCo on 5.7.95. She hoped that the resumption of Second Reading debates on the bills could take place at the sitting to be held on 19.7.95.

The meeting was adjourned at 3:25 p.m.

Legislative Council Secretariat
28 July 1995

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三十一樓



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本署編號 OUR REF. : HAB/CR/1/2/21 Pt. 28
來函編號 YOUR REF : (4) in LM to L/C 467
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23 June 1995

Clerk to the Legislative Council
(Attn: Miss Betty Ma)
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Miss Ma,

Sex Discrimination Bill

I refer to your fax letter dated 21 June 1995 and the proposed amendments to the captioned Bill.

2. The Administration has carried out an assessment of the financial implications of the proposed amendments to the Bill and has taken legal advice on the matter.

3. Clause XXIV(2) of the Royal Instructions specifies the conditions whereby an Ordinance, vote, resolution, or question, the object or effect of which may be to

dispose of or charge any part of Government revenue may be proposed. In the light of this clause, the Administration's view is that the following amendments' effect will be to dispose of or charge the revenue or other public moneys of Hong Kong and thus require, in their present form, the Chief Secretary's certificate that the Governor's recommendation will be signified on second reading.

4. The proposed amendment to clause 56(1) of the Bill extends the functions of the Equal Opportunities Commission in two respects. Firstly, so as to "promote an understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments", and secondly, to scrutinise and report on legislative proposals which it considers may affect equality of opportunity between men and women. Our legal advice is that an amendment which enlarges the functions of the Commission to include tasks not provided for in the Bill as introduced does have a charging effect in that additional resources would be required which are not contemplated by the original proposal, at any rate if the new function involves a substantial, and not merely trivial, accretion to the Commission's overall responsibilities. It is our opinion, based on legal advice, that the proposed new functions are sufficiently substantial to make the amendment one having a charging effect. We estimate that the additional annual cost incurred as conferred by this amendment would be around \$3.5 million.

5. Proposed amendments to clauses 68A and 68B empower the Equal Opportunities Commission to bring proceedings in its own name and to intervene in proceedings. These new clauses also effectively add to the functions of the Equal Opportunities Commission, and, as such, are essentially like the amendment to clause 56. Our legal advice is that as implementation will require the provision of additional resources, these amendments do have a charging effect. It is estimated that the proposed amendments would require an additional amount of around \$2.3 million annually.

6. The proposed amendment to clause 76(1) by which a person would be enabled to lodge with the Equal Opportunities Commission a complaint in writing alleging that another person has done an act which is inconsistent with a "relevant international instrument or obligation" is linked to the introduction of a new function of the Commission as paragraph (ca) of clause 56(1). These two amendments should be considered together. The clause 76 amendment demonstrates that the new function will require the deployment of additional resources by empowering the Commission to conduct investigations and conciliations in circumstances which go beyond those specified by the original Bill. Our legal advice is therefore that this amendment, like that to clause 56(1), has a charging effect. We estimate that this amendment would incur an additional annual cost of around \$1.6 million.

7. Among the proposed amendments, we also note that an amendment has been proposed to the Sex Discrimination Bill to the effect of amending section 5AA of the Legal Aid Ordinance (Cap. 91) so as to allow the Director of Legal Aid to waive the means test for proceedings involving claims of unlawful discrimination or sexual harassment under the Sex Discrimination Ordinance (when enacted).

8. To ensure that the public funds are well spent, applicants are subject to both a means test and a merits test. Merits tests are normally conducted only after an applicant has passed the means test. Means testing for the standard legal aid scheme is based on the financial capacity approach. Under this approach, an applicant whose financial capacity (the aggregate of disposable annual income and disposable capital) not exceeding the eligibility limit will be eligible for legal aid, as specified in section 5(1) of the Legal Aid Ordinance (Cap. 91). If not, the application for legal aid will be refused (and normally the merits test will not be

conducted) and the applicant may have to rely on his or her own means to pursue litigation.

9 The newly enacted Legal Aid (Amendment) Bill 1995 includes a new section 5AA which gives the Director of Legal Aid the discretion to waive the financial eligibility limit in a meritorious Bill of Rights case. The Director of Legal Aid has no discretion to waive the financial eligibility limit in any other civil case.

10. If the Director of Legal Aid is given the discretion to waive the financial eligibility limit in a civil case involving a claim of unlawful discrimination or sexual harassment under the Sex Discrimination Ordinance (when enacted), the Director will have to proceed with the merits test even if the applicant fails the means test. Hence, the Legal Aid Department will need to be given additional resources for conducting the merits test which would otherwise have not been conducted. Furthermore, the Legal Aid Department will find it necessary to grant legal aid to almost all the applicants who passed the merits test, as the circumstances in which she could properly exercise her discretion to refuse a waiver of the means test would be very limited. In other words, certain civil proceedings involving claims of unlawful discrimination or sexual harassment arising from the Sex Discrimination Ordinance (when enacted) for which legal aid would not be available under section 5(1) of Cap. 91 because of the operation of the means test would then be eligible for legal aid.

11. Because the virtually certain consequence of conferring a discretion to waive the means test in respect of a certain category of civil proceedings for which legal aid is already available, but only available as the law now stands if both the means test and the merits test are satisfied, is that the cost to the Government of funding legal aid will significantly increase, the Legislative Council will inevitably be called upon to approve additional provision if the Director of Legal Aid is to

discharge her statutory duties. As additional funds would have to be voted, then it follows in our view that a disposal of the revenue is bound to occur. The additional funds required, as estimated by the Director of Legal Aid, are in the region of \$12.5 million a year.

12. I would be most grateful if you would convey our assessments to the President. Please let me know his decision on the amendments.

Yours sincerely,

(Mrs Stella Hung)
for Secretary for Home Affairs

ANNA

ADAM

23.6.95

- to my discussion w. Adam

A couple of further comments' based on the scanty material I have at home:

1) UK EOC looking at

- international conventions
- proposed legislation

} ∴ just specifying in detail a power that already exists.

UK EOC ~~has~~ expressed its views on European Commission's proposal for a directive on parental leave (submissions to UK govt & discussion in EOC's published reports) : ^{Source} 10th Annual Report, pp. 9-10

UK EOC has regularly commented on/published reports on govt consultation papers/White papers, including those which propose legislation: see 10th Annual Report, pp 14-19 for examples.

UK EOC has expressed its views to government (+ in its reports) on inconsistency of statutory provisions (eg immigration rules) with UK obligations under the European Convention on Human Rights: 10th Annual Report, p 35

I am almost certain that the EOC prepared its own comments on UK govt's first report under CEDAW.]

② Intervention

I think that we can make a respectable argument (given the time STA has allowed us) to the effect that, in the absence of an explicit power to intervene, the EOC would have the power to apply to appear as an *amicus curiae* in proceedings where equality issues arise. This would arise from its (implied/expres) power to do those things necessary or convenient to the performance of its other functions (which intervention clearly would be in appropriate cases). It would be up to the court to decide whether, and on what terms, to hear the Commission.

Accordingly, by including an explicit power, nothing substantive is added to Commission's existing power. (EOC in UK has sought to launch judicial review proceedings - unsuccessful because of lack of standing in a particular case, not because of lack of power - Birmingham City Council case, I think)

③ CONCILIATION (- this is harder)

Argument: within ^{present} power of Com'n to undertake to receive + conciliate complaints re discriminatory (though lawful) acts. Amendment makes this power explicit + Note that Com'n still has discretion to discontinue at any time.

Andrew

24th June, 1995

Mr. K. S. Law
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mr. Law,

**Charging effect of proposed amendments
to the Sex Discrimination Bill**

I refer to Mrs. Stella Hung's letter to you dated 23rd June, 1995.

2. Mrs. Hung argues for the Secretary of Home Affairs that several amendments to the Sex Discrimination Bill proposed by the Bills Committee have a charging effect for purposes of Royal Instructions Clause XXIV(2). I wish to disagree with Mrs. Hung's conclusions in the following respects.

General remarks

3. The Equal Opportunities Commission established by the Bill possesses a very wide jurisdiction, comprising sex, marital status and pregnancy discrimination, defined broadly and in relation to nearly all areas of social activity. Within this jurisdiction it is empowered to carry out broad research, educational and investigative activities, as well as certain enforcement functions with respect to acts made unlawful by the Bill.

4. It would be unrealistic to expect the Commission simultaneously to exercise all relevant powers with respect to every aspect of each of its functions. The Commission is an independent authority, and it will be essential for the governing Commissioners to define from time to time a strategic direction, which will determine the allocation for the time being of the Commission's resources across its various functions and the mix of powers it actually exercises. Experience with similar commissions in Australia and elsewhere has shown that wide variations exist over time in such strategies, with resources sometimes heavily concentrated in a few, particular activities and at other times more evenly dispersed.

5. In these circumstances, the addition of new, related functions and powers cannot be said to have a charging effect so long as the Commission retains full.

discretionary control over the extent to which they will be carried out or exercised at any given time.

6. The Commission's independence in this respect, with which the Administration has undertaken not to interfere, also raises questions about the Administration's ability to forecast cost implications for individual functions and discretionary powers proposed for the Commission.

New clause 56(1)(ca)

7. Clause 56(1)(ca) widens the functions of the Equal Opportunities Commission to include the promotion of international obligations and instruments (specified in amendment (a) to cl. 2) which relate to the Bill's subject matter, sex, marital status and pregnancy discrimination.

8. The cl. 56(1)(ca) function is closely congruent with the Commission's existing functions. The Bill is intended in part to fulfill many of the obligations addressed by cl. 56(1)(ca), such as the Convention on the Elimination of All Forms of Discrimination Against Women. The Administration has consistently maintained to the Bills Committee that the Commission's existing functions, particularly their reference to "promotion of equality of opportunity between men and women" (cl. 56(1)(b)), should be widely construed, and that the proposed additional reference to related international obligations, etc. is unnecessary because it adds nothing new to the Commission's jurisdiction. The UK Equal Opportunities Commission, on which the Bill's Commission is closely modelled, has indeed made frequent reference to and comments on the UK's international obligations in relevant respects. The main purpose of bringing such obligations, etc. expressly into the Commission's functions is to clarify their relevance for avoidance of doubt and thereby to avoid unnecessary legalism if the Commission chooses to address such matters when they are at the periphery of the Bill's own definition of "discrimination" (at cll. 4, 5, 6, 7 and 8).

9. The proposed clause imposes no duty or obligation of any kind on the Commission. The Commission's functions are essentially its terms of reference, and can only be carried out by exercise of its statutory powers (except that some powers are further limited by their own terms to specified matters, e.g. cl. 7 legal proceedings in respect of specified unlawful acts). Whether, how and in respect of which functions the Commission chooses to exercise its powers at any particular time remains wholly within the Commission's own, strategic discretion.

New clause 56(1)(ea)

10. Clause 56(1)(ea) gives the Commission an ancillary function of examining legislative proposals in light of the Commission's general concerns and reporting the results to Legco and to the proposals' sponsors. Such examinations and

reports are entirely discretionary, the clause imposes no new duty or obligation on the Commission.

11. The clause creates no new power. As the Administration has pointed out to the Bills Committee, the power to make such examinations and reports already exists under its general research and education power (cl. 57). The UK Commission has occasionally commented on proposed legislation in its annual reports. Clause 56(1)(ea) merely elevates an implied power to an express Commission function, in order to enhance the status and authority of such reports of this kind as the Commission may choose, at its unfettered discretion, to make.

New clauses 68A and 68B

12. New clauses 68A and 68B empower the Commission in its own name to bring (or intervene in) legal proceedings of types that are relevant to the Bill and which may already be brought by ordinary claimants.

13. These clauses provide the Commission with more flexible and effective enforcement mechanisms, without imposing any new duties or responsibilities. The clauses contain no directions to the Commission or limitations on the Commission's discretion in exercising (or not exercising) the litigation powers conferred on it. Indeed, deciding which claims that private claimants can bring should rather be brought (or participated in) by the Commission in its own name is essentially a strategic determination, and could not be undertaken mechanically.

14. The Commission can achieve many of the same strategic objectives without these powers, but at greater expense. The Commission can, for example, launch a formal investigation into suspected unlawful acts (under cl. 63(4)), concluding if necessary with litigation to enforce its "enforcement notices" (see cll. 70, 73). This will often be a more costly and time-consuming method than litigating directly under the proposed clause 68A(1), however, e.g. where the illegality of the act is so clear that an investigation is unnecessary, or where litigation in the end is predictable and is merely delayed by a formal investigation. In the UK, the House of Lords has also concluded that it is a proper function of the UK Commission to bring judicial review proceedings in the public interest.

15. It is worth noting that the most important aspect of the proposed powers has been accepted by the Administration. The Administration's proposed new clause 80A provides for the Secretary of Home Affairs to make subsidiary regulations empowering the Commission to bring the same claims that could be brought by it under the Bills Committee's proposed clause 68A(1).

Amendment to clause 76(1)

16. The existing clause 76(1) allows claims of acts that are unlawful under the Bill to be brought to the Commission for non-binding conciliation. The proposed amendment makes claims of acts that are inconsistent with relevant international obligations, etc. similarly subject to conciliation.

17. The Administration's assertions that the Bill's own definition of discrimination is effectively as broad as anything defined in relation to international obligations, etc. suggests that this amendment adds little to the Commission's existing conciliation duties. Where it does, the Commission is already empowered to conciliate such claims in pursuit of its promotional and educational jurisdiction if it chooses to do so.

18. I remark in passing that this amendment should not, as suggested in para. 6 of Mrs. Hung's letter, be considered together with the proposed clause 56(1)(ca). The type of complaints which may be brought to the Commission for conciliation is determined by cl. 76(1) itself, and cannot be expanded merely by widening the Commission's general functions (as cl. 56(1)(ca) does). While the two amendments are related as a matter of policy, they are unrelated as a matter of law.

Consequential amendment to sec. 5AA of the Legal Aid Ordinance

19. The proposed amendment authorises the Director of Legal Aid to waive the sec. 5(1) means test for meritorious cases involving claims of discrimination under the Bill in the same manner as is proposed by the Administration (in the Legal Aid (Amendment) Bill 1995) for cases involving claims under the Bill of Rights. The proposed amendment retains the Director's existing discretion over whether or not finally to waive the means test.

20. Thank you for your assistance.

Yours sincerely,

Anna Wu

cc. Legal Adviser

布政司署
政務科
香港灣仔
軒尼詩道一百二十號
管轄中心
三十一樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BRANCH
21ST FLOOR, SOUTHORN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
HONG KONG

本署傳真 OUR REF. HAB/CR/1/2/21 Pt. 28
來電傳真 YOUR REF.
電話 TEL NO 2835 1373
英文傳真 FAXLINE 2834 6176

26 June 1995

DOCUMENT

Mr. K.S. Law,
Deputy Secretary General,
Room 111,
1/F.,
Legislative Council,
8 Jackson Road,
Hong Kong

Dear K.S.,

Sex Discrimination Bill

I refer to the telephone conversation between you and Mrs. Stella Hung this morning.

I enclose a detailed breakdown on the financial changes set out in Mrs. Hung's letter of 23.6.95.

The objects of the Sex Discrimination Bill are set out in its long title and can be gathered from the actual nature and content of its provisions in the form which they were introduced. The intent is to render unlawful certain kinds of sex discrimination, discrimination on the grounds of marital status or pregnancy and sexual harassment as such discrimination and harassment are defined in the Bill. The Bill also provides for the establishment of the EOC. It is NOT our legislative intent that the Sex Discrimination Ordinance should give

effect to international obligations such as ICESCR or CEDAW; nor to link the functions of the EOC to these international conventions and instruments.

If you require any further information, please give me a call.

With regards,

Yours sincerely,

(Miss Susie Ho)
for Secretary for Home Affairs

Encl.

Clause 68A 68B Power of Commission to bring proceedings in its own name (including proceedings inconsistent with BoRO, and extend the definition of discrimination to that within the meaning of ICCPR)

<u>No. of Staff</u>	<u>Ranking (tentative)</u>	<u>Estimated Cost</u>
1	Senior Crown Counsel equivalent	\$1,333,800
1	Crown Counsel equivalent	\$863,280
1	Typist	\$156,264
Total Cost		\$2,353,344

Clause 76(1) Extend the functions of EOC by requiring it to investigate and conciliate disputes pertaining to international instruments.

<u>No. of Staff</u>	<u>Ranking (tentative)</u>	<u>Estimated Cost</u>
2	SEO equivalent	\$1,601,256

Clause 56 Addition of New Function to the
Equal Opportunities Commission

<u>No. of Staff</u>	<u>Ranking (tentative)</u> <u>Subject to EOC</u> <u>Endorsement</u>	<u>Estimated Cost</u>
1	SEO equivalent	\$800,628
1	EO II equivalent	\$286,440
1	Senior Crown Counsel equivalent	\$1,133,800
1	COII equivalent	\$216,816
1	Typist	\$156,264
Publicity funds		\$1 m
Total		\$3,793,948

say \$3.5 million

Anna Wu
c/o 17/F & 18/F
Nine Queen's Road Central
Hong Kong
Tel: 2843 7353 Fax: 2845 2504



Our Ref. G/AW/81H

26th June 1995

Mr K.S. Law
Deputy Secretary General
Legislative Council
8 Jackson Road
Hong Kong

Dear Mr Law,

Re: Charging effect of
proposed amendments to
the Sex Discrimination Bill

I should be grateful if you would pass a copy of my note to Mr Swaine. The documents referred to last Saturday are annexed.

Thank you very much.

Yours sincerely,

Anna Wu

/pk
Encl.

Note to Mr. K.S. Law, Clerk to the Legislative Council

Re: Charging effect of proposed amendments to the Sex Discrimination Bill

I refer to our discussion last Saturday and set out below the additional points to supplement the letter of 24 June 1995.

- New Clauses 56(1)(ca) and (56)(1)(ea)

While Clause 56(1) begins with "The Commission shall..." which is in the nature of a directive, the proposed amendments do not constitute mandatory new functions as such. The work of promoting awareness of international norms, as to 'how' and 'what,' is really left to the Commission to decide. The work of legislative examination and reporting is further couched in terms of a discretion, that is, what "the Commission considers may..."

As Clause 56 forms the cornerstone of the Commission's work, it makes good sense for the word "shall" to be used because the Commission is being directed and charged by the law to undertake those responsibilities and cannot 'ignore' them.

Clause 56(1)(b) refers to the function of promoting equality of opportunity generally. This function, unlike Clause 56(1)(a), is not confined by the scope of the Ordinance. The government has been at pains to emphasise that this should be widely construed. Indeed it is specifically set out in the notes of 3 June 1995 to Dr. Leong, convenor of the Bills Committee (Annex A) that the new clauses are within the scope of Clause 56(1)(b).

The government has also relied on the research and education roles of the Commission, Clause 57 as well as the Commission's incidental powers under Clause 56(2), to justify its assertion that the powers already exist.

The UK Equal Opportunities Commission has in the past expressed views over the European Commission's proposals for a directive on parental leave, commented on and published reports on government consultation papers and white papers including those which propose legislation and expressed views to government on inconsistency of statutory provisions. The Tenth Annual Report provides examples.

- New Clauses 68A and 68B

These proposals empower the Commission in its own name to bring (or intervene in) legal proceedings. The bill already provides powers allowing the Commission to bring proceedings in its own name in specified circumstances. For example, Clause 73 empowers the Commission to bring proceedings to restrain actions where there is persistent discrimination or sexual harassment. Please also see Clause 74.

The Commission is also empowered to provide legal assistance to court litigants. Clause 77(3) covers advice, legal representation and any other form of assistance considered appropriate and Clause 77(4) covers recovery of cost by the Commission.

In fact the most important aspect of the power to bring proceedings has been agreed to by the government. This is reflected by its own amendment 80A. The agreement of government is contained in their notes of 25 May 1995 to the Bills Committee (Annex B). The government indicated that subsidiary legislation would be required to deal with technical matters and hence the power given to the Secretary for Home Affairs to make regulations. The Bills Committee's request for the principles to be spelt out and its objection to the drafting approach were known to the government.

In the House of Lords case, Equal Opportunities Commission and another v Secretary of State for Employment, [1994] 1 All ER 910 (Annex C), it was decided that the UK Commission had locus standi to bring judicial review proceedings in its own name pursuant to the identical provisions in UK (see pages 4 and 11 of the report as marked up) -

'(a) to work towards the elimination of discrimination; (b) to promote equality of opportunity between men and women generally...'

The case reflects the important principle that even without the proposed amendments and the express powers, the Commission could bring proceedings in its own name and to join in proceedings seeking declaratory order relating to breach of Community law and judicial review of the Secretary of State's refusal to introduce amending legislation.

Further in the absence of an explicit power to intervene, the Commission would have the power to apply to appear as an amicus curiae in proceedings where equality issues arose. This would arise from its powers to promote equality as set out in Clause 56 (1) and its implied powers to do those things necessary or convenient to the performance of its functions under Clause 56(2). It would be up to the court to decide whether, and on what terms, to hear the Commission. An explicit power to intervene improves the Commission's procedural position in such cases.

- Amendment to Clause 76(1)

Apart from the arguments already made in my letter of 24 June 1995, I wish to add that it is within the present power of the Commission to receive and conciliate complaints relating to discriminatory though lawful acts. The amendment makes this power explicit. Please note also that the commission still has the discretion to discontinue the conciliation process at any time.

On these three groups of amendments, I would summarise as follows:

- The amendments sought fall within the core functions of the Commission and are within the explicit or implied functions and powers of the Commission. There is no change in terms of objective or scope of the Bill. Indeed government amendment 80A has accepted one of the main proposals from the Bills Committee.

- The amendments sought are in substance enabling provisions for the Commission.

- The need to amend stems from the need to give clarity to the standing and powers of the Commission, to avoid unnecessary litigation over its jurisdiction and to generally make it more effective.

- There is no charging effect. If there is, this would be insignificant. The government has resisted providing details of the budget and has been at pains to emphasise that the Commission is independent and should be left to decide how it wishes to use its money. The figures provided by government are not supported by any explanation. How, for instance, can the government estimate what the Commission is going to review or for that matter how many bills will be forthcoming in the area of equal opportunities? If the government does have a legislative time table, that certainly should be shared. It is impossible to argue against a forever moving and speculative target.

- While I appreciate I am flogging a dead horse, the government's position is stated to be based on legal advice. I would ask for that advice to be made known. There is no need to keep this advice confidential. We are debating over whether an amendment has charging effect and should be assisted by the disclosure of this document.

Finally, I would say that given the time the government has known about these amendments, I do not understand why it should choose the last moment to raise its objections. It makes it impossible for the Bills Committee to recast the amendments to possibly avoid some of the problems or to seek the Governor's consent on matters such as the relaxation of legal aid.

Regards,

Anna Wu.

- 18 C56 New subclause giving EOC function of promoting observation of relevant international obligations (including ICCPR, ICESCR and CEDAW) as they relate to equality of opportunity irrespective of sex, marital status or pregnancy.
- The EOC is already vested with the responsibility to work towards the elimination of discrimination and to promote equality of opportunity between men and women generally. No need for a reiteration of this function.
- 19 C56 (1) A new subclause giving the EOC the power to examine any proposed legislation that it considers may affect equality of opportunity and reporting results to legislation's sponsor.
- The EOC already has a general function to promote equality of opportunity between men and women. In this connection, it could also examine proposed legislation. We do not see the need to provide explicit provisions in this regard.

Part VII - Equal Opportunities Commission

- | | |
|--|---|
| 16 EOC should be empowered to bring proceedings in its own name. | Agreed in principle. In this regard, provisions will be made to empower SHA to make regulations, subject to LegCo's approval. |
|--|---|

Equal Opportunities Commission and another v Secretary of
State for Employment

HOUSE OF LORDS

[1994] 1 All ER 910, [1994] 2 WLR 176, 92 LGR 360, [1994]
ICR 317, [1994] IRLR 176

HEARING-DATES: 25, 26, 27, 28 October, 1 November 1993, 3
March 1994

3 March 1994

CATCHWORDS:

Employment - Discrimination against a woman - Unfair dismissal and redundancy payments - Part-time workers - Qualifying thresholds for unfair dismissal and redundancy different for part-time and full-time workers - Part-time workers required to be in continuous employment for five years to qualify for unfair dismissal and redundancy payments - Full-time workers required to be in continuous employment for only two years to qualify - 90% of part-time workers women - Whether qualifying thresholds for unfair dismissal and redundancy discriminatory against women - EEC Treaty, art 119

Judicial review - Application for judicial review - Locus standi of applicant - Alternative remedy available - Discrimination against women in field of employment - Part-time worker made redundant after working for employer for less

than five years - Part-time worker alleging that United Kingdom redundancy legislation discriminatory against women - Part-time worker seeking judicial review of Secretary of State's refusal to introduce amending legislation - Whether appropriate forum for claim an industrial tribunal - Whether part-time worker having locus standi to apply for judicial review

Judicial review - Application for judicial review - Locus standi of applicant - Equal Opportunities Commission - Discrimination against women in field of employment - Commission alleging that United Kingdom employment legislation discriminatory against women - Secretary of State expressing view that United Kingdom not in breach of European Community law - Commission seeking judicial review of Secretary of State's refusal to introduce amending legislation - Whether commission having locus standi to apply for judicial review - Whether Secretary of State's view on state of law amounting to decision susceptible to judicial review

Employment - Remuneration - Pay - Compensation for unfair dismissal - Whether compensation for unfair dismissal 'pay' - Judicial review - Availability of remedy - Declaration - Grant of declaratory judgment when prerogative order cannot be made - Whether court having jurisdiction to grant declaration - EEC Treaty, art 119

HEADNOTE

The Employment Protection (Consolidation) Act 1978 provided that full-time workers (ie those who worked 16 or more hours a week) had to be in continuous employment for two years to qualify for unfair dismissal and redundancy payments under that Act while part-time workers (ie those who worked between 8 and 16

hours a week) had to be in continuous employment for five years to qualify for the statutory employment rights under that Act. The great majority of

PAGE 3

[1994] 1 All ER 910, [1994] 2 WLR 176, 92 LGR 360, [1994] ICR 317, [1994

full-time employees in the United Kingdom were men while the great majority of of part-time workers were women, so that the unfair dismissal and redundancy provisions resulted in indirect discrimination against women. The Equal Opportunities Commission took the view that such discrimination conflicted with the obligations of the United Kingdom under EEC law, namely art 1193 of the EEC Treaty and Council Directives 75/117 (the equal pay directive) and 76/2074 (the equal treatment directive), to provide the right for men and women to receive equal pay for equal work. However, in a letter of 23 April 1990 to the commission the Secretary of State declined to accept that the United Kingdom was in breach of its obligations under Community law by providing less favourable treatment in the conditions of employment of full-time workers and part-time workers. The commission and a part-time worker who had been made redundant by her employer after less than five years' employment applied for judicial review of the Secretary of State's decision and sought a declaration that the Secretary of State and the United Kingdom were in breach of Community law obligations and an order of mandamus requiring the Secretary of State to introduce legislation to provide the right for men and women to receive equal pay for equal work. The commission also sought a declaration and an order of mandamus in respect of the Secretary of State's failure to amend the 1978 Act so as to provide that part-time workers who had previously worked full-time should have their period of full-time work taken into account in the calculation of statutory redundancy pay. On the procedural aspects of the application the Secretary of State

contended in respect of the individual applicant's claim that her claim was a private law claim which ought not to have been brought against Secretary of State by way of judicial review and in respect of the commission's claim that the commission had no locus standi to bring the proceedings, that the commission's case did not involve any decision or justiciable issue susceptible of judicial review, that the court had no jurisdiction to declare that the United Kingdom or the Secretary of State was in breach of any obligations under Community law and that the Divisional Court was not the appropriate forum to determine the substantive issues raised by the application. On the substantive issue the Secretary of State contended that the differing threshold provisions for full-time and part-time workers' entitlement to unfair dismissal and redundancy payments was objectively justified because it increased the availability of part-time work by reducing the costs to employers of employing part-time workers. The Divisional Court held that the fact that the less favourable treatment of full-time and part-time workers under the 1978 Act was discriminatory against women did not constitute an infringement of art 119 of the EEC Treaty and was in any event justifiable and further held that although it was appropriate for the commission to bring proceedings by way of judicial review of the Secretary of State's 'decision' and that it had locus standi to do so, the court only had jurisdiction to declare rights and obligations enforceable under the existing state of the law and had no jurisdiction to grant an order of mandamus requiring the Secretary of State to introduce legislation to amend the 1978 Act or to declare that he was under a duty to do so. The commission and the individual applicant appealed to the Court of Appeal, which dismissed the individual applicant's appeal on the grounds that her application was essentially a private law claim which should have been brought against her employer in an industrial tribunal and dismissed the commission's appeal on the

grounds that the Secretary of State had not made any 'decision', that there was no justiciable issue suitable for consideration by way of judicial review and also that the commission had no locus standi to bring proceedings for judicial review against the Secretary of State. The commission and the individual applicant appealed to the House of Lords

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[1994] 1 All ER 910, [1994] 2 WLR 176, 92 LGR 360, [1994] ICR 317, [1994

Held - (1) The individual applicant had not been properly joined in the proceedings because the Divisional Court was not the appropriate forum to adjudicate on her claim since it was a private law claim against her employers and ought not to have been advanced in the Divisional Court against the Secretary of State, who was not her employer and was not liable to meet the claim if it was sound. The individual applicant's appeal would therefore be dismissed.

(2) (Lord Jauncey dissenting) The commission had 'sufficient interest' for the purposes of RSC Ord 53, r 3(7) to bring the proceedings and hence the necessary locus standi since the matter to which the commission's application related was essentially whether the relevant provisions of the 1978 Act were compatible with Community law regarding equal pay and equal treatment and the commission had a sufficient interest in that matter

(3) (Lord Jauncey concurring with the reasoning) (a) Although the Secretary of State's letter of 23 April 1990 did not constitute a decision, since it did no more than state the Secretary of State's view that the threshold provisions

of the 1978 Act regarding redundancy pay and compensation for unfair dismissal were justifiable and in conformity with Community law, the real object of the commission's application was the provisions themselves and the commission was entitled to have recourse to judicial review for the purpose of obtaining a declaration that those provisions were incompatible with Community law. Similarly, no question of jurisdiction to grant a declaration that the United Kingdom or the Secretary of State were in breach of obligations under Community law arose since a declaration that the threshold provisions of the 1978 Act were incompatible with Community law was sufficient for the purposes sought to be achieved by the commission. Such a declaration would not involve any attempt by the commission to enforce international treaty obligations of the United Kingdom and could validly be granted by the Divisional Court, which was the appropriate forum to grant such a declaration *Factortame Ltd v Secretary of State for Transport* [1989] 2 All ER 692, *Factortame Ltd v Secretary of State for Transport* (No 2) Case C-213/89 [1991] 1 All ER 70 and *R v Secretary of State for Transport, ex p Factortame Ltd* Case C-221/89 [1991] 3 All ER 769 applied.

(b) The differing threshold provisions in the 1978 Act for full-time and part-time workers workers to qualify for unfair dismissal and redundancy payments were incompatible with art 119 of the EEC Treaty and the equal pay and equal treatment directives because the Secretary of State, on whom the onus rested, had not shown that the differing threshold provisions were objectively justified. Although the reason advanced by the Secretary of State for the differing threshold provisions, namely that they would bring about an increase in the availability of part-time work by reducing the costs to employers of employing part-time workers, was properly to be regarded as a beneficial social policy aim and could not be said not to be a necessary aim of the provisions.

the Secretary of State had not produced evidence to show that the provisions had been proved actually to result in greater availability of part-time work than would be the case without them. In those circumstances the commission was entitled to declarations that the provisions were incompatible with art 119 of the EEC Treaty and the directives. The commission's appeal would (Lord Jauncey dissenting) accordingly be allowed, *Bilka-Kaufhaus GmbH v Weber von Hartz Case* 170/84 [1986] ECR 1607 and *Rinner-Kuhn v FWW Spezial-Gebudereinigung GmbH & Co KG Case* 171/88 [1989] ECR 2743 considered

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[1994] 1 All ER 910, [1994] 2 WLR 176, 92 LGR 360, [1994] ICR 317, [1994

Per Lord Jauncey, Lord Lowry and Lord Browne-Wilkinson. The court has jurisdiction to make a declaratory judgment in judicial review proceedings brought by a plaintiff who has locus standi, even though the court can not in the circumstances of the case also make a prerogative order, and under Ord 53 any declaration as to public rights which could formerly be obtained in civil proceedings in the High Court can now also be obtained in judicial review proceedings; *O'Reilly v Mackman* [1982] 3 All ER 1124 considered; dictum of Lord Scarman in *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 All ER 93 at 109 doubted.

Quaere. Whether the question whether compensation for unfair dismissal is is 'pay' within art 119 of the Treaty and the equal pay directive is acte clair from the fact that redundancy pay has been held to be 'pay' or whether the question requires a reference to the European Court under art 177 of the Treaty for resolution

Decision of the Court of Appeal [1993] 1 All ER 1022 reversed.

NOTES

For the Equal Opportunities Commission, see 16 Halsbury's Laws (4th edn) paras 771:21-771:22, and for a case on the subject, see 20 Digest (Reissue) 594, 4520

For the requirement in United Kingdom legislation of equal treatment of men and women regarding terms and conditions of employment, see 16 Halsbury's Laws (4th edn) para 767, and for cases on the subject, see 20 Digest (Reissue) 579-593, 4466-4515

For the principle of equal pay for equal work in Community law, see 52 Halsbury's Laws (4th edn) paras 21.11-21.13

For the nature and scope of judicial review, mandamus and declarations and locus standi therefor, see 1(1) Halsbury's Laws (4th edn reissue) paras 60, 64, 128, 132, 134, 155, 157, and for cases on the subject, see 16 Digest (Reissue) 321-364, 3362-3859 and 30 Digest (Reissue) 189-194, 202-234

For the Employment Protection (Consolidation) Act 1978, see 16 Halsbury's Statutes (4th edn) (1990 reissue) 232

For the EEC Treaty, arts 119, 177, see 50 Halsbury's Statutes (4th edn) 306, 325

EOC a sufficient interest in that matter? Under s 53(1) of the 1975 Act the duties of the EOC include:

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[1994] 1 All ER 910, [1994] 2 WLR 176, 92 LGR 360, [1994] ICR 317, [1994

'(a) to work towards the elimination of discrimination; (b) to promote equality of opportunity between men and women generally

If the admittedly discriminatory provisions of the 1978 Act as regards redundancy pay and compensation for unfair dismissal are not objectively justified, then steps taken by the EOC towards securing that these provisions are changed may very reasonably be regarded as taken in the course of working towards the elimination of discrimination. The present proceedings are clearly such a step. In a number of cases the EOC has been the initiating party to proceedings designed to secure the elimination of discrimination. The prime example is *Equal Opportunities Commission v Birmingham City Council* [1989] 1 All ER 769, [1989] AC 1155, where the EOC successfully challenged the policy of the council as regards the relative availability of grammar school places for girls and for boys, in proceedings which reached this House and in which it was not suggested at any stage that the EOC lacked locus standi. In *R v Secretary of State for Defence, ex p Equal Opportunities Commission* (20 December 1991, unreported) it was common ground that the EOC had locus standi. Another instance is *R v Secretary of State for Social Security, ex p Equal Opportunities Commission Case C-9/91* [1992] 3 All ER 577, which went to the European Court. In my opinion it would be a very retrograde step now to hold that the EOC has no locus standi to agitate in judicial review proceedings questions related to sex

discrimination which are of public importance and affect a large section of the population. The determination of this issue turns essentially upon a consideration of the statutory duties and public law role of the EOC as regards which no helpful guidance is to be gathered from decided cases. I would hold that the EOC has sufficient interest to bring these proceedings and hence the necessary locus standi.

The next question is whether there exists any decision or justiciable issue susceptible of judicial review. The EOC's application sets out the Secretary of State's letter of 23 April 1990 as being the reviewable decision. In my opinion that letter does not constitute a decision. It does no more than state the Secretary of State's view that the threshold provisions of the 1978 Act regarding redundancy pay and compensation for unfair dismissal are justifiable and in conformity with Community law. The real object of the EOC's attack is these provisions themselves. The question is whether judicial review is available for the purpose of securing a declaration that certain United Kingdom primary legislation is incompatible with Community law. It is argued for the Secretary of State that Ord 53, r 1(2), which gives the court power to make declarations in judicial review proceedings, is only applicable where one of the prerogative orders would be available under r 1(1), and that if there is no decision in respect of which one of these writs might be issued a declaration cannot be made. I consider that to be too narrow an interpretation of the court's powers. It would mean that while a declaration that a statutory instrument is incompatible with Community law could be made, since such an instrument is capable of being set aside by certiorari, no such declaration could be made as regards primary legislation. However, in the *Factortame* series of cases (*Factortame Ltd v Secretary of State for Transport* [1989] 2 All ER 692,

Anna Wu
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Our Ref. G/AN/811

26th June 1995

Mr Michael Suen, CBE, JP
Secretary for Home Affairs
31st Floor
Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong

BY FAX NO. 2832 9983

Dear Mr Suen,

Re: Sex Discrimination Bill

I understand the Home Affairs Branch has issued a lengthy letter to various members of the Legislative Council setting out in detail the government's reasons for opposing the proposed amendments of the Bills Committee. I trust there is no confidentiality attached to this letter. Would you be agreeable to providing me and the Bills Committee with a copy?

Yours sincerely,

Anna Wu

/pk
c.c. Dr the Hon Leong Che-hung, OBE, JP
(Fax No. 2840 0748)

URGENT—BY FAX

26th June 1995

Mrs. Stella Hung
Deputy Secretary for Home Affairs
Home Affairs Branch
31st Floor, Southorn Centre
130 Hennessy Road
Wanchai, Hong Kong



Dear Mrs. Hung,

Sex Discrimination Bill

Thank you for your telephone call to me this afternoon, in answer to Anna Wu's letter of today's date, stating that Home Affairs Branch is not aware of any letter sent to Members setting out in detail the Government's reasons for opposing the proposed amendments of the Bills Committee to the captioned Bill.

We understand that a note has been sent to several legislators, entitled "Sex Discrimination Bill committee-stage amendments put forward by Anna Wu: Must Defend Items". The note sets out in tabular form the Administration's comments on all the principal amendments put forward by the Bills Committee. We would like to know whether you are aware of this note, and if so whether you could forward a copy to Anna Wu and other members of the Bills Committee.

Thanks for your assistance.

Yours sincerely,

Adam C. Mayes
for Anna Wu

cc. Dr. the Hon. Leong Che-hung, OBE, JP

PERSONAL

**SEX DISCRIMINATION BILL
COMMITTEE STAGE AMENDMENTS
PUT FORWARD BY ANNA WU**

'MUST DEFEND' ITEMS

(D) INTERNATIONAL TREATIES OBLIGATIONS

Committee Stage Amendments

To link the interpretation of the Sex Discrimination Bill, the work of the Equal Opportunities Commission with international treaties (regardless of whether they are applicable to Hong Kong or not e.g. CEDAW and the Declaration on the Elimination of Violence Against Women).
[Amendment to clauses 2, 56(1), and 76]
MUST DEFEND

(E) EMPLOYMENT MATTERS

Committee Stage Amendments

To provide for all the provisions in the SDB to come into force by 1.1.1996; to reduce the transitional period for small business establishments from 3 years to 1 year from the commencement of the Ordinance; to remove the exception for protective legislation one year after the commencement of the relevant sections of the Ordinance.
[Amendment to clauses 1, 10 and 49]
MUST DEFEND

Administration's Comments

SDB is a self-contained piece of legislation the terms of which are clear and certain. There is no need to refer to other instruments for interpretation of the SDB. In any event, international treaties are not justiciable in the Courts of Hong Kong and it is not the Administration's intention to set up the EOC to conciliate on disputes relating to provisions in international treaties in Hong Kong.

Administration's Comments

Commencement dates of legislation should tie in with the operational set up for implementation of the legislation. For the SDB, it is necessary to allow time to first set up the Equal Opportunities Commission and for the Commission to develop the Code of Practice in employment. The Code will provide guidance for all parties concerned. Without the Code there would be uncertainties for employers e.g. they may have difficulty in defining equal pay for equal work. To protect themselves, employers may need to seek legal advice whenever they hire, promote or fire their staff. The Administration expects that it would take about 9 months (from the establishment of the EOC) for such a code to be developed. Reducing the length of the transitional period for small business establishments would also create difficulties for those small employers who would need a reasonable period to better understand the operations of the Ordinance.

JOB EXCEPTIONS

Committee Stage Amendments

To delete the exception for the small house policy, to make provisions so that the exceptions for (a) the differential treatment of staff in the disciplinary services, (b) for providing a different level of benefits for employees with different marital status, and (c) for death or retirement benefits in employment to expire in one year after the commencement of the Ordinance.

[Amendment to clauses 10, 14, 15, 54 and Schedule 4 Part 2.]

MUST DEFEND

Administration's Comments

All the exceptions provided in the SDB are reasonable and necessary. E.g. if the exception for employment benefits were to expire at the end of one year, all employers may no longer be able to provide different levels of housing benefits to employees of different marital status. Employees may lose out because everybody would then receive a flat rate. For the small house policy, the Administration is conducting a review to look at ways to improve the policy, if the exception is deleted, Government would not be able to continue with the policy. This will have tremendous impact on the indigenous community.

(IV) EXPANDING THE POWERS OF THE EQUAL OPPORTUNITIES COMMISSION (EOC)

Committee Stage Amendments

To expand the powers of the EOC and remove the 'checks and balances' already built into the system; to empower the EOC to carry out a named person investigation without any ground (i.e., regardless of whether the EOC has a belief that the named person has committed unlawful acts or not). To empower the EOC to bring proceedings in its own name and to take over proceedings in its own name if a claimant receiving EOC assistance withdraws from the proceedings.

[Amendment to clauses 16, 57(3), 63, 64(2), new clause 68A, and 77]

MUST DEFEND

Administration's Comments

These proposals, if carried will give the EOC extensive powers which are beyond the original legislative intent. There are certain standard provisions governing the operation of statutory bodies funded by the Government e.g. provisions to empower the S for T to give directions to the BOC as regards its expenditure, borrowings and investments. In respect of conducting named person investigations, the EOC, like any other regulatory bodies in HK, should have some grounds for singling out the particular person. It would be extremely unfair upon the person named if the EOC names a person in a formal investigation without any grounds. Government has already put forward CSAs to empower SFA to make regulations to allow the EOC to bring proceedings in its own name. We need to rely on subsidiary legislation because there are still a number

of legal issues to be resolved, e.g., what would be the appropriate remedy where there is no claimant? Anna Wu's proposals has not addressed such issues. It is inappropriate to give the EOC immediate powers to bring proceedings without resolving these issues.

ON EXPANDING THE TYPES OF REMEDIES THAT MAY BE AWARDED BY THE COURT

Committee Stage Amendment

To repeal the provision which provides that there shall be no award of damages if the indirect discrimination was unintentional; to empower the court to order any remedy including promotion, reinstatement etc. [Amendment to Clause 68]

MUST DEFEND

Administration's Comments

Where the defendant can prove that the indirect discrimination was unintentional, the remedy is to require him to desist from such acts. Such a remedy is considered to be appropriate. For reinstatement orders, the Secretary for Education and Manpower is now conducting a general review of labour relations. Reinstatement orders are not only applicable in cases relation to sex discrimination. The question of reinstatement orders should be dealt with in the context of that review.

ON WAIVING OF MEANS TEST FOR LEGAL AID

Committee Stage Amendment

To allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the Ordinance.

[New Clause]

MUST DEFEND

Administration's Comments

This raises the policy issue of waiving the means test for legal aid in civil litigation. The purpose of the Legal Aid Ordinance is to make provision for the granting of legal aid in civil actions to persons of limited means. In industrial and traffic accident claims involving the loss of limb or life, the applicants for legal aid are subject to the means test. It is not accepted that claims under the Sex Discrimination Ordinance are more deserving and should be given special consideration when compared to other claims in tort where there had been loss of life or limb.

Civil Administration of Laws and Government Programs

Committee stage amendments

To make it unlawful for a person who performs any function or who exercises a power under a law to discriminate.

[New Clause 31C]

MUST DEFEND; Government's CSAs which largely reflects the principles in the Bill of Rights Ordinance are more appropriate.

Administration's comments

Government will move CSAs to make it unlawful for Government to discriminate against a woman in the performance of its functions or the exercise of its powers. These provisions are adequate and will ensure that Government may not discriminate and reflect the principles in the Bill of Rights Ordinance. In respect of Anna Wu's proposal, the generality of the phraseology means that her clause can apply to any person (including a private individual) who exercises any power under any law, even when this is unrelated to any Government activities. More importantly, Anna Wu's proposals go beyond what is provided for in the International Covenant on Civil and Political Right as applied to Hong Kong (by implication, beyond the provisions in the Bill of Rights Ordinance). they do provide exception for powers exercised for the purpose of immigration control

Civil Financial Penalty for Publishing a Discriminatory Advertisement

Committee Stage Amendment

To empower the BOC to apply to the District Court for an order imposing a financial penalty on a person whom the Commission believes has published a discriminatory advertisement.

[Amendment to clause 74]

MUST DEFEND

Administration's comments

Financial penalties are only imposed by tribunals, not by the courts. If the court finds someone contravening the law, the appropriate remedy should be an award of damages (civil proceedings) or imposing a fine or term of imprisonment (criminal proceedings). In any event, we do not agree that the publication of a discriminatory advertisement is such a grave act that warrants the imposition of a financial penalty of \$10 000 to \$30 000.

(IX) ADVISORY BODIES AND RURAL ELECTIONS

Committee Stage Amendment

Provisions to make it unlawful to discriminate in appointments to a public body and public authority, including the positions of village representative or member of office-holder of a Rural Committee.
[New clause 30A]
MUST DEFEND

Administration's comments

It would be more appropriate to rely on persuasion and administrative measures to foster the principle of one person one vote in village elections. The proposals in relation to public appointments are redundant because a new provision will be added to provide that the Government cannot discriminate on a prohibited ground in the performance of its functions and exercise of its powers. Such a provision already covers public appointments.

(X) EXCEPTION FOR ACTS DONE FOR THE SECURITY OF HONG KONG

Committee Stage Amendment

To remove the exception for 'actions done for the security of Hong Kong'.
[Deletion of Clause 51]
MUST DEFEND

Administration's comments

The exception is to provide the disciplined services with the flexibility to, for example, in case of emergencies (situations where the security of Hong Kong is in question), deploy officers of a particular sex to carry out special tasks.

(XI) PERIOD WITHIN WHICH PROCEEDINGS MAY BE BROUGHT

Committee Stage Amendment

Amend the period which proceedings under the Ordinance may be brought to provide that time in conciliation will not be taken into account.
[Amendment to clause 78]
MUST DEFEND

Administration's comments

Clause 78(3) of the Bill will be amended to extend the period within which proceedings may be brought to 24 months. We expect conciliation by the EOC would not take more than two years to complete. Therefore, it is not necessary to further provide that the time in conciliation will not be taken into account.

THE OFFICE OF ANNA WU, LEGISLATIVE COUNCILLOR • 立法局議員胡紅玉辦事處

Anna Wu
 c/o 17/F & 18/F
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 Hong Kong
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平等機會

Our Ref. G/AW/81E(1)

26th June 1995

The Hon Michael Sze, ISO | JP
 Secretary for Civil Service
 Civil Service Branch
 10/F Central Government Offices
 West Wing
 Ice House Street
 Hong Kong

BY FAX AND BY HAND

Dear

Re: Sex Discrimination Bill
Housing Allowance

Thank you for your letter of 23rd June 1995.

I am afraid you have misunderstood the significance of the marital status amendment. It will not have the consequences that you describe.

As you may know, any measure which is reasonable is not regarded as discriminatory. This is something that has been made clear to the Home Affairs Branch officials repeatedly during Bills Committee meetings over the past year. Moreover, I had time and again told these officials of my personal willingness to brief all major government branches on the interpretation of discrimination laws. My offer has never been taken up.

As to your specific examples, let me reassure you that the marital status amendment will not, for example, require the paying of double benefits to a married civil service couple or allow each of them to claim the same allowance in their own capacity.

As for private tenancy allowance, as long as the various rates are pegged to household size, there will be no

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 Telephone: 537 2466, 537 2467 Facsimile: 530 2018 Law Office: 845 7353
 LEGCO ASSISTANTS: Eric Chow 1128635 a/c 8939 Adam Mayes 1128028 a/c 1325

/...

香港中環政府合署西座四一五室

The Hon Michael Sze, ISO JP
26th June 1995
Page 2

problem with the law. There is no suggestion that the same private tenancy allowance should be given to all officers, regardless of family circumstance.

Similarly, the provision of departmental quarters for married junior officers in the disciplined services is not an issue.

All the problems you cite as consequences of the marital status amendment are, in fact, non-issues. Perhaps, if you and other government officials had accepted my offer of a briefing, the misunderstanding would not have arisen.

Given the indication in your letter that the civil service terms of appointment are amongst the fairest and most equal in Hong Kong, I believe you have nothing to worry about. If you are doubtful as to whether this is the case, then a review should be commenced as soon as possible. I am sure you would not wish to retain any arbitrary or unreasonable practice in the government.

Further, the obligations under the Bill of Rights for the civil service are very real. I would hope your letter is not suggesting that there are existent breaches. I would also point out again that the substance of the proposed amendment is to require the government to review the matter.

I very much hope that you will now understand why your fears regarding the exemption are groundless.

Yours sincerely,

Anna Wu

/pk
c.c. All Members of the Legislative Council

SEX DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Mrs. Peggy Lam, O.B.E., J.P.ClauseAmendment Proposed

68

By adding -

"(6A) No award of damages to a claimant shall exceed an amount of \$150,000 in the case of -

- (a) an act of discrimination against the claimant which is unlawful by virtue of Part III (including any case where the respondent is by virtue of section 39 or 40 to be treated as having committed such an act of discrimination against the claimant);
- or
- (b) an act of sexual harassment against the claimant which is unlawful by virtue of Part III.

(6B) The Governor in Council may, by notice in the Gazette, amend subsection (6A) by substituting another amount for the amount appearing in that subsection."

來函編號 Your Ref:

本函編號 Our Ref:

電話 Tel: 2869 9463

圖文傳真 Fax: 2877 9600

立法局秘書處

Legislative Council Secretariat

26 June 1995

BY FAX : 2845 2504

The Hon Anna WU
Room 415
Central Government Offices
(West Wing)
11 Ice House Street
HONG KONG

Dear Miss Wu

**Equal Opportunities (Race) Bill
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
and Equal Opportunities (Religious or Political Conviction,
Trade Union Activities and Spent Conviction) Bill**

I refer to your letter of 31 May 1995 seeking an opinion from the President on whether the three captioned bills may have a charging effect within the meaning of Standing Order 23.

I am pleased to advise you that the President is of the opinion that on the basis that the additional court that will be needed to hear and determine actions brought under the three bills is the extension of a service that is already authorized by law, the three captioned bills would not have a charging effect within the meaning of Standing Order 23.

Yours sincerely

(LAW Kam-sang)
Deputy Secretary General

c.c. SHA (Attn : Mrs Stella HUNG)

香港中區皇后大道八號立法局大樓

Legislative Council Building, 8 Jackson Road, Central, Hong Kong.

1311



本處傳真 Our Ref.
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27 June 1995

The Hon Anna WU Hung-yuk
c/o Robert W H Wang & Co
17th Floor
Nine Queen's Road Central
HONG KONG

Sex Discrimination Bill

I have considered your submissions, both written and oral, in response to the Administration's view that a number of the amendments proposed to be moved by Dr C H LEONG will have a charging effect.

I would first make two general points:

- (a) Where a new function is imposed upon the Commission, in terms which require that it shall do a certain thing, the inevitable consequence is that there will be a charge on the public revenue if the doing of that act requires the spending of public money. Government is in those circumstances obliged to provide the money necessary to enable that act to be done.

- (b) Where a new discretion is conferred, the Commission is of course free not to do the act, in which case no question of public expenditure will arise; but it is equally free to do the act, in which case the question of public expenditure will arise. It is in those circumstances that the effect of an amendment may be to dispose of or charge public revenue within the meaning of Standing Order 45(6).

I now turn to the specific amendments.

Clause 56(1)(ca)

It is clear that the Commission's duty to work towards the elimination of discrimination and of sexual harassment is circumscribed by the definition of those terms in clause 2 of the Bill. It could not really be argued that the duty proposed under the new sub-clause (ca) could be treated as implementing those two primary duties. Indeed I think your principal argument was that the promotion of the objects in the new sub-clause (ca) should be viewed as complementary to sub-clause (b) which requires the Commission to promote equality of opportunity between men and women generally. I am in agreement with you to the extent that in promoting such equality of opportunity, the Commission would be entitled to promote understanding and acceptance of international obligations and the standards contained in international instruments as defined, and would also be entitled to do so under its discretionary powers to engage in research and educational activities under clause 57. Where the Commission had this discretion, it could

stated. I must assume that the Government will not delay in making these Regulations, and am therefore able to conclude that the enactment of this sub-clause in advance of the Regulations will not have a charging effect.

Sub-clause (2)

I think there is a great deal of force in your submission that the Commission would have locus standi to apply for judicial review for appropriate declarations on the authority of the decision of the House of Lords in R.v. Secretary of State for Employment ex parte Equal Opportunities Commission (1994) 2 W.L.R. 409. As in that case, the Commission's implied power to bring such proceedings would flow from its duty to work towards the elimination of discrimination under clause 56(1)(a). I would be confident that no charging effect would arise if in the definition sub-clause (3), discrimination was limited to that falling within sections 4, 5, 6, 7 and 8; but on balance I do not think that the extension of this definition in the formula proposed would have any significant impact upon expenditure. Accordingly, I am of the opinion that this sub-clause will not have a charging effect.

Clause 76(1)

The proposed amendment would clearly widen the scope of the Commission's conciliation function. Under sub-clause (3), the Commission is obliged to conduct an investigation unless satisfied the act is not unlawful or one or other of the provisions of sub-clause (4) applies. This is a case in which the amendment may have a charging effect, and I so rule.

Amendment to section 5AA of the Legal Aid Ordinance

I do not see any answer to the Administration's view that additional funds will be required if the Director of Legal Aid is giving the discretion to waive the means test in the case of claims of unlawful discrimination or sexual harassment under this Bill. I am accordingly of the opinion that this amendment will have a charging effect.

Yours sincerely,

John Swaine
President

cc: Dr the Hon C H LEONG
Mrs Stella HUNG, Home Affairs Branch

PRESS STATEMENT

Legislative Councillor Anna Wu

27 June 1995

Anna Wu: 843-7353

Eric Chow: 537-2466 or 1128635 x8939

Adam Mayes: 537-2467 or 1128028 x1325

Government blocks amendments strengthening the Equal Opportunities Commission

Less than 24 hours before debate on the Sex Discrimination Bill is scheduled to commence in Legco, the Government has successfully blocked the introduction of four key amendments to strengthen enforcement of the Bill.

The amendments are some of the approx. 25 amendments formulated by the Legco Bills Committee that examined the Bill (together with Anna Wu's Equal Opportunities Bill) for almost a year. Late last Friday, Home Affairs Branch challenged five amendments that it claimed would have financial implications for Government. The challenges remained confidential over the weekend as they were considered by Sir John Swaine, President of the Legislative Council. The President today ruled that ^{one} of the challenged amendments could go forward, but the other ^{four} ~~two~~ could only be moved with Government approval.

Ms. Wu stated that she was "extremely disappointed that the Government is resorting to technicalities to block attempts to strengthen enforcement under the Bill" She added that because the challenge was mounted at the last minute (even though Government had known about the amendments for a long time), it would be impossible to reformulate the blocked amendments in time for the debate tomorrow.

The challenged amendments are:

1. **BLOCKED:** an amendment allowing the means test to be waived for legal aid in connection with legal claims made under the Sex Discrimination Bill.

Government's cost estimate: \$12.5 million.

2. **BLOCKED:** an amendment to give the Equal Opportunities Commission [EOC] the function of "promot[ing] an understanding and acceptance, and the public discussion, of relevant international obligations . . ." such as CEDAW and the ICCPR in relation to sex discrimination.

3. **BLOCKED:** an amendment to enable the EOC to report to Legco on any proposed, new legislation that the EOC believes may affect equality of opportunity.

Government's cost estimate: \$3.5 million (for the above two amendments *together*).

4. **BLOCKED:** an amendment allowing the EOC to conciliate complaints that are not covered by law, but are covered by non-binding international standards (such as CEDAW). This would have allowed the EOC to mediate complaints about arguably discriminatory acts that are not covered by law, such as stereotyped advertising.

Government's cost estimate: \$1.6 million

5 ALLOWED an amendment empowering the EOC itself to litigate claims of discrimination (instead of being restricted to assisting private claimants, as now provided by the Bill)

Government cost estimate \$2.3 million

The financial implications challenges are just a part of heavy Government lobbying against the Bills Committee's amendments

In challenging the amendments linking the EOC to international non-discrimination standards, the Government emphatically asserted that the SDB was not intended to give effect to international obligations — even though Government publicity repeatedly linked the Bill to the proposed extension of CEDAW to Hong Kong, and the Government cited the Bill to a UN Committee last year as evidence of the Government's progress towards meeting international human rights standards (specifically under the International Covenant on Economic, Social and Cultural Rights)

— end —



Fax No. 2868 5069

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Ref. (47) in BG 16/5/1(C)(94) II

28 June 1995

The Hon Anna Wu
c/o 17/F & 18/F
Nine Queen's Road Central
Hong Kong

Re : Sex Discrimination Bill
Housing Allowance

Thank you for your reply of 26 June.

Would that life were as simple as you portray it. You appear content to leave areas of significant government policy and finance hanging in the ether : in the hope and expectation that they will not be challenged, or not challenged successfully. Certainty is a prerequisite in good civil service administration..

I fully agree with you that, in our opinion, our policies and practices are fair, justifiable and reasonable. But these issues cannot be left to chance. If we all agree they are reasonable, what is the objection to including an exemption in the SDB? In the light of your letter I have taken further legal advice which confirms that it is necessary and appropriate to provide, through exemptions in the Bill, for instances of justifiable and reasonable differential treatment between persons whose circumstances are the same or not materially different.

We are clearly going to have to agree to disagree on this one. One final point. You make reference to Bill of Rights' obligations. Let me emphasise again that I am not saying there is discrimination in the provision of benefits. The exceptions in the SDB are to provide for instances of reasonable and justifiable differential treatment.

(Michael C C SZE)
Secretary for the Civil Service

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June 28, 1995

Ms Anna Wu / Mr Adam Mayes

Dear Anna and Adam,

A propos Peggy Lam's amendment, I thought it might be useful to give some illustrations of cases in which the specific damages were considerably more than the level proposed by her. *Hill v Water Resources Commission* (1985) EOC 92 127, a case in which the complainant was subjected to serious sexual harassment resulting in severe consequences to her physical and psychological health (with corresponding economic costs). In that case the Equal Opportunity Tribunal (in 1985) awarded her AUSS\$34,872.34 for the various heads of damage. That is more than HK\$200,000 if today's rate of conversion were used; if one added 10 years' inflation etc in, it would probably be double or more. (Originally the NSW legislation had a limit of AUSS\$40,000 -- the latest CCH suggests that this limit is still there; the federal sex discrimination appears to have no such limit.)

If there is a chance to make any general substantive points, it may be worthwhile mentioning (again) that the power to award damages is primarily remedial and that putting a limit (which is so low) on the damages means that, even in a case where the discrimination has been intentional and egregious leading to serious economic loss and costs incurred as a result of medical care, the person subjected to the discrimination bears the cost. This is not a rule that we apply in cases such as defamation, car accidents, assault, etc -- what then can be the rationale for this civil wrong (which is analogous to a tort and which will be treated as such when it comes to calculating damages)? It might also be mentioned that damages have to be proved, ie loss of wages etc is awarded only at the level the person was receiving or would have received.

The other point we have already mentioned, namely that the limits on damages have gone in the UK, as a result of European law. However, the principle applied was that the European law guarantee was designed to provide a remedy for loss actually

suffered; the same principle of remedy can be derived from the ICCPR, ICESCR and CEDAW.

Good luck

Andrew

¶92-127] Hill v. Water Resources Commission.
 Equal Opportunity Tribunal, New South Wales.
 Decision 10 May 1985; Judgment 31 May 1985.
 Judgment, with deletions indicated, below.

Equal opportunity — Sexual harassment — Discrimination on ground of sex — Denial of access to promotion opportunities — Subjection to detriment — Whether females treated less favourably than males — Whether employer liable for acts of sexual harassment by employees — Complaint lodged outside statutory time period — Anti-Discrimination Act, 1977 (N.S.W.), sec. 24(1); 25(2); 53; 88(3), (4).

The complainant had been employed by the Water Resources Commission since 1973. In September 1981, she was promoted to the Grade 2 position of Secretary of the Tender Board of the Commission's Commercial Branch. In doing so, she became the first female graded clerical officer to enter an almost completely male-dominated area. She and the Equal Employment Opportunity Co-ordinator were the highest-graded female clerical officers in an organisation in which only about 12% of the staff were female.

Prior to this promotion, the complainant had been involved in various activities involving the promotion of equal opportunity rights for women and other disadvantaged groups at the Commission, had acted as a Spokeswoman for the Commission and had also been active in her union. From time to time, these activities had led to unwelcome comments from male employees of the Commission. Overall, however, her work relationships with other employees appeared to be favourable.

Following her promotion to the Commercial Branch, the unwelcome comments and conduct by other (male) staff increased in both volume and unpleasantness. Among the main incidents of harassment were the following:

- when cartons of toilet rolls were unloaded from a truck, they were thrown to her with unnecessary force;
- telephone calls in which either no-one spoke on the other end or an unpleasant recorded message was played, such as one from a Venereal Disease Clinic;
- mail the complainant was expecting failed to turn up;
- cartoons and other offensive material arrived anonymously in the mail;
- provocative and offensive material, such as an advertisement for a brothel, was placed on Commission notice boards, with the complainant identified;
- various sexist remarks from male employees;
- at a Christmas party on a Friday night, the complainant was told that fish she kept in a bowl on her desk had been killed. It was not until the following Monday that she was able to discover that the fish were still alive;
- a refusal by certain employees to recognise her authority as their acting supervisor, by by-passing her to have certain work matters carried out; and
- after the complainant had successfully arranged for some male toilets to be converted to female use, the toilets were blocked and the walls smeared with faeces. As Acting Assistant Building Supervisor, the complainant had to arrange for the toilets to be cleaned up.

These incidents were reported to more senior staff members, in particular the Deputy Secretary of the Branch. In most cases, either no action or very limited action was taken, and often there was a lengthy delay before any action was taken. The incidents were also reported

by the complainant to the Commission's Equal Employment Opportunity Co-ordinator, who pursued them on the complainant's behalf as well.

The Commission had developed both an Equal Employment Opportunity Management Plan and an Affirmative Action program. It had also issued a policy statement on the subject of sexual harassment at a later stage.

Initially, the complainant was told that she would not be allowed to fill the Acting Grade 3 position of Assistant Building Manager, this position normally being held by the Secretary of the Tender Board. The position was initially given to a lower-graded male employee, but later the complainant occupied the position.

From January to April 1982, the complainant was transferred to a position where she assisted the EEO Co-ordinator to prepare the Management Plan.

On 29 July 1982, there was an incident in the Commercial Branch which led to an investigation and a disciplinary inquiry into a number of charges, including disruption of work and harassment against the men involved. The complainant was very distressed by this incident.

On 16 August 1982, the complainant was transferred to a position of Grade 2 Clerk in the EEO Co-ordinator's office. The complainant claimed that when she had been asked if she wanted a transfer, she replied that she did not want one. The Grade 2 position involved a drop in salary and no opportunities to act in higher grade positions from time to time. None of the men facing charges had their jobs altered.

The complainant remained in this position until June 1983, when she was seconded to the Public Service Board "in the interests of her safety". Earlier in 1983, she had received a threatening letter and other threats had been made. The complainant had lodged her complaint with the Anti-Discrimination Board on 9 February 1983.

The complainant's position in the EEO section was later upgraded to Grade 3, but she was paid the higher salary of this grade for only part of the time in this position.

She remained at the Public Service Board on secondment. While in this latter position, she cannot qualify for promotion in the Commission and cannot relieve in higher positions.

She is also under medical and psychological treatment, including counselling; for stress-related conditions claimed to be causally related to her work situation. This treatment is paid for by the Commission.

The complainant's complaint alleged discrimination on the ground of sex, denial of opportunities for promotion (by being denied opportunities to occupy the higher-graded acting positions), loss of salary and subjection to detriment (through being transferred to lower graded positions).

Held: complaint substantiated, damages awarded.

1. The various incidents affecting the complainant amounted to harassment of her, leading to the need for her to seek medical and psychological treatment. A man in the same position would not have been harassed.

2. The Water Resources Commission was liable for the acts of harassment by its employees. The problems had been brought to the attention of management by both the complainant and the EEO Co-ordinator, but until the incident of 29 July 1982, either no action or insufficient or delayed action had been taken by management.

3. The initial refusal to allow the complainant to act as Assistant Building Manager amounted to discrimination on the ground of sex, as well as denial of opportunity for promotion. A male employee would not have been treated in the same fashion.

4. The denying received
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6. D loss of en Commission sexually d
Before Members
Judge B Member, Members
History of
On 10 N lengthy inqu the com Resources the resp the ground of We found consequent complainant relief and co publish ou The order are set out he
The com of the Anti- 1983. The occurred di commencin complainant Branch on head office North Sydney good cause complaint Anti-Discrim despite the fa of the Act referred to investigated to let us for ing (c) of the A
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Transfers of the complainant were a discrete act of discrimination. As well as opportunities for promotion, they subjected the complainant to a detriment. No material transfer as a result of the incident of 29 July 1982.

Complainant was also subjected to a detriment in terms of loss of salary as a result of transfers and the initial inability to occupy the higher-graded Acting Assistant Manager's position. There was also a detriment in terms of consequences to her health.

Damages were awarded to compensate for injury to feelings, pain and suffering and loss of life, as well as loss of salary and promotion opportunities as a result of the conduct. The Commission was ordered to refrain from engaging in further discriminatory conduct towards the complainant.

(Headnote by the TOR INDUSTRIAL LAW EDITORS)

Judge R.T.H. Barbour (Senior Judicial Member), Dr B. Thiering and Ms S. Tracey.

R.T.H. Barbour (Senior Judicial Member), Dr B. Thiering and S. Tracey

[sic]

In 1935 the Tribunal completed a report, into a complaint by Jane Hill (complainant) against the Water Commission of New South Wales (respondent) alleging discrimination on the basis of sex in the area of employment. The complaint substantiated, made orders in favour of the complainant in respect of damages, injunctive orders, and indicated that we would publish our reasons in writing at a later date. We made our reasons for judgment available under.

The complaint was lodged with the President of the Discrimination Board on 9 February 1981. The complainant's grounds of discrimination relied upon were that during a period of seventeen months ending on 1 September 1981, when she was performing book up duties in the Commercial Department on the 9th floor of the respondent's building known as Ibis House at 100 Pitt Street, Sydney, she was shown for accepting the position under sec. 33(4) of the Equal Opportunity Act, 1977. ("the Act") that it included contraventions outside the period of six months prescribed in sec. 33(3). The President considered the complaint and then referred it to the Tribunal pursuant to sec. 94(1)(a) and

The complaint is brought under sec. 24(1) and 25(2) of the Act. Section 24(1) deals with the type of discrimination on the ground of sex which in Australia and the United Kingdom is somewhat unfortunately termed "direct" discrimination. As one English writer has recently observed "less favourable", "unequal" or "disparate" treatment (the latter being the common American usage) are more accurate descriptions — see article by Michael Rubenstein, "The Law of Sexual Harassment at Work", *Industrial Law Journal* Vol. 12 No. 1 (March 1983) at p. 11.

Section 24(1) provides as follows:

"24(1) A person discriminates against another person on the ground of his sex if, on the ground of—

- (a) his sex;
- (b) a characteristic that appertains generally to persons of his sex, or
- (c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of the opposite sex."

Section 25 prescribes discrimination in certain defined employment situations. Section 25(1) applies to discriminatory conduct of a prospective employer in relation to offers of employment and is not relevant to this case. Section 25(2) provides as follows:

The second matter relates to the Commercial Branch. Some of the conduct there was by men who were clearly identified, making it possible to call them up, singly or together, to bring them into line. Further, there was one serious matter which fairly cried out for firm intervention by senior administration, especially when it was seen that Branch administration was ineffective in dealing with the public. Into this category fall what we regard as the serious matter of continuous undermining of Ms Hill's authority when acting in supervisory positions. This applies particularly to Bo, who was acting as Assistant Commercial Officer when he refused to instruct her in June 1982 about her duties and when he encouraged B and others to bypass her and go straight to him on flexi-leave and other things.

[Condonation by employer]

On the evidence in this case we have no hesitation in concluding that the employer condoned the continuing and increasingly damaging hostile work environment which was a feature of Ms Hill's condition of work. It brought the employer into contravention of sec. 25(2)(a), because the situation was so serious and so continuous as to affect adversely the terms and conditions of work which the employer "afforded" her, i.e. made available to her. It also brought the employer into contravention of sec. 25(2)(c), first, because to have to endure the hostile working environment was a "detriment" to which she was subjected, and secondly, because the move to the EEO Section on 16 August when none of the men accused was moved, was not only unfair and humiliating but also operated as a distinct career set-back, commencing with her downgrading to Grade 2 when she had previously worked there as Grade 3 and could have expected to be acting as Grade 3 and above fairly regularly had she stayed in the Commercial Branch. On this aspect we found unconvincing Mr Whelan's claim that he had to keep these men together to keep an eye on them and that the buyers had to be kept together. In our view there would have been no barrier at all to the removal of one or more of the clerical officers.

Insofar as Ms Simpson relied in the alternative on the proposition that the Commission "permitted" the employees to do what they did and thus became liable under sec. 52 of the Act we were unable to accede to this

submission. We agree with Mr Menzies, reasons he advanced, that sec. 52 cannot be applied to the complainant in the circumstances of this case.

On the American cases and in principle we cannot accept Mr Menzies' argument that the employer's less favourable treatment which we have found occurred was not on the ground of sex. It was less favourable treatment on the ground of sex because a comparable man would not have been severely harassed. To look at it another way the harassment would not have happened "but for" the complainant's sex. [Denial of opportunity, detriment].

We turn now to the claim that Mr B discriminated against the complainant on the ground of sex by initially declining, because she was a woman (as we find on the face of the evidence) to let her act as Assistant Building Manager. In our view this is clearly established by the evidence of the complainant, which we find to be more reliable than the contrary account of Mr Bennett. In fact, even on Mr Bennett's version we think the treatment was discriminatory. On either view she was subjected to a detriment, the loss of the agreed sum of difference pay. Finally, we deal with the alternative view of the conduct of the respondent's senior officers in peremptorily moving Ms Hill to the EEO Section against her wishes and without also moving any of the other men. In our opinion, this could properly be regarded as constituting a discrete act of discrimination. It clearly amounted to subjecting her to a detriment and we think that other conditions of liability are obviously established on the facts of the case.

Relief and costs

On 10 May 1985 at the conclusion of the argument on the question of relief and costs we made orders as follows:

1. Find the complaint of sex discrimination in employment substantiated.
2. Order the respondent to pay to the complainant damages in the sum of \$34,872.34 by way of compensation and damage suffered by reason of the respondent's conduct.
3. Pursuant to sec. 113(b)(ii) of the Act order that while the complainant remains an employee of the respondent Commission until further order the respondent

servants and agents be enjoined from engaging in sexually discriminatory conduct towards the complainant adversely affecting the reasonable enjoyment by the complainant of her terms and conditions of employment or her normal working environment.

4. Order that the respondent pay to the complainant the sum of \$2,888 costs.

Medical treatment

[Details of the complainant's psychological state and the treatment she received and is still receiving were set out in detail.]

By agreeing to pay for the counselling sessions, the respondent Commission has admitted that the need for ongoing counselling is causally related to the stress conditions encountered at work during the period in question. Even with that admission we would have no difficulty in finding that the condition described by Miss B and by her physician Dr W was causally related to the conditions of harassment leading to hostile working environment for the consequences of which we have held the respondent Commission to be liable.

[Further details of treatment.]

Apart from the fact that the sessions cost \$35 each and are paid for by the respondent Commission presumably because it has paid liability in the *Workers Compensation Act*, we were not provided with any material as to the amount of payments made by the Workers Compensation Insurance on her behalf or as to any weekly payments of compensation which may have been received. The case was conducted apparently without any dissent from the respondent's side upon the basis that as there was no statutory obligation for pay-back if moneys awarded under this Act, the question of workers compensation entitlements should be left to one side, assumption being that the complainant would continue to have her rights whatever they may be under that Act.

According to Miss B [the complainant's medical counsellor] satisfactory resolution of her problems is prevented by the existence of these proceedings, the uncertainty of her future regarding employment, and her need to develop new psychological mechanisms. As to this last factor the evidence of Miss B is to be found in her examination and in re-examination.

where on being asked about the effect that the evidence had had on the complainant she said: — "As I understand them there is almost an attitude about her entire sense of herself; the way she used to manage with her own feelings; with her relationships with other people...her idea of herself in her career

[Medical opinions on the effects of stress on the complainant were set out in detail.]

The complainant is therefore entitled to be compensated for a substantial psychological disability which has had quite distressing effects up to date and continuing. At the least it would appear that it will be some years before there will be a final settling down of the symptoms and there appears to be a question mark as to whether she will ever make a full recovery

[Damages

Having regard to the whole of the evidence as to health matters including the complainant's own evidence we consider that a substantial sum should be awarded under the heading of general damages for injury to feelings, past and present, pain and suffering and loss of enjoyment of life. Assessment of this type of damage is notoriously difficult but thinking as we do that something in the range of \$25,000 to \$35,000 would be adequate but not excessive compensation we have fixed on the figure of \$27,500 for this head of damage.

Figures were agreed upon between the parties involving the arithmetical calculation involved in lost opportunity to act in higher graded positions during three periods. From 1 September 1981 to 6 October 1981 when she was prevented from occupying the Grade 3 position of Acting Assistant Building Manager the agreed difference between Grade 2 and Grade 3 totals \$100.44. As we consider that this loss was caused by the discriminatory conduct of the respondent through Mr Bennett and Mr Dillon we allow the sum of \$100.44 for this period.

The second period claimed related to the loss incurred from 17 August 1982 to 11 November 1982 following her removal from the Commercial branch to the EEO Section. We have already made it clear that in our opinion she would have earned a Grade 3 salary in all probability had she remained in the Commercial Branch. Liability for this sum

appears to us to be attracted either as a consequence of the sex harassment decision or as a consequence of a separate discriminatory act which we regard as established in the form of Mr Dillon's moving and downgrading of her which we regard as something which would not have happened but for her sex and would not have been suffered by a comparable male in such circumstances. The amount involved here is a total of \$175.70 and we think she is entitled to this sum.

The third and largest of the amounts claimed under this head relates to the fact that after Ms Squirchuk left the Commission there was a vacancy in the position of EEO Co-ordinator, a Grade 7 position from 2 August 1983 to 24 November 1983. We think it probable that if she had remained Ms Hill would have occupied the position during that period pending the appointment of a successor. Accordingly we consider that the loss of this opportunity which is also causally related to the proved acts of discrimination as a proper item of compensation and we award the agreed sum, namely \$2,096.20. These three amounts make a total of \$2,372.34

The last item for which we consider damages should be awarded is loss of earning capacity to compensate for the disruption to her career which will be involved during the remaining period of secondment and during the readjustment period which will follow. Included in that is an amount to cover the very distinct possibility that when the time comes she will still not be fit enough and the circumstances will not be appropriate for her to return to work at the Commission. This will mean some delay while she obtains other work. Doing the best we can we assess the amount under this head as \$5,000. The total damages award which we entered in her favour therefore amounts to \$34,872.34.

[Injunction]

The terms of the injunctive relief set out above speak for themselves. We considered that some appropriate order should be made to protect her as far as it was reasonable to do so from a repetition of the situation which built up when she was in the Commercial Branch resulting in a hostile working environment. This was deliberately framed to cover the situation whilst the complainant remains an employee of the respondent Commission or until further order. It will therefore only have practical effect if the complainant goes back to work with the respondent Commission. We wish to make it clear that by insertion of the phrase "or until further order" we are intending to leave it open to the parties to apply at any time if circumstances should arise or make it desirable to vary or terminate the order.

[Costs]

The only remaining matter is that of costs. Particulars of the sums awarded are as follows:

(a) allowance for costs of the day on 2.3.84 and 16.7.84 when hearing adjourned on respondent's application	\$ 838
(b) allowance of part of complainant's general costs due to putting complainant to proof of allegations subsequently admitted (approximately 2 days)	<u>\$2,000</u>
	<u>\$2,888</u>

The first of these items was conceded. The second was allowed having regard to sec. 114 of the Act and to the principles in *Penfold v. Penfold* 144 C.L.R. 311. The circumstances which appeared to justify our awarding costs appear from the text of item (b) and the history of the inquiry. Much time and expense would have been saved if there had been at the outset agreement on facts not genuinely in dispute.

**Note to Members of the Bills Committee studying
the Equal Opportunities Bill, the Sex Discrimination Bill
and the Disability Discrimination Bill**

Possible amendments to the Disability Discrimination Bill

Part I — Preliminary

REF. #	CLAUSE	STATUS	AMENDMENT PROPOSED	REMARKS
1	1(2)	defeated in SDB	Amend to bring provisions of Ordinance into operation on 1st January 1996, or on earlier dates as appointed by the Secretary for Health & Welfare.	Members have been concerned about the time required for the establishment of the EOC and issue of the Codes of Practice, delaying commencement of employment provisions. Proposed amendment sets an operational date.
2	new	defeated in SDB <i>BC: drop</i>	New clause directing Ordinance to be interpreted to give effect to relevant international instruments and obligations.	One of the purposes of the Bill is to meet in part certain international standards or obligations, e.g. under the ICCPR or the UN Declaration on the Rights of Disabled Persons. The new clause directs the courts to have regard to this purpose, and to follow internationally-accepted interpretations of discrimination law to the extent the DDB itself allows. Similar provisions exist in the equal opportunity laws of other Commonwealth jurisdictions, for example in most such Australian laws

Part II — Discrimination (none)

3	7	agreed in SDB	Amend to extend definition of victimisation to cover circumstances where a person is victimised because of proceedings, etc. taken out by another person under the DDB.	Accepted by Admin for SDB.
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[cf. EqT 3.9]*

Part III — Employment Field

4	new	agreed in SDB	New clause prohibiting discrimination against commission agents	Accepted by Admin for SDB
5	11(2)	agreed in SDB	Amend to expressly prohibit discrimination in terms and conditions of employment [cf EqT 2 20]	Accepted by Admin for SDB
6	11(3), (5), (7)	Defeated in SDB BC: <i>drop</i>	Amend exemption for small employers to expire one year after enactment of Ordinance (and delete Governor's power to vary year of expiry)	Admin CSAs propose 3 years for SDB Proposed amendment provides grace period of 1 year that can be extended annually by Legco to a maximum of 3 years
7	12(3)(b)	accepted by HWB	Amend GOQ relating to employer-provided premises to limit it to cases where modification of the premises would impose unjustifiable hardship	To bring GOQ relating to premises in line with other provisions relating to premises
8	12(3)(b)	accepted by HWB	Amend GOQ relating to employer-provided premises to give the applicant the right to make necessary modifications at the applicant's own expense	To bring GOQ relating to premises in line with other provisions relating to premises (Cf DDB 27(2)(c))
9	12(3)(c)	accepted by HWB	Delete GOQ based on the essential character of the establishment	Appears to duplicate effect of exception recognising inherent requirements of the job
10	12(3)(d)	accepted by HWB	Delete GOQ for personal services best provided by person without disability	Purpose of GOQ is unclear
11	12(3)(e), 54-5 & Sch 3	agreed in SDB	Delete GOQ and other exceptions in relation to Sched 3 protective regulations to expire in one year, subject to extension by Legco resolution	Protective regulation scheduled in SDB considered out-of-date and either unfounded, or best extended to cover both sexes Need more information about function of Sched 3 in DDB
12	12(3)(f)	accepted by HWB	Delete GOQ recognising prejudice against the disabled outside Hong Kong	Purpose of GOQ in relation to disability is unclear

13 20 agreed in SDB To make harassment of an employer by an employee unlawful. Accepted by Admin for SDB.

Part IV — Other fields

14 new agreed in SDB (Bills Comm language defeated in SDB) New clause prohibiting discrimination in administration of laws and government programmes. [cf. EqT 3.23] Accepted by Admin for SDB. Admin's proposed CSAs incorporate new and unnecessary exceptions. The Bills Committee endorsed the wording in EOB.

15 ~~accepted by HWB~~ ~~Delete~~ exception for voluntary bodies' discrimination in the provision of services to the public. Voluntary bodies' service to the public should not be exempt. Voluntary bodies are already exempt in relation to their own membership (DDB 29(2)), and other legitimate differential treatment is adequately covered-by exceptions for special measures and for charitable benefits (DDB 47-8) Purpose of exception is unclear.

16 30(1) Delete exception for facilities for special care in hospitals.

17 34 accepted by HWB Amend prohibition of harassment to include harassment of educational staff by students. Accepted by Admin for SDB.

Part V — Other unlawful acts

18 40 & 76 agreed in SDB Amend to make unlawfully discriminatory advertisements subject to a civil penalty (of \$10,000 for a first contravention and \$30,000 for additional contraventions). DDB cl. 40 makes discriminatory advertisements unlawful, but no penalty is provided for. The EOC can only apply to the court for an injunction to restrain a person from publishing more unlawful advertisements (cl. 76(4)). On application by the EOC, the court should also be able to impose a penalty as a deterrent. The proposed civil penalty is similar to that presently imposed by the Insider Dealing Tribunal under s. 23(1)(c) of the Securities (Insider Dealing) Ordinance (Cap. 395).

Part VI — General exceptions

19	56	defeated in SDB	Delete exemption for acts done to safeguard the security of Hong Kong	Disagree with Admin that, unless excepted, any differential treatment will be regarded as discrimination Under SDB cl 9/DDB cl 6, differential treatment will not be unlawful if justified by materially different circumstances Further exemptions are therefore unnecessary
20	58 & Sch 5	defeated in SDB	Amend further exceptions in Sched. 5 to expire in one year, subject to extension by Legco resolution.	Same remarks as for DDB cl. 56, at ref no. 11 above

Part VII — Equal Opportunities Commission

21	60(1)	charging effect	New subclause giving EOC function of promoting observation of relevant international instruments and obligations as they relate to disability discrimination.	Despite apparent breadth, the EOC's functions are limited to discrimination as defined in the DDB In its roles other than law-enforcement (such as research, promotion, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad, international non-discrimination standards.
22	60(1)	charging effect	New subclause giving EOC function of examining any proposed legislation that it considers may affect equality of opportunity in relation to disability and reporting results to legislation's sponsor.	The proposed subclause gives the EOC an express, statutory role in respect of proposed legislation. A similar role is conferred on the Privacy Commissioner under cl. 8(1)(d) of the Personal Data (Privacy) Bill.
23	65(4)	defeated in SDB	Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions, irrespective of whether it believes unlawful acts have occurred. [Cf. EqT 4.8 & 4.12]	The proposed amendment is in line with key recommendations of the UK EOC. The EOC is unlikely to investigate a person unless it believes the person has discriminated. Cl. 63(4), however, requires the EOC to incorporate that belief expressly in the investigation's terms of reference. This undesirably restricts investigations: if the investigation uncovers discrimination outside the EOC's initial belief, the EOC must redraft the terms of reference and restart the investigation. This has caused unreasonable delay to the UK EOC's investigations

24	new	agreed in SDB	New clause providing that, in proceedings under Ordinance, District Court not bound by rules of evidence and may inform self as sees fit	Accepted by Admin for SDB
25	new	agreed in SDB	New clause providing that, in proceedings under Ordinance, each party shall pay own costs unless court finds exceptional circumstances justify otherwise.	Accepted by Admin for SDB
26	70(3)-(4)	defeated in SDB	Amend to empower a court in proceedings under the Ordinance to order any remedy the court considers just and appropriate, including reinstatement	Admin initially accepted in principle, then proposed to consider in the course of the general review of labour relations presently being conducted Since the Admin has accepted this in principle, the Bill should be amended accordingly without delay.
27	70(5)	defeated in SDB	Delete bar against damage awards for indirect discrimination in cases of unintentional discrimination	Similar provisions in UK law have been repealed after being found inconsistent with European human rights standards It is preferable to leave the court flexibility to take account of intentions by varying the size of awards
<u>new</u>	new	agreed in SDB	Limit damage awards to \$150,000 max. (Governor may amend amount).	Proposed by Peggy Lam
28	71(2)	agreed in SDB	Amend to authorise enforcement notices to include, in addition to a requirement that a person cease an act of unlawful discrimination, a requirement that the person cease any specific practice(s) that led to the unlawful discrimination. [cf. EqT 4.16]	Accepted by Admin for SDB.
29	69(5)	agreed in SDB	Delete. (EOC must give prior notice to persons against whom enforcement notice to be issued, and hear and take account of such persons' representations opposing issuance of enforcement notice.) [cf. EqT 4.13]	Accepted by Admin for SDB.

30	new	agreed in SDB (Bills Comm language defeated in SDB)	New clause empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance. [cf. EqT 4.17]	Accepted by Admin for SDB. Admin CSAs empower SHA to provide by subsidiary legislation. It will be more proper to provide this power in the principal Ordinance.
31	new	defeated in SDB	New clause empowering EOC to bring proceedings seeking a declaration that legislation has been repealed by reason of inconsistency with the Bill of Rights Ordinance as it relates to disability discrimination.	DDB (unlike EOB) has no clause repealing inconsistent legislation. EOC is therefore unable to seek judicial declarations repealing discriminatory laws. This function is restored by the proposed amendment.
32	new	defeated in SDB	New clause empowering EOC to intervene by leave of court in any proceedings under the Ordinance.	Where an individual is litigating an important test case under the DDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions exist in Australian equal opportunity laws.
33	78	charging effect	Amend to enable EOC to conciliate complaints of acts inconsistent with relevant international instruments and obligations as they relate to disability discrimination.	The EOC should be able to provide a non-binding conciliation service for complaints concerning acts covered by international non-discrimination standards, but not actually unlawful under the DDB
34	79	defeated in SDB	Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings.	Where the EOC has already provided assistance to a person litigating an important case under the DDB, the EOC should be able to pursue the case in its own name if the person withdraws.
35	80(1)-(2)	agreed in SDB	Amend to permit proceedings to be brought under the Ordinance for a period of 2 years from the act complained of.	Accepted by Admin for SDB.

36	80(4)	defeated in SDB	Amend period within which proceedings under the Ordinance may be brought, to provide that time in conciliation will not be taken into account.	DDB should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant in conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation fails
37	80	agreed in SDB	New subclause to provide an additional period within which proceedings under the Ordinance may be brought, of 2 years following publication of a formal investigation report that finds unlawful discrimination, for persons who claim to have suffered from the reported discrimination. [Cf. EqT 4.15]	Accepted by Admin for SDB.

Part IX — Miscellaneous

38	82(2) & Sch 7	charging effect	Consequentially amend section 5AA of the Legal Aid Ordinance (Cap. 91) to allow the Director of Legal Aid to waive the means test for proceedings involving claims of discrimination under the Ordinance (as for proceedings involving claims under the Bill of Rights).	The DDB restores important, inter-citizen rights deleted from the original Bill of Rights Bill. In principle, therefore, provision should be made for the DDB on the same basis as for the BORO.
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Office of Anna Wu
29 June 1995

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT
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Hong Kong

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Your Ref.

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30 June 1995

The Hon Anna Wu
Legislative Councillor
Legislative Council Chamber
8 Jackson Road
Hong Kong.

Dear Ms. Wu,

At one of our meetings to discuss the Disability Discrimination Bill, I undertook to let you have information on how the new airport would be accessible for people with a disability. I enclose, for this purpose, a copy of the written reply to questions asked by your colleague, the Hon Eric Li on 2 February 1994. The answer seems to be quite full. But should you need further information, please do not hesitate to contact me.

Yours sincerely,

(Ms A E Shepherd)
for Secretary for Health and Welfare

Enc.

AES/ks

LEGCO QUESTION NO. 8 (Written)

Date of Sitting : 2 February 1994

Asked by : Hon Eric Li Ka-cheung, JP

Replied by : SES

Question : Will the Government inform this Council of the facilities to be incorporated in the design of the Chek Lap Kok new airport terminal building to facilitate usage by the physically disabled, including the low-visioned and the blind, just as other people can use airport facilities; and when organisations for the physically disabled will be consulted on the detailed design?

Reply :

Mr President,

The Provisional Airport Authority (PAA) has taken great care in planning the passenger terminal in order to ensure that disabled people find it as simple as possible to use. The design of the terminal takes account of the objectives outlined in the 1992 Hong Kong Government Green

Paper on rehabilitation policies and services as well as the need for complying with recognised international standards and guidelines concerning facilities for the disabled. The PAA's policy has been to establish the requirements of the disabled at the earliest possible stage in the development of the new airport. All categories of disability are being considered in the planning process. These include provision for those with walking difficulties, the wheelchair-bound, the blind and partially sighted and the deaf and hard of hearing.

2. A wide range of features to accommodate the needs of the disabled has been incorporated in the design of the terminal. For instance, where level changes are unavoidable lifts and escalators will be provided. Ramps will be provided at the entrance to the terminal from the roadside kerb and the integrated ground transportation centre incorporating the airport railway platform. They will be equipped with handrails on both sides of their entire length. The quality of light in the building will be an aid to people with poor vision. Whenever possible, automatic doors will be used for main entrances and exits. The floors within the passenger terminal will be so designed as to minimize any risk of slipping. All building levels will be accessible by lifts. All lifts will be equipped with an automatic safety reopening device. All passenger lifts

will be provided in a form that is suitable for use by wheelchairs. There will be raised buttons in the lift, together with visual and audible signals of the lifts arrival and travel directions. The airport will allow wheelchair-bound passengers to use their own chair right up to the cabin door, though wheelchairs will of course be subject to screening by airport security. Steps or narrow passages will be avoided on passenger bridges connecting the aircraft to the terminal. Vehicles with mobile lifting devices for disabled passengers will also be available for aircraft which are parked on remote stands. Since any airport can be a challenging environment even with the most careful design, escort arrangements, from check-in to aircraft, will be provided, as at Kai Tak, by the airlines.

3. Information desks will be close to and visible from the building entrances, so that information and any necessary help can be provided early. Routes to information desk and check-in counters will be direct and clearly visible from the entrance. At least one section of an information desk or counter group will be of a height that people in wheelchairs can reach. A sufficient number of toilets for people with disabilities will be made available in the processing halls and gate areas. These designated toilets will be located adjacent to the general washroom facilities. Toilets for the disabled will be

usable by members of either sex. There will be an adequate number of telephones suitable for wheelchair users. These telephones may also be equipped with hearing aids to help those who are hard of hearing.

4. Accessibility, in a broad sense, also relates to convenience in services like shops, restaurants, banks and post offices. Most of these will be on the same level as the passenger handling facilities so that they can be readily accessible to passengers with disabilities. Drinking fountains and vending machines will be accessible to wheelchair users. Seats with supportive back and armrests will be provided throughout public areas. Visual and audible fire warning alarm systems will be installed at strategic locations. All switches and controls will be easily detectable and of a height that people in wheelchairs can reach. Amenities that cater for passengers with disabilities will be marked with the international symbol of access. Public information signs will be clearly legible and strategically located to define the access routes through the terminal. There will be airport staff at the information desks who are trained to communicate with the disabled and help them. Other staff who are in contact with passengers will be given similar training. The PAA will also consider providing additional technical aids at the airport information desks; tactile maps indicating the terminal layout at public entrances and information desks; directional tactile signs at strategic

locations: as well as induction loops for the hard of hearing in selected areas of the terminal.

5. In addition to taking into account the above requirements for the design of the terminal itself, the PAA is making similar provisions for the disabled in the design of public areas outside the terminal, including arrangements for access to transport facilities to and from the new airport.

6. In order to ensure that the needs of the disabled can be taken into account in planning the terminal facilities, the PAA has in recent months held a series of meetings with several of the societies representing the disabled in Hong Kong including the Hong Kong Society for the Blind, the Hong Kong Association of the Deaf and ReHabAid. The PAA is also liaising with the Access and Transport Subcommittee under the Rehabilitation Development Co-ordinating Committee. These various meetings have proved very helpful to the PAA in planning the design of the terminal and liaison will continue as the planning process goes forward.

(7) Outstanding business for the LegCo sitting on 5.7.95

Bills - 1st and 2nd Readings

- (i) Equal Opportunities (Race) Bill
(Private Member's Bill to be introduced by Ms Anna WU)
- (ii) Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
(Private Member's Bill to be introduced by Ms Anna WU)
- (iii) Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill
(Private Member's Bill to be introduced by Ms Anna WU)
- (iv) Companies (Amendment) (No. 2) Bill 1995
- (v) Professional Accountants (Amendment) Bill 1995
- (vi) Block Crown Lease (Cheung Chau) Bill
(Private Member's Bill to be introduced by Mr Andrew WONG)
- (vii) Electoral Provisions (Amendment) Bill 1995
(Private Member's Bill to be introduced by Mr Andrew WONG)

The Chairman said that the above Bills would be introduced into LegCo on 5.7.95 and considered at the House Committee on 7.7.95.

In response to Ms Anna WU, the Chairman confirmed that the House committee had previously agreed that the Bills listed at (i) - (iii) above be referred to the same Bills Committee studying the Equal Opportunities Bill immediately after introduction into LegCo. Ms WU said that, barring unforeseen circumstances, the resumption of the Second Reading debates on the three Bills would be held on 19.7.95.

Mr Andrew WONG said that the Bills Committee studying the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill had a meeting with the Administration. The Administration had no objection to the Bills Committee including his Private Member's Bill (i.e. item (vi) above) in its study.

4th July, 1995

Mrs. Anna Lo
Clerk to the Bills Committee considering the
Equal Opportunities Bill, Sex Discrimination Bill, and
Disability Discrimination Bill
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mrs. Lo,

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill, and Equal Opportunities (Religious or Political
Conviction, Trade Union Activities, and Spent Conviction) Bill

I attach a slightly revised version of the committee-stage amendments [CSAs] to be moved by Anna Wu. The sole revision is the deletion of one amendment that appeared in the previous version (amendment (b) to cl. 33 of the Race Bill and to cl. 52 the Age, etc. Bill).

The deleted amendment raised the captioned Bills' penalties for serious vilification to the same level as provided for the same offense under the Disability Discrimination Bill. Although the general understanding was to reconcile the language of the various Bills, this amendment raises issues which there is no longer time to discuss fully and is therefore withdrawn.

I would also like to take this opportunity to explain several technical amendments among the CSAs. These make minor adjustments to bring the captioned Bills' language into closer parallel with the Sex Discrimination Ordinance [SDO] and with the Disability Discrimination Bill [DDB], as follows:

1. With respect to unlawful advertising, the CSAs substitute the definition used in the SDO and DDB for the definition in the captioned Bills. The effect of either definition is the same.
2. Also with respect to unlawful advertising, the CSAs replace the criminal penalties now provided in the captioned Bills with a civil penalty of \$10,000 for a first contravention and \$30,000 for subsequent contraventions. This follows a

Bills Committee recommendation adopted in the SDO and accepted by the Administration for the DDB.

3. The CSAs modify the definition of serious vilification in the captioned Bills by adding reference to property to which the vilified person or group has access. This parallels the definition used in the DDB.

4. The CSAs make technical improvements to the clauses on administration of laws and government programmes, by adding express reference to prerogative powers. This follows language recommended by the Bills Committee for the SDO.

Thanks for your assistance.

Yours sincerely,

(Adam C. Mayes)
for Anna Wu

Ref : HB/C/61

Report to the House Committee on 5 July 1995

**Bills Committee to study
the Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill,
Equal Opportunities (Race) Bill,
Equal Opportunities (Religious or Political Conviction,
Trade Union Activities and Spent Conviction) Bill,
and Disability Discrimination Bill**

Purpose

This paper reports on the deliberations of the captioned Bills Committee on the **Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Race) Bill, and Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill** and seeks Members' agreement for the Bills to resume Second Reading debate on 19 July 1995.

Background

2. An interim report of the Bills Committee to study the Equal Opportunities Bill (EOB) and Sex Discrimination Bill (SDB) was presented to the House Committee on 5 May 1995 on the progress of the scrutiny of the two Bills generally, and on the proposed restructuring of the EOB in particular (LegCo Paper No. HB 586/94-95 refers). The proposal was to restructure the EOB into three separate bills, each covering the different grounds of discrimination, excluding sex and disability as they are already covered by the SDB and Disability Discrimination Bill (DDP). The wording of the three new bills will remain the same as in the relevant parts of the original EOB. At that meeting, it was agreed that Ms Wu's three separate bills, after completing the required formalities and being introduced into LegCo and referred to the House Committee, should be assigned immediately to the same Bills Committee. The three new equal opportunities bills have been introduced on 5 July 1995.

The Bills.

3 The Equal Opportunities (Family Responsibility, Sexuality and Age) Bill is to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of family responsibility or family status, sexuality, or age, or involving harassment on the ground of sexuality.

4 The Equal Opportunities (Race) Bill is to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination of race, colour, nationality, national or ethnic origin, or involving racial harassment.

5. The Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill is to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of religious or political conviction, union membership or activities, or spent criminal conviction.

The Bills Committee

6. The Bills Committee, chaired by Dr Hon LEONG Che-hung, has held a total of 34 meetings to study the EOB and SDB, including 16 meetings with the Administration on the latter and two rounds of meetings with 34 deputations. Views from 10 written submissions have also been considered. Lists of membership of the Bills Committee, deputations/written submissions and summary of their areas of concerns are at Appendices I to IV of the interim report referred to in paragraph 2.

Deliberations of the Bills Committee

7. Members note that the Bills aim at eradicating the seven areas of discrimination named in the Bills. Each area covers direct and indirect discrimination in work, education, provision of goods, services & facilities, accommodation, land, clubs and other activities. The Bills adopt a certain pattern in the drafting since almost the same standards and principles apply to each and every prohibited ground of discrimination. The Bills propose to make discriminatory acts or

practices, in general, civil wrongs, triable in District Court. The Bills further propose that the court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit. The Bills also propose that each party to litigation will ordinarily bear that party's own costs. The court may, however, award costs as it thinks fit in exceptional circumstances. These Bills do not make provisions for the establishment of a similar body as the Equal Opportunities Commission (EOC) in the Sex Discrimination Ordinance, principally because of the difficulties faced by a private member under Standing Order 23.

8. The majority Members of the Bills Committee support the Bills which are more comprehensive than the anti-discrimination legislation introduced by the Administration, namely the SDB and DDB. They particularly share some deputations' feelings on age and family status discrimination.

9. During the thorough study of the Bills, Members have raised a few concerns. In response to these concerns, Hon Anna Wu has agreed to amend the Bills. Lists of the outline of the Committee Stage Amendments (CSAs) on the three Bills with details of the Bills Committee's views are at **Appendix I**. The more important amendments are highlighted below:

- (a) Deletion of exceptions for hiring domestic helpers (Ref. No. A2, A3, A6, A7, A12, A13, B2, B3, C2 - C3, C5 - C8);
- (b) Exception for family responsibility discrimination and nationality discrimination in admission decisions made in certain circumstances by private schools (Ref. No. A4);
- (c) Exception for school admissions in compliance with government-formulated admission schemes (Ref. No. A19, B11, C10);
- (d) Amendment to provide that mandatory retirement ages do not constitute unlawful age discrimination (Ref. No. A15);

- (e) Exception for legal entitlements, obligations or disqualifications of persons under 18, and laws protecting the welfare of persons under 18 (Ref. No. A16); and
- (f) Exception for age discriminatory laws and acts done under their authority, to expire in two years, and may be extended up to another two years, subject to LegCo resolution (Ref. No. A17).

Views of the Administration

10. As pointed out in the interim report referred to in paragraph 2, the Administration supports, in principle, the spirit of anti-discrimination legislation. It emphasizes a step-by-step approach with introduction of the SDB, followed by the DDB, so that the social, economic and legal implications of adopting the legislative approach can be closely examined after the enactment of these two Bills. (The former Bill was enacted on 28 June 1995.) It also plans to conduct a study on the need for action to tackle discrimination relating to age, family status and sexuality no later than the end of 1995. This study is anticipated to be completed in 12 months. Some Members agree to this progressive approach while the majority consider that anti-discrimination legislation should be enacted early.

11. The Administration did not attend meetings of the Bills Committee in the scrutiny of the relevant parts of the original EOB relating to the three new Bills. It therefore has no specific comments on the Bills nor has the Administration indicated to-date that it will move any amendments.

Committee Stage Amendments (CSAs)

12. A full set of the CSAs is at **Appendix II**. They will be moved by Hon Anna Wu.

Recommendation

13. The Bills Committee recommends that the Second Reading debate of the Bills be resumed at the LegCo sitting on 19 July 1995.

Advice Sought

14. Members are invited to support the recommendation of the Bills Committee at paragraph 13 above.

LegCo Secretariat
4 July 1995

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Outline of Committee Stage Amendments

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
A1	3(1)	Amend definition of employment to ensure (a) coverage of government work; and (b) that work as a barrister or as a barrister's pupil is covered.	Technical amendments to ensure the Bill's coverage of the employment field is comprehensive, in line with the express coverage of barristers in the Sex Discrimination Ordinance (SDO).
A2	11(3)	Repeal exceptions for hiring domestic helpers.	The exceptions for hiring domestic helpers are generally unnecessary and, where relevant, can be replaced by specifying job requirement.
A3	13(2)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.A2.
A4	18	Add new subclause exempting family responsibility discrimination in admission decisions made by private schools in order to accommodate students whose relatives study or work at the same schools.	School admission schemes commonly give some degree of preference to applicants with relatives teaching/studying at the same school. This is considered reasonable, and an exceptions provided for clarify.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
A5	25 44 71	Technical improvement to the clauses on administration of laws and government programmes, by adding express reference to prerogative powers.	This follows the language recommended for the SDO.
A6	30(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.A2.
A7	32(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.A2.
A8	45	Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment.	Technical improvements to harassment provisions.
A9	46(1)	Amend provisions on harassment in education to cover harassment by students of other students, or of staff.	A new sub-clause is to be added on sexual harassment of a student by another student; and of a teacher by a student.
A10	46(2) 47(2) 48(2)	Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.	Technical improvements to harassment provisions.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
A11	52	Modify the definition of serious vilification by adding reference to property to which the vilified person or group has access.	This parallels the definition used in the Disability Discrimination Bill (DDB).
A12	53A	Add new clause exempting laws and policies giving eligibility for marriage and for adoption from sexuality part of the Bill.	These issues should be separately examined in future.
A13	55(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.A2.
A14	57(2)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.A2.
A15	73(b)	Amend the retirement provision to provide that mandatory retirement ages do not constitute unlawful age discrimination.	Clause 73(a) and (b) exempt voluntary phased-in retirement schemes and provide a temporary exemption of two years for mandatory retirement schemes respectively. In view of Members' divided views on compulsory retirement age, clause 73(b) is proposed to be amended so as not to prohibit mandatory retirement age.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
A16	74A	Add new clause exempting legal entitlements, obligations or disqualifications of persons under 18, and laws protecting the welfare of persons under 18.	In response to Members' concerns about the protection of minors, clause 74A will be amended to clarify that it will not affect existing laws concerning the legal status of persons under 18.
A17	74B	Add new clause exempting age discriminatory laws and acts done under their authority, to expire in two years, and may be extended up to another two years, subject to LegCo resolution.	A temporary exemption of two years, which may be extended up to another two years, is proposed for all existing laws with possible age discriminatory implications in order to give Government time for orderly review and revisions.
A18	79	(i) Substitute the definition used in the SDO and DDB and (ii) replace the criminal penalties now provided in the Bill with a civil penalty of \$10,000 for a first contravention and \$30,000 for subsequent contraventions.	The amendments bring the Bill's language and provision into closer parallel with the SDO and DDB.
A19	83A	Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes).	At present a high percentage of school places in public and subsidized primary or secondary schools are allocated by educational establishments under a system devised by the Education Department, rather than by the schools themselves. The amendment provides that educational bodies should not be

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
A20	91A	Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluation of good character.	challenged if they follow the system in allocating school places. Any challenge of differential treatment under the system should be directed instead to the government department responsible for devising it.
A21	95A	Consequentially amend the Schedule to the Official Languages Ordinance (Cap.5) to permit the use of Chinese language in proceedings under the Ordinance.	A new clause is added to bring in the provisions of the Sex Discrimination Ordinance (s.16(2)) and Disability Discrimination Bill (cl.17(2)).
			Same amendment as made by the Sex Discrimination Ordinance and Disability Discrimination Bill, to allow use of Chinese in the Courts.

Equal Opportunities Bill (Race) Bill
Outline of Committee Stage Amendments

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B1	3(1)	Amend definition of employment to ensure (a) coverage of government work; and (b) that work as a barrister or as a barrister's pupil is covered.	Technical amendments to ensure the Bill's coverage of the employment field is comprehensive, in line with the express coverage of barristers in the Sex Discrimination Ordinance.
B2	11(3)	Repeal exceptions for hiring domestic helpers.	The exceptions for hiring domestic helpers are generally unnecessary and, where relevant, can be replaced by specifying job requirement.
B3	13(2)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.B2.
B4	18	Add new subclause exempting discrimination on the basis of nationality (i.e. race) in admission decisions made by private schools in order to accommodate students who previously studied or are likely in future to study in particular educational systems (e.g. in French schools or in Japanese schools).	Exception provided for admissions to international schools.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B5	25	Technical improvement to the clauses on administration of laws and government programmes, by adding express reference to prerogative powers.	This follows the language recommended for the SDO.
B6	26	Technical amendments to harassment provisions: (a) to ensure that coverage of harassment in work is complete; (b) to clarify definition of harassment by way of hostile work environment.	Technical improvements to harassment provisions.
B7	27(1)	Amend provisions on harassment in education to cover harassment by students of other students, or of staff.	A new subclause is to be added on sexual harassment of a student by another student and of a teacher by a student.
B8	27(2) 28(2) 29(2)	Technical amendments to harassment provisions to clarify definition of harassment by way of substantial interference with activities in other areas.	Technical improvements to harassment provisions.
B9	33	Modify the definition of serious vilification by adding reference to property to which the vilified person or group has access.	This parallels the definition used in the Disability Discrimination Bill (DDB).

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B10	35	(i) Substitute the definition used in the SDO and DDB and (ii) replace the criminal penalties now provided in the Bill with a civil penalty of \$10,000 for a first contravention and \$30,000 for subsequent contraventions.	The amendments bring the Bill's language and provision into closer parallel with the SDO and DDB.
B11	41A	Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes).	At present a high percentage of school places in public and subsidized primary or secondary schools are allocated by educational establishments under a system devised by the Education Department, rather than by the schools themselves. The amendment provides that educational bodies should not be challenged if they follow the system in allocating school places. Any challenge of differential treatment under the system should be directed instead to the government department responsible for devising it.
B12	49A	Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character.	A new clause is added to bring in the provisions of the Sex Discrimination Ordinance (s.16(2)) and Disability Discrimination Bill (cl.17(2)).

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B13	53A	Consequentially amend the Schedule to the Official Languages Ordinance (Cap.5) to permit the use of Chinese language in proceedings under the Ordinance.	Same amendment as made by the Sex Discrimination Ordinance and Disability Discrimination Bill, to allow use of Chinese in the Courts.

Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill

Outline of Committee Stage Amendments

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
C1	3(1)	Amend definition of employment to ensure (a) coverage of government work; and (b) that work as a barrister or as a barrister's pupil is covered.	Technical amendments to ensure the Bill's coverage of the employment field is comprehensive, in line with the express coverage of barristers in the Sex Discrimination Ordinance.
C2	11(4)	Repeal exceptions for hiring domestic helpers.	The exceptions for hiring domestic helpers are generally unnecessary and, where relevant, can be replaced by specifying job requirement.
C3	13(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.C2.
C4	25 43 62	Modify the definition of serious vilification by adding reference to property to which the vilified person or group has access.	This parallels the definition used in the Disability Discrimination Bill (DDB).
C5	29(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.C2.
C6	31(2)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.C2.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
C7	46(3)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.C2.
C8	50(2)	Repeal exceptions for hiring domestic helpers.	Same reason as for ref No.C2.
C9	64	(i) Substitute the definition used in the SDO and DDB and (ii) replace the criminal penalties non provided in the Bill with a civil penalty of \$10,000 for a first contravention and \$30,000 for subsequent contraventions.	The amendments bring the Bill's language and provision into closer parallel with the SDO and DDB.
C10	68A	Add new clause exempting school admissions in compliance with government-formulated admission schemes (but not exempting the schemes themselves, or government liability for formulating the schemes).	At present a high percentage of school places in public and subsidized primary or secondary schools are allocated by educational establishments under a system devised by the Education Department, rather than by the schools themselves. The amendment provides that educational bodies should not be challenged if they follow the system in allocating school places. Any challenge of differential treatment under the system should be directed instead to the government department responsible for devising it.

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
C11	76A	Amend qualifying bodies provisions to add requirement that qualifying bodies have regard to evidence of past, unlawful discrimination in making evaluations of good character.	A new clause is added to bring in the provisions of the Sex Discrimination Ordinance (s.16(2)) and Disability Discrimination Bill (cl.17(2)).
C12	80A	Consequentially amend the Schedule to the Official Languages Ordinance (Cap.5) to permit the use of Chinese language in proceedings under the Ordinance.	Same amendment as made by the Sex Discrimination Ordinance and Disability Discrimination Bill, to allow use of Chinese in the Courts.

LegCo Secretariat
4 July 1995

THE HONG KONG COUNCIL OF SOCIAL SERVICE

香港社會服務聯會

PATRON

The Right Honourable Christopher HONG
Secretary for Home Affairs

DIRECTOR

Mr. T. F. CHAN, JP



Your Ref

Our Ref

Facsimile Memorandum

To : Dr. Hon. Leong Che-hung OBE JP Fax No. : 2877 8024
Chairperson, Bills Committee to Study
Equal Opportunities Bill, Sex Discrimination
Bill and Disability Discrimination Bill
Legislative Council

From : Chong Chan-yau Tel No. : 2864 2933
Convenor Fax No. : 2864 2962
Task Group on Anti Discrimination
Legislation for Disabled Persons

Re : Disability Discrimination Bill

Date : July 6, 1995

Number of Pages (including this cover) : 4 only

Message

I forward herewith for reference of your Bills Committee a list of seven key items which we hope you would further pursue in the Disability Discrimination Bill. All these items are currently opposed by the Administration and some similar amendments were defeated in the Sex Discrimination Bill. We hope you would continue your excellent job and not be discouraged by the voting results in the Sex Discrimination Bill. We the local disabled community and people in rehabilitation field would not give up but instead, step up our lobbying work hoping that more legislators and the Administration would consider seriously and understand the special circumstances disabled persons face and vote on these seven items according to what we are advocating for.

On the other hand, I hope you would let us know whether in the present definition of disability the term "organisms" includes HIV.

Thank you for your kind attention.

Encl.

Items which should be pursued in Disability Discrimination Bill (DDB)

Removal of the exemption providing transitional period for small business establishments

The government proposed to allow a 3-year grace period for small business establishments (Cl. 11). The Joint Council considers such an exemption unnecessary and cautions this might further reduce the employment opportunities of disabled persons who are facing an extremely high unemployment rate.

According to a survey several years ago, the unemployment rate in the disabled community was as high as 49%. Another survey conducted in 1994 also showed that 77% of the responding employers had never employed disabled persons before and almost 80% of the respondents had worries in employing disabled persons. Despite the effort paid by the Governor in recent years in promoting employment of disabled persons, no significant effect had been seen. We are very much concerned that disabled persons would be hit most severely in this period of time when the overall unemployment rate of Hong Kong is in a rising trend.

We believe firmly that all Hong Kong citizens should work together to materialize the principle of "equal opportunities and full participation" and small businesses should join other large employers in providing equal employment opportunities to disabled persons.

We understand that if small firms experience genuine difficulties in employing disabled persons, they would be safeguarded by the provision of "unjustifiable hardship" in the Bill. This would certainly relieve the worries of small (and even large) firms.

2. Employers should not be allowed to request information from their employees or job applicants which is irrelevant to the jobs

Clause 39 of DDB provides that an employer may request the same information from all its employees or job applicants, disregarding if they are people with disabilities or not. The Joint Council is concerned that employers might require all their employees or job applicants to provide such information which is irrelevant to the jobs, e.g. medical history including history of mental illness. In fact, we have observed that more and more companies are requesting their job applicants to take HIV test.

Allowing employers to acquire irrelevant information of disabled job applicants like medical history would possibly increase the opportunities of disability discrimination in workplace. Moreover, disabled persons might be discouraged to apply for or remain in jobs if they are required to reveal their health history or condition, e.g. certain kinds of chronic illnesses, HIV, history of mental illness.

Moreover, we believe that both people with and people without disabilities should be allowed to maintain their personal privacy and not to release personal data which is not relevant to the jobs.

3. To simplify the EOC's investigation procedures following the recommendations put forward by the UK Equal Opportunities Commission

The Joint Council advocates that EOC should be allowed more flexibility in conducting formal investigation without being obstructed by any procedural hurdles. We propose to amend CL 65(4) of the Bill in line with the recommendations of United Kingdom's EOC so that the future EOC would not be required to believe that one has discriminated before starting a formal investigation on that named person.

Discrimination is often covert and obscure. Disability discrimination is even so because quite often many factors are involved and many victims of discrimination might not have the ability to identify a discriminatory act or explain to others the full picture of the encounter. Naturally, mentally handicapped persons and, perhaps, many ex-mentally ill persons would have difficulties in this respect. Visually or hearing impaired persons might also have similar problems because they may not obtain all relevant information of an event.

Therefore, it would not be surprising that in the course of a formal investigation, EOC identifies discriminators other than those named in the terms of reference. If the present provision in DDB is endorsed, the EOC would need to redraft the terms of reference and restart the investigation. This would certainly cause undue delay to the investigation.

The Joint Council proposes to amend the DDB so that EOC may carry out an investigation into named persons or organizations, irrespective of whether it believes unlawful acts have occurred.

4. Enhancement of EOC's ability to bring proceedings in its own name and to intervene by leave of court in any proceedings under DDB

Disabled persons might face extra difficulties in bringing proceedings. They might find taking a legal action too expensive or difficult for them, or they might not be willing to disclose their identity by taking up a court suit (especially for those with HIV/AIDS or former mental illness record). There should thus be a provision to allow EOC to bring proceedings in its own name. Moreover, such a provision should be provided in the principle ordinance instead of through subsidiary legislation.

When disabled persons are litigating important test cases under DDB, the EOC should, with the permission of the court, be allowed to participate so as to facilitate a proper development of the legislation.

The Joint Council hopes that new clauses be added to DDB to enhance EOC's litigating power named above.

5. Reinstatement as an option of remedies

With a very low employment rate amongst the disabled community, every employment opportunity for disabled persons is invaluable. We suggest that "reinstatement" be added to DDB as an option of remedies (*Cl. 70*) so that when the situation permits and favours, the court may have the necessary legal provision to grant "reinstatement" to disabled victims of workplace discrimination.

6. No ceiling on damages

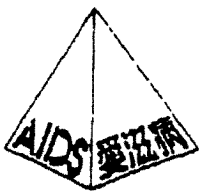
The proposed HK\$150,000 ceiling on damages is absolutely unacceptable. The Legal Department has pointed out that such a ceiling usually does not exist in any civil claims. There is also not such a ceiling in the Bills of Rights Ordinance.

Setting such a ceiling means that discriminators do not have to compensate claimants any amount of damages above HK\$150,000. This would certainly discourage disabled persons from taking up court suits as the legal cost might be high compared to the maximum amount of compensation obtainable. A discriminator may also avoid litigation by simply making a deal with the potential claimant and paying HK\$150,000 to the latter. This would not be uncommon as, for example, employers might instead of making their workplace fully accessible, compensate up to HK\$150,000 to the victims of discrimination if a claim really arises.

The Joint Council strongly opposes to the imposition of any ceiling on damages in DDB.

7. Extension of the time-limit to bring proceedings

The government proposes (*Cl. 80*) that the court may not consider any claims after the completion of a 2-year period following the complained act or the release of a relevant report of investigation into the act. The Joint Council has originally proposed to extend the period to 6 year in line with the usual practice of other civil tort cases. As to simplify the matter, we would also support the proposal of LegCo's Bills Committee so that the two-year limit to bring proceedings does not count the time used for conciliation by EOC.



愛滋病顧問委員會
ADVISORY COUNCIL ON AIDS

愛滋病顧問委員會 ADVISORY COUNCIL ON AIDS

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6 July 1995

Ms A E Shephard
Health & Welfare Branch
7/F Central Government Office
Lower Albert Road
Central
Hong Kong

Dear Ms Shepherd,

Disability Discrimination Bill

I have been instructed by Dr the Honourable Conrad Lam, Chairman of the AIDS Services Development Committee of the Advisory Council on AIDS, to provide you with our views on the Bill. We are particularly worried about Clause 39 on the subject of requests for information, and an amendment is clearly indicated in this regard.

Requests for information

Clause 39 sets out ambiguous provision in rendering it unlawful to request or require information from a disabled person that others are not required to provide. In the context of HIV, it implies that HIV testing of all persons, for example in pre-employment check-up, is lawful so long as everyone is required to undertake the test or to provide evidence of the result of such tests. Such provision is against local AIDS policy as stipulated in the document Strategies for AIDS Prevention, Care & Control in Hong Kong formulated by the Advisory Council on AIDS.

We understand that the provision is similar to the one in Australia. In this context we have asked for the advice of a legal policy analyst in Sydney. His comment is attached for your easy reference (attached paper 1). The impact of the provision may not be significant in Australia as there are other state laws giving adequate coverage in curbing discrimination. In USA, where the Americans with Disability Act was enacted, clear regulations have been established to prohibit pre-employment examination which is not job-related (see attached paper 2).

We propose amending the clause to make it unlawful to request for unnecessary information as in the case of Queensland and the USA.

1365

COMMITTEE STAGEAmendments to be moved by Dr. the Hon. Conrad Lam Kui-shing, J.P.

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|-----------------------|---|
| 39 (<i>alt'v A</i>) | <p>By renumbering the clause as subclause 39(1).</p> <p>By adding -</p> <p style="padding-left: 40px;">“(2) Subject to subsection (3), if, because of section 11(1), it would unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide medical information (whether by completing a form or otherwise) in connection with or for the purposes of the doing of the act.</p> <p style="padding-left: 40px;">(3) Nothing in subsection (2) makes it unlawful for a person to request or require another person to provide medical information that is necessary to determine if that other person would be unable to carry out the inherent requirements of the job or would require services or facilities that are not required by persons without a disability.”</p> |
| 70 (<i>alt'v B</i>) | <p>By adding -</p> <p style="padding-left: 40px;">“(2A) Where in any proceedings under section 11(1) it is proved that a person—</p> <p style="padding-left: 80px;">(a) treated another person less favourably than he treated or would treat a person without a disability, and</p> <p style="padding-left: 80px;">(b) requested or required that other person to provide medical information (whether by completing a form or otherwise), in connection with or for the purposes of the doing of the act referred to in paragraph (a),</p> <p style="padding-left: 40px;">then it shall be presumed until the contrary is proved that the act was done on the ground of that other person’s disability.”</p> |

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT

Lower Albert Road
Hong Kong

DOCUMENT

Our Ref.: HW CR 2/5091/94 Pt 21

Your Ref.

Tel: 2810 3195

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2869 4376

6 July, 1995

Dr the Hon Leong Che-hung, OBE JP
Chairman, Bills Committee to study the Disability Discrimination Bill
Legislative Council Chamber
8 Jackson Road
Hong Kong.

Disability Discrimination Bill

At the Bills Committee meeting on 30 June, I undertook to come back to Members on five points. I set out below the Administration's views on these.

(a) **New Clause : Government**

Having taken legal advice, we have decided to adopt the same amendment as passed by the Legislative Council for the Sex Discrimination Bill, on 28 June, prohibiting discrimination on the part of Government in the performance of its functions or the exercise of its powers. The same exceptions will also be covered: these refer to any act done under immigration legislation and any act done if it was necessary to comply with a requirement of an existing statutory provision.

(b) **Clause 56 : Acts done to safeguard the security of Hong Kong.**

We have decided to delete this clause from the Bill.

(c) Clause 58: Further Exceptions

We have decided to retain this clause. It will be noted that the Schedule it refers to is currently empty and that under clause 84, if the Governor in Council were to amend it by putting something in, such an addition would be subject to the approval of the Legislative Council.

(d) Clause 70: Reinstatement

Although reinstatement as a remedy is provided in the United Kingdom against unfair dismissal of employees, experience there has shown that there are many enforcement problems. For example, the court will need to consider the employees' wishes, the practicability of the employee's returning to work for the employer and, in cases where the employee is partly to blame for the dismissal, whether or not it would be just to make a reinstatement order. In general, where a case of alleged unfair dismissal is brought to the court, the relations between the employee and the employer would have broken down to such an extent that reinstatement would not be a welcome remedy to either party. Compensation should therefore be the appropriate remedy. Moreover, as Members may be aware, the question of reinstatement has been addressed in a review of labour relations conducted by Secretary for Education and Manpower and legislative proposals to take forward the review will be introduced into the Legislative Council in the next session.

(e) New Clause: "Cap" on damages

The question was raised as to whether this amendment would be inconsistent with the ICCPR. Under Article 2(3)(a) of the ICCPR, each State Party undertakes to ensure that any person whose rights or freedoms recognised in the ICCPR are violated shall have an effective remedy.

A statutory limit on compensation is not, by itself, inconsistent with this undertaking. The Human Rights Committee has recognised that Article 2 of the ICCPR generally leaves it to the State Parties concerned to choose their method of implementation in their territories within the framework set out in that article.

I met the Hon Anna Wu and her legal team to discuss both the Administration's and her proposed amendments to the Disability Discrimination Bill yesterday morning. The final point on which I undertook to give a response is her proposed amendment to Clause 65(4) on the EOC's power to carry out an investigation into named persons irrespective of whether it believes unlawful acts

have occurred. Ms Wu expressed some concern, in connection with this clause, that those with a mental impairment might be in a special position. This concern was not clear to me so I agreed to discuss it with her separately. I will respond on this point shortly.

I hope that the responses on these outstanding points are clear. Please feel free to give me a call to discuss any queries you might have.

I hope to be in a position to send you the Administration's committee stage amendments on 10 July. I hope that you will be able to send me the Bills Committee's proposed amendments at the same time.

Yours sincerely,

(Ms A E Shepherd)
for Secretary for Health and Welfare

AES/ks

that this would be pursued at a convenient juncture (para 24 of the report)

The Bills Committee recommended that the Second Reading debate be resumed on 19.7.95. Members agreed and noted the revised draft Committee Stage amendments tabled at the meeting (Appendix I).

- (d) **Report by the Bills Committee to study the Film Censorship (Amendment) Bill 1995**
(LegCo Paper No. HB 1102/94-95)

Mr James TO, Chairman of the Bills Committee, reported on the deliberations of the Committee. He also tabled a further note (Appendix II) which contained the Chinese version of the Committee Stage amendments to the Bill.

Members agreed that, subject to the amendments agreed between the Bills Committee and the Administration, the Second Reading debate on the Bill should be resumed on 19.7.95.

- (e) **Report by the Bills Committee to study the Equal Opportunities (Race) Bill, Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill and Disability Discrimination Bill**
(LegCo Paper No. HB 1090/94-95)

Dr LEONG Che-hung, Chairman of the Bills Committee referred Members to the report on the three equal opportunities bills. So far, the Administration had made no specific comments on the Bills nor had it indicated that it would move any amendments. The Bills Committee recommended that the Second Reading debate on the Bills be resumed on 19.7.95. This was agreed.

Ms Anna WU supplemented that :

- (a) the Bills excluded the areas not covered by the Bill of Rights;
- (b) the Bill would have a lot of flexibility in terms of timing for implementation i.e. there was no specific commencement date; and

- (c) apart from the amendments contained in the report, she would move additional Committee Stage amendments by allowing the Government to opt for progressive implementation in the area of employment.

Dr LEONG said that the Bills Committee had been upset about the Administration's support for a last minute Committee Stage amendment moved to the Sex Discrimination Bill at the sitting on 28.6.95. This amendment, which introduced a cap of \$150,000 for damages, had not been fully discussed as a policy issue with the Bills Committee. The Bills Committee was concerned that the Administration would move a similar amendment to the Disability Discrimination Bill, but the Administration had yet to give a firm reply to this.

- (f) **Report by the Bills Committee to study the Airport Authority Bill**
(LegCo Paper No. HB 1111/94-95)

Mr Peter WONG, Chairman of the Bills Committee referred Members to the report and said that the Bills Committee had yet to see the amendments proposed to be moved by Members of the Democratic Party and the Administration. Nevertheless, the Bills Committee recommended that the Second Reading debate on the Bill be resumed on 19.7.95. Members agreed.

- (g) **Report by the Bills Committee to study the Public Order (Amendment) Bill 1994**
(LegCo Paper No. HB 1118/94-95)

Mr Zachary WONG, Chairman of the Bills Committee, reported that the Administration had accepted the majority of the proposals made by the Bills Committee and would move Committee Stage amendments to such effect. As regards the two proposals which the Administration had not agreed, Committee Stage amendments would be moved by individual Members. The Bills Committee recommended that the Second Reading debate be resumed on 19.7.95. Members agreed.

10th July, 1995

Mrs. Anna Lo
Clerk to the Bills Committee considering the
Equal Opportunities Bill and Disability Discrimination Bill
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mrs. Lo,

**Equal Opportunities (Family Responsibility, Sexuality and Age) Bill,
Equal Opportunities (Race) Bill, and Equal Opportunities (Religious or Political
Conviction, Trade Union Activities, and Spent Conviction) Bill**

I attach the final version in English of the committee-stage amendments [CSAs] to the captioned Bills to be moved by Anna Wu.

This version incorporates technical revisions by the Law Drafting Division. In particular, the Law Drafting Division suggested deleting the consequential amendments to the Official Languages Ordinance (Cap. 5) because recent changes to that Ordinance make further amendment unnecessary.

In addition to the CSAs previously discussed and endorsed by the Bills Committee, there are a number of new CSAs of which notice is given for the first time today, which will be moved by Anna Wu on her own account. The new CSAs are as follows:

Regulations to provide transitional exceptions for business

The new CSAs add new clauses 84A, 42A and 69A to the 3 Bills respectively.

The proposed new clauses empower the Secretary for Home Affairs to make regulations to provide transitional exceptions from the Bills' employment provisions for different categories of businesses. The Secretary has considerable flexibility in defining the categories of businesses covered, either by size or by type of business, and in determining the scope and duration of the temporary exemptions created. Any such regulations made by the Secretary must be approved by the Legislative Council.

De facto spouse

The new CSAs delete all references to de facto spouses (in cl. 3(1)) in each of the 3 Bills.

Discrimination on the basis of characteristics of relatives or associates

In each of the Bills, the new CSAs delete both the definition of "associate" (in cl. 3(1)) and cl. 6, the clause concerning discrimination based on the characteristics of relatives or associates. The CSAs also delete the references to relatives and associates in relation to harassment, in cl. 49 of the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill and cl. 30 of the Equal Opportunities (Race) Bill.

The effect of the new CSAs is that the Bills will not cover treatment of a person based on characteristics of the person's relatives or associates.

Effect on inconsistent laws

The new CSAs delete cl. 8 in each of the Bills, which is the clause expressly repealing prior, inconsistent laws. Without this clause, each Bill's effect on prior laws will be governed by ordinary principles of statutory interpretation. Discriminatory laws may also continue to be challenged under the Bill of Rights Ordinance (Cap. 383).

Punitive and exemplary damages

The new CSAs delete the references to punitive and exemplary damages in the clauses setting out remedies that may be awarded under the Bills (in clauses 88, 46 and 73 of the 3 Bills respectively). The effect of the CSAs is that the courts will look to ordinary principles of the common law in deciding whether to award such categories of damages.

Effect of Bill of Rights Ordinance on inconsistent laws

The new CSAs amend the consequential amendments to the Bill of Rights Ordinance (Cap. 383) made by the Bills (in clauses 96, 54 and 81 for the 3 Bills respectively). The CSAs ensure that the changes made to the Bill of Rights Ordinance will not be applied retrospectively.

I will forward the CSAs in Chinese as soon as they are finalised. Thanks for your assistance.

Yours sincerely,

(Adam C. Mayes)
for Anna Wu

10th July, 1995

Mr. K. S. Law
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mr. Law,

Legislative Council

Committee-Stage Amendments

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

In accordance with Standing Order 45(2), I hereby give notice of my intention to move the attached amendments to the captioned Bill at the Committee Stage of the 19 July, 1995 Legislative Council sitting.

Thanks for your assistance.

Yours sincerely,

Anna Wu

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE)
BILL

COMMITTEE STAGE

Amendments to be moved by the Hon Anna WU Hung-yuk

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	<p>(a) In the definition of “employment”-</p> <ul style="list-style-type: none">(i) in paragraph (b), by deleting “and” at the end;(ii) in paragraph (c), by deleting the semicolon and substituting “, or as a Crown servant or Government servant; and”;(iii) by adding -<ul style="list-style-type: none">“(d) work as a pupil or tenant in a barrister’s chambers,and in the case of the employment referred to in paragraph (d) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant;”. <p>(b) In the definition of “near relative”, by deleting “or de facto spouse” in paragraph (b).</p> <p>(c) By adding -<ul style="list-style-type: none">““advertisement” () includes every form of advertisement, whether to the public or not, and whether--<ul style="list-style-type: none">(a) in a newspaper or other publication;(b) by television or radio;(c) by display of notices, signs, labels, showcards or goods,(d) by distribution of samples, circulars, catalogues, price lists or other material;(e) by exhibition of pictures, models or films, or(f) in any other way,and references to the publishing of advertisements shall be construed accordingly,“barrister’s clerk” () includes any person carrying out any of the functions of a barrister’s clerk;”</p> <p>(d) By deleting the definition of “associate”</p> <p>(e) By deleting the definition of “de facto spouse”</p>
6	By deleting the clause
8	By deleting the clause

11 By deleting subclause (3)

13 By deleting subclause (2)

18 By adding -

“(2A) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of family status, in connection with admission as a student to an educational institution, if the authority so discriminates in good faith in favour of a relative of another person who is employed by or who is a student at that educational institution ”

25 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”

(b) By adding “who” before “has any other responsibility”

30 By deleting subclause (3).

32 By deleting subclause (2)

44 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”.

(b) By adding “who” before “has any other responsibility”.

45 By deleting the clause and substituting -

“45. Harassment on the ground of sexuality in employment

(1) It is unlawful for a person (“the harasser”) to harass--

(a) an employee of that person,

(b) an employee of a person of whom the harasser is an employee, a commission agent or a contract worker; or

(c) a person who is seeking employment by the harasser, or by another person of whom the harasser is an employee, a commission agent or a contract worker,

on the ground of that person's sexuality

(2) It is unlawful for a person to harass--

(a) a commission agent or contract worker of the harasser,

(b) a commission agent or contract worker of a person of whom the harasser is an employee, a commission agent or a contract worker; or

- (c) a person who is seeking to become a commission agent or contract worker of the harasser or of another person of whom the harasser is an employee, a commission agent or a contract worker,

on the ground of that person's sexuality.

(3) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with employment or work or possible employment or work, of the other person; or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with employment or work or possible employment or work, of the other person; or
- (b) the person, alone or together with other persons, engages in conduct which creates a hostile or intimidating work environment for the other person on the ground of that person's sexuality.”.

46

(a) By adding -

“(1A) It is unlawful for a person who is a student of an educational institution to harass--

- (a) a person who is, or is seeking to be, a student of that educational institution; or
- (b) a person who is a member of the staff of that educational institution,

on the ground of that person's sexuality.”.

(b) By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the studies, or the application for admission to an educational institution as a student, of the other person, or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the studies, or the application for admission to an educational institution as a student, of the other person; or
- (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution on the ground of sexuality.”.

By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the accommodation, or application for accommodation, of the other person, or

- (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the accommodation, or application for accommodation, of the other person; or
- (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of that accommodation on the ground of sexuality.”.

48 By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass another person on the ground of that other person's sexuality if—

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's sexuality, and—
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with access to, or the provision of goods, services or facilities, of the other person; or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the access to, or the provision of goods, services or facilities; or
- (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of those goods, services or facilities on the ground of sexuality.”.

49 By deleting the clause and substituting -

“49. Harassment by reference to the sexuality of a person

In this Part a reference to harassment on the ground of the sexuality of a person includes harassment on the ground of or in relation to--

- (a) the sexuality or assumed or imputed sexuality of the person;
- (b) a characteristic that appertains generally to persons of the same sexuality as the person; or
- (c) a characteristic that is generally imputed to persons of the same sexuality as the person."

52 In paragraphs (a) and (b), by adding ", or towards any other property to which the person or group of persons have access" after "group of persons".

New By adding -

"53A. Laws relating to marriage or to adoption

(1) Nothing in this Part affects the operation of any provision of a law, being a provision that relates to--

- (a) capacity to marry; or
- (b) eligibility to adopt an infant within the meaning of section 2 of the Adoption Ordinance (Cap. 290).

(2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of a provision referred to in subsection (1)."

55 By deleting subclause (3).

57 By deleting subclause (2).

- 71 (a) By deleting "performs any function" and substituting "exercises a prerogative power, who performs a function".
- (b) By adding "who" before "has any other responsibility".

- 73(b) (a) By deleting "during the period of 2 years after the commencement of this Ordinance to discriminate against" and substituting "to require".
- (b) By adding a comma after "paragraph (a)".
- (c) By deleting "by requiring that person".

New By adding -

"74A. Legal capacity and welfare of minors

Nothing in this Part affects the operation of a law--

- (a) that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are minors; or
- (b) the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.

74B. Laws and acts done under statutory authority

- (1) Nothing in this Part affects the operation of any existing statutory provision.
- (2) Nothing in this Part renders unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision.
- (3) Subject to subsection (4), in this section “existing statutory provision” () means any provision of--
 - (a) any Ordinance enacted before this Ordinance was enacted; and
 - (b) any subsidiary legislation made--
 - (i) under an Ordinance enacted before this Ordinance was enacted; and
 - (ii) before, on or after this Ordinance was enacted.
- (4) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted.
- (5) Subject to subsections (6) and (7), this section shall expire on the 2nd anniversary of the day on which this Ordinance is enacted
- (6) Prior to the expiry of this section under subsection (5) the Legislative Council may, by resolution, extend this section for a period of one year
- (7) If this section is extended under subsection (6) the Legislative Council may, by resolution, extend it for a further period of one year, but not thereafter ”

(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of this Ordinance.

(2) Subsection (1) shall not apply to an advertisement if the intended act would not in fact be unlawful.

(3) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves--

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(5) Without prejudice to section 88, where a court is satisfied that a person has done an act which was unlawful by virtue of this section, the court may make an order imposing a financial penalty on the person.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”

New

By adding -

“83A. Compliance with school admission schemes

Nothing in this Ordinance affects any act done by an educational authority in order to comply with--

- (a) the Primary One Admission System or any scheme, system or programme that replaces that System in whole or in part;
- (b) the Secondary School Places Allocation System or any scheme, system or programme that replaces that System in whole or in part; or

- (c) any provision of a law, being a provision relating to the admission of students.”.

New

By adding -

“84A. Regulations to provide transitional exceptions for employers

- (1) The Secretary for Home Affairs may make regulations--
- (a) providing that subsections 11(1) and (2), 30(1) and (2) and 55(1) and (2) shall not apply, or shall apply with modifications, to specified categories of employers;
 - (b) specifying such categories of employers by reference to--
 - (i) the number of persons employed by an employer; or
 - (ii) the nature or types of business or industry, falling within a particular such category;
 - (c) specifying which of the subsections referred to in paragraph (a) shall not apply, or shall apply with modifications, to a particular such category, and modifications to which any such subsections shall be read; and
 - (d) appointing the day on which regulations made under this section shall expire, and different days may be appointed for different regulations.
- (2) Subsection (1) shall expire on the day on which the last remaining regulation made under this section expires.
- (3) Any regulations made under this section shall be subject to the approval of the Legislative Council.”

88(2)

By deleting paragraph (f).

New

By adding -

“91A. Qualifying bodies to have regard to evidence of unlawful acts

- (1) Where an authority or body is required by law to satisfy itself as to a person’s good character before conferring on a person an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be

taken to impose on the authority or body a duty to have regard to any evidence tending to show that the person, or any of the person's employees or agents (whether past or present), has done an act that is unlawful under this Ordinance.

(2) In this section, "confer" () includes renew or extend."

96

(a) In the proposed subsection (3), by deleting "For the avoidance of doubt, it" and substituting "It".

(b) In the proposed subsection (3), by deleting "" at the end.

(c) By adding -

"(4) For the avoidance of doubt, subsection (3) shall come into operation upon commencement of section 96 of the Equal Opportunities (Family Responsibility, Sexuality and Age) Ordinance (of 1995).".

10th July, 1995

Mr. K. S. Law
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mr. Law,

Legislative Council

Committee-Stage Amendments

Equal Opportunities (Race) Bill

In accordance with Standing Order 45(2), I hereby give notice of my intention to move the attached amendments to the captioned Bill at the Committee Stage of the 19 July, 1995 Legislative Council sitting.

Thanks for your assistance.

Yours sincerely,

Anna Wu

EQUAL OPPORTUNITIES (RACE) BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Anna WU Hung-yuk

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	<p>(a) In the definition of “employment”-</p> <ul style="list-style-type: none">(i) in paragraph (b), by deleting “and” at the end;(ii) in paragraph (c), by deleting the semicolon and substituting “, or as a Crown servant or Government servant; and”;(iii) by adding -<ul style="list-style-type: none">“(d) work as a pupil or tenant in a barrister’s chambers,and in the case of the employment referred to in paragraph (d) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant;”. <p>(b) In the definition of “near relative”, by deleting “or de facto spouse” in paragraph (b).</p> <p>(c) By adding -<ul style="list-style-type: none">““advertisement” () includes every form of advertisement, whether to the public or not, and whether--<ul style="list-style-type: none">(a) in a newspaper or other publication;(b) by television or radio;(c) by display of notices, signs, labels, showcards or goods;(d) by distribution of samples, circulars, catalogues, price lists or other material;(e) by exhibition of pictures, models or films; or(f) in any other way,and references to the publishing of advertisements shall be construed accordingly;“barrister’s clerk” () includes any person carrying out any of the functions of a barrister’s clerk;”.</p> <p>(d) By deleting the definition of “associate”</p> <p>(e) By deleting the definition of “de facto spouse”.</p> <p>(f) By deleting the definition of “relative”</p>
6	By deleting the clause
8	By deleting the clause

11 By deleting subclause (3)

13 By deleting subclause (2)

18 By adding -

“(3) Nothing in subsection (1) renders it unlawful for an educational authority to discriminate against a person on the ground of national origin or nationality, in connection with admission of the person as a student to an educational institution, if the authority so discriminates in good faith in favour of another person who has previously studied or is likely to study in a particular place or places outside Hong Kong”.

25 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”.

(b) By adding “who” before “has any other responsibility”.

26 By deleting the clause and substituting -

“26. Racial harassment in employment

(1) It is unlawful for a person (“the harasser”) to harass racially--

- (a) an employee of that person;
- (b) an employee of a person of whom the harasser is an employee, a commission agent or a contract worker; or
- (c) a person who is seeking employment by the harasser, or by another person of whom the harasser is an employee, a commission agent or a contract worker.

(2) It is unlawful for a person to harass racially--

- (a) a commission agent or contract worker of the harasser,
- (b) a commission agent or contract worker of a person of whom the harasser is an employee, a commission agent or a contract worker, or
- (c) a person who is seeking to become a commission agent or contract worker of the harasser or of another person of whom the harasser is an employee, a commission agent or a contract worker

(3) A person shall, for the purposes of this section, be taken to harass racially another person if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with employment or work or possible employment or work, of the other person; or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with employment or work or possible employment or work, of the other person; or
- (b) the person, alone or together with other persons, engages in conduct which creates a racially hostile or intimidating work environment for the other person.”.

27

- (a) By adding -

“(1A) It is unlawful for a person who is a student of an educational institution to harass racially--

- (a) a person who is, or is seeking to be, a student of that educational institution; or
- (b) a person who is a member of the staff of that educational institution.”.

- (b) By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass racially another person if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the studies, or the application for admission to an educational

- institution as a student, of the other person or
- (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the studies, or the application for admission to an educational institution as a student, of the other person; or
 - (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution on the ground of race.”.

28 By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass racially another person if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the accommodation, or application for accommodation, of the other person; or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the accommodation, or application for accommodation, of the other person; or
- (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of that accommodation on the ground of race ”

29 By deleting subclause (2) and substituting -

“(2) A person shall, for the purposes of this section, be taken to harass racially another person if--

- (a) the first-mentioned person threatens, abuses, insults or taunts the other person on the ground of that person's race, and--
 - (i) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with access to, or the provision of goods, services or facilities, of the other person; or
 - (ii) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the access to, or the provision of goods, services or facilities; or
- (b) the person, alone or together with other persons, engages in conduct which substantially interferes with the other person's access to, use or enjoyment of those goods, services or facilities on the ground of race.”.

30 By deleting the clause and substituting -

“30. Harassment by reference to the race of a person

A reference to harassment on the ground of the race of a person includes harassment on the ground of or in relation to--

- (a) the race of the person;
- (b) a characteristic that appertains generally to persons of the same race as the person; or
- (c) a characteristic that is generally imputed to persons of the same race as the person.”.

33 In paragraphs (a) and (b), by adding “, or towards any other property to which the person or group of persons have access” after “group of persons”.

35 By deleting the clause and substituting -

“35. Discriminatory advertisements

(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood

as indicating, an intention by a person to do any act which is or might be unlawful by virtue of this Ordinance.

(2) Subsection (1) shall not apply to an advertisement if the intended act would not in fact be unlawful.

(3) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves--

- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful; and
- (b) that it was reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(5) Without prejudice to section 46, where a court is satisfied that a person has done an act which was unlawful by virtue of this section, the court may make an order imposing a financial penalty on the person.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”.

New

By adding -

“41A. Compliance with school admission schemes

Nothing in this Ordinance affects any act done by an educational authority in order to comply with--

- (a) the Primary One Admission System or any scheme, system or programme that replaces that System in whole or in part;
- (b) the Secondary School Places Allocation System or any scheme, system or programme that replaces that System in whole or in part; or
- (c) any provision of a law, being a provision relating to the admission of students.”.

New

By adding -

“42A. Regulations to provide transitional exceptions for employers

- (1) The Secretary for Home Affairs may make regulations--
- (a) providing that subsections 11(1) and (2) shall not apply, or shall apply with modifications, to specified categories of employers;
 - (b) specifying such categories of employers by reference to--
 - (i) the number of persons employed by an employer; or
 - (ii) the nature or types of business or industry, falling within a particular such category;
 - (c) specifying which of the subsections referred to in paragraph (a) shall not apply, or shall apply with modifications, to a particular such category, and modifications to which any such subsections shall be read; and
 - (d) appointing the day on which regulations made under this section shall expire, and different days may be appointed for different regulations.
- (2) Subsection (1) shall expire on the day on which the last remaining regulation made under this section expires.
- (3) Any regulations made under this section shall be subject to the approval of the Legislative Council.”

46(2)

By deleting paragraph (f)

New

By adding -

“49A. Qualifying bodies to have regard to evidence of unlawful acts

- (1) Where an authority or body is required by law to satisfy itself as to a person’s good character before conferring on a person an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that the person, or any of the person’s

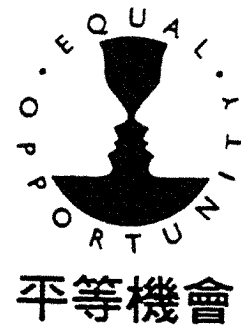
employees or agents (whether past or present), has done an act that is unlawful under this Ordinance.

(2) In this section, “confer” () includes renew or extend ”

- 54
- (a) In the proposed subsection (3), by deleting “For the avoidance of doubt, it” and substituting “It”.
 - (b) In the proposed subsection (3), by deleting “. ” at the end.
 - (c) By adding -
 - “(4) For the avoidance of doubt, subsection (3) shall come into operation upon commencement of section 54 of the Equal Opportunities (Race) Ordinance (of 1995).”.

10th July, 1995

Mr. K. S. Law
Clerk to the Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong



Dear Mr. Law,

Legislative Council

Committee-Stage Amendments

Equal Opportunities (Religious or Political Conviction, Trade Union Activities,
and Spent Conviction) Bill

In accordance with Standing Order 45(2), I hereby give notice of my intention to move the attached amendments to the captioned Bill at the Committee Stage of the 19 July, 1995 Legislative Council sitting.

Thanks for your assistance.

Yours sincerely,

Anna Wu

EQUAL OPPORTUNITIES (RELIGIOUS OR POLITICAL CONVICTION, TRADE UNION ACTIVITIES AND SPENT CONVICTION) BILL

COMMITTEE STAGE

Amendments to be moved by the Hon. Anna WU Hung-yuk

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 3(1) | <p>(a) In the definition of “employment”-</p> <ul style="list-style-type: none">(i) in paragraph (b), by deleting “and” at the end;(ii) in paragraph (c), by deleting the semicolon and substituting “, or as a Crown servant or Government servant; and”;(iii) by adding -<ul style="list-style-type: none">“(d) work as a pupil or tenant in a barrister’s chambers,and in the case of the employment referred to in paragraph (d) each barrister or barrister’s clerk in the chambers concerned shall be deemed to be an employer of the pupil or tenant;”. <p>(b) In the definition of “near relative”, by deleting “or de facto spouse” in paragraph (b).</p> <p>(c) By adding -<ul style="list-style-type: none">““advertisement” () includes every form of advertisement, whether to the public or not, and whether--<ul style="list-style-type: none">(a) in a newspaper or other publication;(b) by television or radio;(c) by display of notices, signs, labels, showcards or goods;(d) by distribution of samples, circulars, catalogues, price lists or other material;(e) by exhibition of pictures, models or films; or(f) in any other way,and references to the publishing of advertisements shall be construed accordingly;“barrister’s clerk” () includes any person carrying out any of the functions of a barrister’s clerk;”.</p> <p>(d) By deleting the definition of “associate”.</p> <p>(e) By deleting the definition of “de facto spouse”</p> <p>(f) By deleting the definition of “relative”</p> |
| 6 | By deleting the clause. |

- 8 By deleting the clause.
- 11 By deleting subclause (4).
- 13 By deleting subclause (3).
- 25 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”.
- (b) By adding “who” before “has any other responsibility”.
- 29 By deleting subclause (3).
- 31 By deleting subclause (2).
- 43 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”.
- (b) By adding “who” before “has any other responsibility”.
- 44 By renumbering it as clause 28A.
- 46 By deleting subclause (3).
- 50 By deleting subclause (2).
- 62 (a) By deleting “performs any function” and substituting “exercises a prerogative power, who performs a function”.
- (b) By adding “who” before “has any other responsibility”.
- 64 By deleting the clause and substituting -
- “64. Discriminatory advertisements**
- (1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of this Ordinance.
- (2) Subsection (1) shall not apply to an advertisement if the intended act would not in fact be unlawful.
- (3) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves--
- (a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by

reason of the operation of subsection (2), the publication would not be unlawful; and

(b) that it was reasonable for him to rely on the statement.

(4) A person who knowingly or recklessly makes a statement of the kind referred to in subsection (3) which in a material respect is false or misleading commits an offence and is liable on conviction to a fine at level 4.

(5) Without prejudice to section 73, where a court is satisfied that a person has done an act which was unlawful by virtue of this section, the court may make an order imposing a financial penalty on the person.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”.

New By adding -

“68A. Compliance with school admission schemes

Nothing in this Ordinance affects any act done by an educational authority in order to comply with--

- (a) the Primary One Admission System or any scheme, system or programme that replaces that System in whole or in part;
- (b) the Secondary School Places Allocation System or any scheme, system or programme that replaces that System in whole or in part; or
- (c) any provision of a law, being a provision relating to the admission of students.”.

New By adding -

“69A. Regulations to provide transitional exceptions for employers

(1) The Secretary for Home Affairs may make regulations--

- (a) providing that subsections 11(1), (2) and (3), 29(1) and (2) and 46(1) and (2) shall not apply, or shall apply with modifications, to specified categories of employers;
- (b) specifying such categories of employers by reference to--

- (i) the number of persons employed by an employer; or
- (ii) the nature or types of business or industry, falling within a particular such category;
- (c) specifying which of the subsections referred to in paragraph (a) shall not apply, or shall apply with modifications, to a particular such category, and modifications to which any such subsections shall be read; and
- (d) appointing the day on which regulations made under this section shall expire, and different days may be appointed for different regulations.

(2) Subsection (1) shall expire on the day on which the last remaining regulation made under this section expires.

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

73(2) By deleting paragraph (f).

New By adding -

“76A. Qualifying bodies to have regard to evidence of unlawful acts

(1) Where an authority or body is required by law to satisfy itself as to a person’s good character before conferring on a person an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that the person, or any of the person’s employees or agents (whether past or present), has done an act that is unlawful under this Ordinance.

(2) In this section, “confer” () includes renew or extend ”

81 (a) In the proposed subsection (3), by deleting “For the avoidance of doubt, it” and substituting “It”

(b) In the proposed subsection (3), by deleting “. ” at the end.

(c) By adding -

“(4) For the avoidance of doubt, subsection (3) shall come into operation upon commencement of section 81 of the Equal

Opportunities (Religious or Political Conviction, Trade Union
Activities, and Spent Conviction) Ordinance (of 1995) ” ”

Anna Wu
C/o 17/F & 18/F
Nine Queen's Road Central
Hong Kong
Tel: 2843 7353 Fax: 2845 2504



Our Ref. G/AW/101

11th July 1995

Mr Michael Suen, CBE, JP
Secretary for Home Affairs
31st Floor
Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong

BY FAX NO. 2832 9983
AND BY HAND

Dear Mr Suen,

**Re: Equal Opportunities (Family Responsibility,
Sexuality and Age) Bill
Equal Opportunities (Race) Bill
Equal Opportunities (Religious or Political
Conviction, Trade Union Activities and
Spent Conviction) Bill**

I understand you have been conveying to reporters and LegCo Members various beliefs you hold concerning the three Equal Opportunities Bills that have been gazetted.

As you know, the forerunner of these three Bills, the original Equal Opportunities Bill, was presented to you as early as the end of 1993. Throughout the course of the drafting of the original Bill and related consultation and, subsequently, after gazettal of the original Bill in July 1994, throughout the deliberations of the Bills Committee, you were invited to provide comments and views. Specifically I had extended my offer to brief you and other government branches on the original Bill and to discuss with you and other government officials any areas of concern.

As you also well realise, I restructured the original Bill and dropped the chapters relating to sex and disability discrimination to facilitate the passage of the government

Room 415 Central Government Offices (West Wing), 11 Ice House Street, Hong Kong
Telephone: 537 2466, 537 2467 Facsimile: 530 2018 Law Office: 843 7353
LEGCO ASSISTANTS Eric Chow 1128635 a/c 9939 Adam Mays 1128028 a/c 1525
香港中環德輔道中政府合署西座四一五室

/...

Mr Michael Suen, CBE, JP
11th July 1995
Page 2

Bills proposed in response to my original Bill. My replacement Bills were introduced on 5th July 1995. I was disappointed not to see you or any member of your Branch in the Legislative Council when I renewed my standing offer to discuss any matter of concern with you and representatives of other government branches.

You have informed me that you are the policy secretary for the coordinating branch and that it would not be appropriate for me to contact other branches directly.

Despite the length of time that you have had to deliberate upon my original Bill, it is regrettable to find yourself and other government officials spreading erroneous information to reporters and other LegCo Members, apparently in an effort to sabotage the replacement Bills. The issues raised by you that have been drawn to my attention are wrong in law and thoroughly misplaced.

I am surprised that you should refuse to raise these matters with the proposer of the original Bill and the three replacement Bills - namely myself. I find it regrettable that you should choose also to frustrate and bypass the constitutional channel of vetting legislation, namely the Bills Committee, despite its offer to you specifically to participate in the process. This conduct is unbecoming of government.

To correct the quite erroneous image you have presented to the press and to influential individuals, I am inviting you to an open debate on the Equal Opportunities Bills. This would be the best way for information to be provided to the public and the legislators. Please let me know as a matter of urgency a time of your choice.

I trust you will be in the Legislative Council Chamber tomorrow. I wish to discuss with you the details of organising the debate as well as to present to you over two thousand letters from victims complaining about age discrimination and a video tape on several forms of discrimination experienced by victims in Hong Kong. I trust you would be available tomorrow afternoon and the presentation of the materials could take place in public.

Yours sincerely,

Anna Wu

/pk
c.c. The Hon Mrs Anson Chan, CBE, JP

PRESS BRIEFING

by Legislative Councillor Anna Wu

11 July 1995

Anna Wu: 843-7353

Eric Chow: 537-2466 or 1128635 x8939

Adam Mayes: 537-2467 or 1128028 x1325

Anna Wu challenges Secretary for Home Affairs to open debate on Equal Opportunities Bills

In a newspaper article published today, Secretary for Home Affairs Michael Suen outlined in public his arguments against Anna Wu's 3 Equal Opportunities Bills. Mr. Suen also reportedly said that he would attempt on 19 July to adjourn debate, delaying the vote on the 3 Bills until a later date.

Mr. Suen's arguments grossly distort the facts about the Bills, and in response, Anna Wu is challenging him to an open debate on the Bills.

Mr. Suen also did not mention that an adjourning debate on the Bills is in fact a quiet way to kill them. It would be impossible to reschedule them for later debate in the one remaining sitting after 19th July, and they would therefore lapse at the end of the Legco session.

Ms. Wu will have a press briefing on these matters today at 6 P.M., at Central Government Offices (West Wing), Room 330.

— end —

PRESS STATEMENT

Legislative Councillor Anna Wu

11 July 1995

Anna Wu: 843-7353

Eric Chow: 537-2466 or 1128635 x8939

Adam Mayes: 537-2467 or 1128028 x1325

Anna Wu's Equal Opportunities Bills

In a press briefing today, Secretary for Home Affairs Michael Suen gave his reasons for opposing Anna Wu's 3 Equal Opportunities Bills.*

Mr. Suen also made some specific criticisms against the Bill in a newspaper article this morning, and reportedly said that he would attempt on 19 July to adjourn debate to delay the vote on the 3 Bills until a later date. (In fact such delay would quietly kill the Bills because it would be impossible to reschedule them before their lapse at the end of the Legco session.)

In response, Anna Wu has written to the Secretary challenging him to an open debate on the Bills (copy of letter attached). Ms. Wu also has the following comments:

"The Secretary suggested that the Bills should not be enacted in haste. I don't think a year and a half of public debate and a year of detailed scrutiny by legislators can be called hasty.

He suggests that Government needs more time to legislate "responsibly" on equal opportunity. This is apparently because, as Michael Suen tells it, the Government is as ignorant of the Bills today as it was when they were introduced a year ago.

It is disgraceful for the Government to plead ignorance after a year and a half of public and legislative debate over detailed legislative proposals. If the Government really is that uncertain, it is because Mr. Suen has shirked his own responsibility for a year and a half.

Mr. Suen has no one but himself to blame if Government is not ready to vote on the Bills yet. Michael Suen had no comment when I sent him a complete draft of my original Bill 18 months. After Legco finally began examining the Bill last July, Mr. Suen failed to attend a single discussion of my Bills.

At the same time, he has always insisted that all discussion with Government about the Bills must be through him because his Branch is the coordinating Branch. In practice he has been the obstructing and delaying Branch. Whatever deference was reasonably due the

*** The 3 Bills are scheduled to be voted on in Legco on 19 July. Their titles and subjects are:**

- 1. Equal Opportunities (Family Responsibility, Sexuality and Age) Bill;**
- 2. Equal Opportunities (Race) Bill; and**
- 3. Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill.**

Government a year ago is no longer due today. We can't wait forever for Government to catch up. The victims of discrimination shouldn't have to wait.

Government's desire to take time to legislate responsibly appears to be selective and self-serving. Government is pushing very hard for an immediate vote on the Mandatory Provident Fund Bill, even though major parts of the legislation are missing and won't be filled in until next term. They're pushing for a vote now on the Court of Final Appeal Bill despite deep uncertainty about what that Bill means.

Legco is much better prepared to vote on the Equal Opportunities Bills than on either the MPF or the CFA Bills. Government ought to be careful about suggesting that controversial votes be conveniently deferred or they may soon find their own legislative programme gutted.

Some of the specific problems that Michael Suen attributed to the Bills in a newspaper article today are so wildly inaccurate that I must wonder if he expressed himself clearly. I would like to hear his objections in his own words. I have asked him to debate the Bills with me publicly. I hope that way we can avoid the shadowy and misleading lobbying that preceded the more controversial aspects of the Sex Discrimination Bill."

— 2 page letter follows —

政 務 司
香港灣仔軒尼詩道一百三十號
修頓中心三十一樓



Secretary for Home Aff
31st Floor, Southern Cent
130 Hennessy Road,
Wan Chai,
Hong Kong.

11 July 1995

The Hon Anna Wu,
c/o 17 & 18th Floor,
Nine Queen's Road Central,
HONG KONG.

Dear Ms. Wu,

Equal Opportunities Bills

I refer to your letter of 11.7.1995 in respect of your three Bills on equal opportunities.

First of all, I would like to put on record that I have never said that it would not be appropriate for you to contact other branches directly to discuss your equal opportunities bills. The Home Affairs Branch carries policy responsibility on the subject of equal opportunities generally and we are responsible for co-ordinating Government's position in this regard. Nonetheless, there is no inhibition whatsoever for you to approach the relevant policy branches directly.

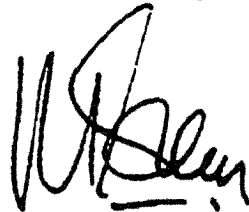
On the principle of equal opportunities, the Administration has made its position very clear from the outset that we fully support the very laudable principle of equal opportunities for all. However, anti-discrimination legislation is a new area of law in Hong Kong. The social, economic and legal implications of such

legislation are not yet fully appreciated by the community at large. It is more appropriate to adopt a step by step approach; concentrating first on discrimination against sex and disability where there has been thorough public consultation and clear public support. You will recall that in August 1994 shortly after your Equal Opportunities Bill was introduced into the Legislative Council, at the invitation of the Bills Committee set up to study your Equal Opportunities Bill, the Administration stated this position clearly and explained our concerns over a number of issues relating to your Bill.

On 10 February 1995 when I attended the meeting of the Bills Committee studying the Sex Discrimination Bill and the Equal Opportunities Bill, I rehearsed to Members the Administration's views in respect of the Equal Opportunities Bill. At the Bills Committee meeting on 31 March, 1995, I again set out clearly to Members the rationale for adopting the gradual approach. We also offered to conduct a study towards the end of 1995 in respect of discrimination on the grounds of age, family status and sexual preference and informed Members that the study would take about a year to complete. In addition, we gave an undertaking at the meeting that the Legislative Council would be informed of the progress of the study. The Administration's position was reiterated by the Chief Secretary at the Budget Debate and at subsequent Bills Committee Meetings by the representative of Home Affairs Branch. Legislative Council Members and members of the community are fully aware of the Administration's views on the three equal opportunities bills. There is no question of 'bypassing' the Bills Committee and I take strong exception to that allegation.

I understand that the resumption of the second reading debates on your three Bills will take place on 19 July, 1995. That is the proper forum to debate on whether Hong Kong is ready to adopt a comprehensive anti-discrimination legislation in the form that you have proposed. I would of course be happy to receive the letters of complaint and the video tape mentioned in your letter.

Yours sincerely,



(Michael M. Y. Suen)
Secretary for Home Affairs

c.c. AA/CS

URGENT—BY FAX & BY HAND

12th July 1995

Mr. Michael Suen, CBE, JP
Secretary for Home Affairs
31st Floor
Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong



Dear Mr. Suen,

Equal Opportunities Bills

I refer to your letter of 11 July 1995.

I wish to remind you that when I first approached your Branch at the end of 1993 with the initial draft of the Equal Opportunities Bill, I proposed meeting other branches on the draft Bill. Your response at the time was that your branch would be coordinating the review and response. While attempting to secure the government's certificate stating that the replacement Bills had no charging effect, I pressed for an opportunity to contact the legal officer directly to explain the substance of the Bills. Your response was that it would not be appropriate for me to do so. Clearly, other branches have only spoken through your branch relating to these Bills, until recently when the Administration began lobbying against the Bills.

You suggest that the implications of the Bills are not fully appreciated by the community at large. After a year and a half of public debate and a year of detailed scrutiny by legislators, I disagree. Public understanding could, of course, only have been enhanced had you accepted my invitation to an open debate.

It may well be, however, that the implications of the Bills are not fully appreciated by the Administration. If that is so, I suggest that the fault lies with the Administration.

Many issues relating to the Bills were discussed in detail at the weekly Bills Committee meetings over the period of one year. Many of those issues have been addressed by amendments responding to or suggested by Bills Committee participants. The Administration, however, took the unusual step of

disengaging itself from this process, indicating early on that no one from the Administration would participate in the Bills Committee's detailed scrutiny of the Bills.

The Administration's desire for yet more time to legislate 'responsibly' appears to be selective and self-serving. The Administration is pressing for approval of the Mandatory Provident Fund Bill, despite major gaps in that legislation that the Administration acknowledges cannot be filled until next term. The Administration has not hesitated to insist on approval of the Court Final Appeal Bill despite deep uncertainty about its meaning and effect.

By contrast, in the area of equal opportunity protection the Administration justifies continuing inaction by seizing on issues that are far more marginal than those it overlooks in other areas. It must be appreciated that the area of equal opportunity protection has been marked by abandonment and renegeing of commitments on the part of the Administration. I need not remind you of the lack of any track record between 1976, when the main international covenants were extended to Hong Kong, and 1991, when the Bill of Rights was passed under tremendous pressure. I also need not remind you of the implicit undertaking the government gave to legislate against discrimination when it stripped the draft Bill of Rights of its effect on the private sector in 1988, nor of the subsequent refusal to legislate against sex discrimination in 1992.

Only sustained pressure caused the Administration finally to put forward its Sex Discrimination Bill. That Bill was based on UK law, yet the Administration was unaware until it learned in the Bills Committee that the Commission responsible for the law had made extensive recommendations for reform. The Administration had not heard of the significant legal loopholes identified by the Commission, such as the law's failure to cover private clubs.

The Administration's response to these problems, which it ought to have considered before introducing the Sex Discrimination Bill, was inconsistent and often back-peddling. Some problems, such as clubs, were belatedly addressed by amendments to the Bill. Others, such as retirement, have been indefinitely deferred by methods such as empty schedules to be filled in later. Yet others, such as reinstatement, were first accepted in principle, then retracted. There is little doubt that the resulting legislation will need further amendment next term.

Judging by the Administration's track record, there is every reason to expect that the conclusions reached by the proposed internal study on age, family responsibility and sexuality will closely resemble the Administration's position today, or for that matter last August. You yourself have been busy saying that you do not have the resources to tackle this area. There is no reason to expect that the Administration will put forward a superior legislative

proposal, or even a comparable one. What commitment is there from the Administration? What can the victims of discrimination rely on?

The Bills that I am proposing have seen a year and a half of public debate and undergone an extraordinarily long and detailed examination in the Legislative Council. That is more than an adequate foundation for legislation, whether or not the Administration chose to participate.

Yours sincerely,

Anna Wu

c.c. The Hon. Mrs. Anson Chan, CBE, JP

**Note to Members of the Bills Committee studying
the Equal Opportunities Bill, the Sex Discrimination Bill
and the Disability Discrimination Bill**

Result of consultation exercise on the Equal Opportunities Bill

I. Written submissions

A consultation exercise on the Equal Opportunities Bill and the Human Rights and Equal Opportunities Commission Bill was launched on 27 March, 1994. Since then, more than 1800 copies of an information package, which includes a proposal, summaries of the Bills, information sheet, were sent out to government departments, Members of the Executive Council, Legislative Council and District Boards, chambers of commerce, interest groups and individuals. The public were invited to submit comments on the Bills before 15 May, 1994. Comments on both Bills were received. For the purpose of this Bills Committee, only those on the Equal Opportunities Bill are shown below. Where consent to release was given by the groups or individuals, copies of the submission can be inspected.

Many of the comments described here were also raised during the final consultation periods of the Bills Committee. This paper does not pertain to those submissions.

Groups or organizations

- 21 written submissions representing 24 groups or organizations were received by 15 May, 1994. Among these, 21 groups were in support of the Bill, 1 against it and 2 took no position.
- Some of the submissions were fairly brief, for example simply expressing support for the Bill in principle, whereas others contained detailed comments, including comments on voluntary compliance, domestic violence, affirmative action, exemptions under the Bill, and its application to religious institutions.

Individuals

- 11 written submissions in support of the Bill were received. In addition, more than 2000 signatures in support of comprehensive equal opportunity enactment were gathered over a Saturday afternoon in May 1994.

- A group of 137 individuals sent in identical, photocopied submissions, opposing equal opportunity enactment. They expressed concerns over the implications of the Equal Opportunities Bill for religious bodies and schools.

II. Consultation meetings with various groups or organizations

Between April and October 1994, meetings were held with representatives or individuals from various organizations to discuss and receive comments on the proposed Equal Opportunities Bill. Issues raised (including opposing views) in the meetings are summarized below. The list of the organizations with which meetings were held appears in the Appendix.

General concerns

Many individuals were concerned about the following:-

- what amounts to discrimination and whether all differential treatment is considered discrimination;
- which party bears the burden of proof in discrimination complaints; whether those being discriminated can seek redress effectively under this Bill;
- what would be the impact of this Bill on various social policies, such as housing, social welfare, adoption and education policies;
- whether there are provisions on affirmative action or quota system (opposing views were expressed by various groups on this issue);
- what penalties would be imposed for committing discrimination; what acts are criminal offences under the Bill;
- the importance of an effective implementation mechanism to enforce legislation.

Women's groups

Representatives from various groups raised the following issues:-

- whether legislation on sex discrimination only would be more focussed and easier to enact, and easier to implement than a comprehensive equal opportunity enactment;
- age and family responsibility discrimination are closely related to sex discrimination and enactment covering these areas is essential to promote gender equality;
- whether the Bill could address the severe difficulties faced by women aged over 30 in looking for employment;
- whether the definition of sexual harassment is broad enough to tackle different problems;
- the rationale for not addressing family inequalities and domestic violence in the Bill.

Social service agencies and social workers' groups

Representatives from various groups raised the following issues:-

- whether the definition of disability covers AIDS, chronic illness and visceral disability;
- what is meant by inherent work requirement and unjustifiable hardship; whether such exemptions would turn into loopholes for employers to evade obligations;
- existing codes guiding accessibility of newly constructed buildings are ineffective; whether the Bill could improve accessibility of existing buildings and vehicles for the disabled;
- whether parents or carers (such as social workers) of the disabled persons are protected against discrimination under this Bill;
- discrimination on the ground of religious conviction in employment of social workers exists among a number of social service agencies; and this should not be tolerated.

Homosexuals' groups

Representatives from various groups raised the following issues:-

- prejudice towards homosexuals is very strong, and the fear of being discriminated makes few homosexuals willing to reveal or openly admit their sexuality;
- discrimination against homosexuals is particularly serious in the areas of employment and accommodation;
- the contribution of homosexuals to the society and their right to enjoy equal opportunity should be recognized and protected by legislation.

Religious bodies

Almost all the groups listed explicitly endorsed the Equal Opportunities Bill in principle.

Representatives from various groups raised the following issues:-

- what is the definition of religion and what kinds of belief would be considered religious conviction;
- whether religious schools are obliged to employ divorced persons and homosexuals under this Bill;
- whether morning assembly, prayer, etc. in religious schools would be affected by the Bill;
- whether the Bill would permit same sex marriage or adoption by homosexuals; and whether legal protection offered to homosexuals would result in excessive dominance by the minority over the majority (however, there was no objection against legislating to prohibit sexuality discrimination);

- whether this Bill would give rise to opportunities for government intervention into religious organizations (including church, schools and social service agencies operated by religious order), thereby affecting their autonomy.
- the right to be free from discrimination and religious freedom must be very carefully balanced, for instance in employment by schools run by religious orders.
- schools' ability to give preference to Christians in employing teachers, counsellors is important to ensure that students learn certain values under different disciplines;
- employment of teachers should be based on merit solely, indeed, even posts for teaching religious subjects should be open to well qualified non-believers; current exemptions under the Bill are too wide.
- importance of religious schools and social service agencies in Hong Kong's education and social welfare system must be recognized; their mission when founding schools or services must be considered alongside the relevant exemptions;
- institutionalized gender inequality in the church, such as unequal pay for equal work, unequal promotion opportunities, should not be exempted.

Migrant workers' groups

Representatives from various groups raised the following issues:-

- prejudice towards non-Chinese people, especially migrant workers, is very strong in the community;
- exclusion relating to hiring of domestic helpers should be removed;
- how this Bill would affect existing immigration restrictions, such as 2-week period to return to home countries upon termination of contracts.

Civil rights groups

Representatives from various civil rights groups welcomed the introduction of the Equal Opportunities Bill and many believed that enactment of the Bill would be an important measure to strengthen individual rights protection

III. Consultation meetings with the business sector

Between February and April 1995, meetings were held with a small number of companies (14), many of them are multi-national corporations. General concerns raised during the meetings are summarized below

- Equal opportunity is a human right

- Even in major corporations that have Equal Employment Opportunity (EEO) policies, there is agreement that bias still exists, particularly in areas of age, sex, marital status, race
- Companies cited benefits of EEO policy
 - Employers have a broader, qualified work force from which to choose
 - Corporate loyalty increases, builds employee stability Turnover in Hong Kong is serious (30-40% annually) Hiring and re-training is costly
 - A competitive environment and a prosperous community can be achieved only when all people can compete fairly in the work force.
 - Productivity increases when workplace is free of harassment and discrimination.
 - Diversity in workplace promotes positive employee attitudes, ultimately spills over to their communities.
 - Seniority is recognized as positive -- senior employees with experience serve as role models and mentors.
- These same companies strongly support the Equal Opportunities Bill and feel that without legal intervention, change will either be non-existent or inconsistent. They advocate a policy that provides incentives for compliance and penalties for non-compliance.
- Some companies with EEO policies are still frustrated by discriminatory attitudes that people have, feeling that they are socially entrenched. They believe that without the Bill, there will be no incentive to pave the way for changing attitudes and practices.
- Placement companies are frustrated by not being able to place highly qualified clients because of inherent discrimination in work force. Age and race have been cited as serious problems.
- More companies are willing to hire the handicapped. However, government help in changing the physical environment would be needed; educational programmes for the handicapped employees as well as the employers of the handicapped would be needed to change work attitudes and expectations.
- Larger companies with good non-discrimination policies would be willing to help implement the Bill, for instance, through mentoring others, sharing knowledge and developing programmes.
- Companies are concerned with the timely implementation of the Equal Opportunities Bill. They would want to see an incremental approach, but an immediate start.

Office of Anna Wu
12 July, 1995

政務司
香港灣仔軒尼詩道一百三十號
總領中心三十一樓



Secretary for Home Affairs
31st Floor, Southern Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong.

By Fax and By Hand

13 July 1995

The Hon Anna Wu,
17 & 18/F,
Nine Queen's Road, Central,
Hong Kong.

Dear Ms Wu,

Equal Opportunities Bills

Thank you for your letter of 12 July, the fax copy of which has just been received.

I note that most of the points which you make cover old grounds on which we hold different views. That is perhaps not surprising given the different approaches we adopt in dealing with this issue. Suffice it for me to say that it is the firm belief of the Administration that a gradual approach is best suited for Hong Kong given all the circumstances. I would also like to take this opportunity to reiterate the commitment of the Administration to conduct a study towards the end of 1995 in respect of discrimination on grounds of age, family status and sexual preference.

Yours sincerely,

(Michael M. Y. Suen)
Secretary for Home Affairs

c.c. AA/CS

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill
Equal Opportunities (Race) Bill
**Equal Opportunities (Religious or Political Conviction, Trade
Union Activities and Spent Conviction) Bill**

Introduction

1. The above three Bills sponsored by the Honourable Anna Wu were gazetted on 30 June 1995 and introduced into Legislative Council on 5 July. Ms. Wu intends to resume the Second Reading Debate of the three Bills on 19 July 1995.

2. The Administration fully supports the spirit and the laudable principle of equal opportunities enshrined in the Bills. Indeed, it is inconceivable that anyone would object to the principle of equal opportunities for all.

3. We respect Ms. Anna Wu's remarkable efforts in putting together the three Bills and her attempts to raise public awareness of the issues involved. The Bills Committee have also spent time and effort in scrutinising the Equal Opportunities Bill which forms the basis of the three new equal opportunities bills. Members have also listened to the submissions made by the relevant organizations and interest groups.

4. However, we have reservations on the readiness of the community in accepting a comprehensive legislative approach against so many different types of discrimination at the same time. We are concerned that the three Bills have not been put forward on the basis of public consultation which give the community a chance to discuss the main issues at stake and to debate alternative courses of action. As a result, the public at large are not aware of the impact of Ms. Wu's Bills on their everyday life and the society as a whole. For example, are parents ready to accept a homosexual child-minder? Would it be unlawful for a principal of a school to refuse to let the school hall to a dubious religious cult, on the ground that the principal objects to the preachings of that cult?

5. We firmly believe that, as in many other jurisdictions, it is more appropriate to adopt a gradual approach in introducing anti-discrimination legislation. Anti-discrimination legislation is a new area of law in Hong Kong. Before taking a decision to institute such legislation, members of the public should be willing and ready to accept the new statutory obligations which underpins the fundamental concepts of the broad range of discriminations. Effective implementation of any anti-discrimination legislation depends on genuine public support

Discriminations on Grounds of Sex and Disability

6. The Sex Discrimination Ordinance was developed after 22 months of wide public consultation, careful analysis of policy options and serious scrutiny of the implications of the various options. There was thorough public debate on the need for legislation and the principles behind the Ordinance. We are confident that members of our community support our approach and are aware of their rights and new obligations under the new legislation. The same can be said of the Disability Discrimination Bill.

7. Before we legislate against further types of discrimination, we need to have a chance to establish whether there are problems in respect of a particular type of discrimination and if so, what are the most appropriate measures to address the problems identified. We need to be certain of the public's preference.

Discriminations on Grounds of Age, Family Status and Sexual Preferences

8. Apart from sex and disability discrimination, we understand that Legislative Council members are particularly concerned about three types of discrimination: that on the grounds of age, family status and sexual preference. These three subjects are covered by the Hon Anna Wu's Equal Opportunities (Family Responsibility, Sexuality and Age) Bill. As we have already made it clear, while we do not dispute the principle of eliminating discrimination, we do

not believe that it is prudent to proceed to legislate without first having a chance to undertake a thorough study and to solicit public views. In this connection, the Administration has undertaken to do so later on in the year and to report back to the Legislative Council on the relevant findings with recommendations on the way ahead by October 1996.

9. The Administration is also concerned with the uncertainties that the proposed Bills would create. Would it be unlawful for an employer to deny promotion for an employee who is due to retire because of the employee's age? What about the case of a religious school refusing to admit a person of a particular sexual preference? Would it be possible for an employer to replace an expatriate with a local recruit to help boost employment opportunities in the labour market? Would it be unlawful for a female beautician to refuse to provide facial services at home to a person of a particular age group and sexual preference? We understand that Ms. Anna Wu would be proposing committee stage amendments to remove some of the uncertainties in respect of age discrimination. However, given the scope of the legislation, the legality of many of the acts which people have taken for granted would be brought to doubt. There would not be any certainty unless and until that cases are ruled by the Court.

The Bills Before LegCo

10. The Legislative Council has just passed the Sex Discrimination Ordinance. The Disability Discrimination Bill is also in the pipeline. Members of the public have yet to adapt to the new norms and standards set by the two Ordinances which cover two types of discrimination and harassment in six areas of activities. Ms. Anna Wu's three new bills on equal opportunities cover a list of seven additional types of discrimination. The cumulative effect of these Bills have yet to be assessed. A person, in taking a decision in respect of letting out a flat, for example, would need to be extra mindful of what otherwise would be a subjective judgement of the tenant he/she would pick. To avoid contravening the law, he/ she would have to evaluate his/her subjective decision against a total of nine types of possible discrimination.

11. We understand that Ms. Anna Wu has prepared substantial committee stage amendments making last minute changes to her three Bills. We are not convinced that members of the public are prepared for the three bills, nor would they be in a position to understand the bills and express their views on the detailed provisions within the short space of time before the bills and the proposed CSAs are put to Second and Third readings.

Equal Opportunities (Family Responsibilities, Sexuality and Age) Bill

Clause

Object

Administration's Comments

1422

Matters of Principle

C 2., C 7.
C 96

To link the interpretation of the Bill with international treaties and instruments (regardless of whether they have been extended to or create a binding obligation on Hong Kong or not e.g. CEDAW). To amend the Bill of Rights Ordinance to make it applicable to all legislation.

This is unacceptable. International treaties are not justiciable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject matter of which is not relevant to the entire BORO, to amend the BORO generally.

Discrimination on the ground of Family Status in Employment

C 11

To make it unlawful to discriminate on family status in work

- Impact on existing Legislation

Some provisions of the Employment Ordinance give differential treatment to a person of a certain family status e.g. S.1(2)(d) denies a female employee who is the mother of more than 2 existing surviving children the rights to maternity leave pay upon pregnancy. S.2 of the Employees' Compensation Ordinance excludes from its protection a member of the employer's family who is employed by the employer, resides with the employer and is not covered by a valid employees' compensation insurance policy. This provision may create uncertainties in these areas.

PERSONAL

Administration's Comments

Object

Clause

Discrimination on the ground of Sexual Preference in Employment

C 30 (cf. C 83) To make it unlawful to discriminate on the ground of sexual preference in work.

Problems for Employment in the Civil Service

- This clause would make it unlawful for a Government Department not to post, for e.g., homosexual officer to a boys' homes despite the knowledge of a particular officer's sexuality. Both Immigration Department and the Correctional Services Department have officers whose duties include the escorting and guarding of detainees and prisoners. For reasons of decency and to avoid allegation of harassment, detainees and prisoners are escorted and guarded by officers of the same sex. If officers with homosexual or bisexual preference are recruited to guard detainees and prisoners, problems of decency and vulnerability to allegations of harassment will arise.
- Similar problems will arise in the cases of the deployment of, for example, nurses where there would be physical contact between the service provider and recipient and that the service recipient may object to being served by a person with homosexual preference.

Uncertainties for employment in the private sector

- A person refuses to hire a homosexual person to look after

PERSONAL

Clause

Object

Administration's Comments

- A secondary school refuses to employ a homosexual/bisexual person as a teacher to teach ethic or to counsel youngsters. This may constitute unlawful discrimination
- A school run by a religious body requiring all teachers to support its policy in condemning homosexuality as a sin. A teacher who refuses to comply is dismissed. This may constitute discrimination.
- A school employs a homosexual person as a teacher but requires him and not other teachers not to encourage or preach his way of life to his students. This may be challenged as discrimination
- An employer dismisses a domestic helper on the ground that he/she is a homosexual. This could be unlawful under the Bill.

Discrimination on the ground of Sexual Preference in the Provision of Services

C 39

To make it unlawful to discriminate on the ground of sexual preference in provision of goods, services and facilities.

Examples of difficulties/ uncertainties arising from this provision

- Under existing guidelines, providers of reproductive technology services would not be permitted to make these available to gay couples. This is intended to reflect public feedback that reproductive technology should be available

PERSONAL

Clause

Object

Administration's Comments

- A female beautician refuses to provide facial services at home to a person of a particular age group and sexual preference. This may be discrimination under the bill
- A family with young children refuses to rent a room in their flat to a homosexual couple. This may be challenged as discrimination under the Bill

Harassment and vilification on the ground of sexual preference

C 45(3)
C 51

To make harassment and vilification on the grounds of sexual preference in employment unlawful

Examples of difficulties/ uncertainties arising from this provision

- A school headmaster condemns homosexuality as a sin in the morning assembly. It can be argued that this constitutes harassment in employment as it creates a hostile work environment for homosexuals working in the school
- A headmaster giving a speech condemning homosexual behaviour as a sin and incites contempt for homosexual members in the school. This may constitute vilification

PERSONAL

Administration's Comments

Object

Clause

Discrimination on the ground of Age in Employment

C 55 To make it unlawful to discriminate on the grounds of age in work

Examples of difficulties/ uncertainties arising from this provision

- Employment related Ordinances
Some employment-related ordinances set minimum age for employment and prohibit employment of children and young persons in certain trades and tasks or for certain periods of time. Removal of such protective legislation may mean that we cannot continue with the application of some International Labour Organisation Conventions and Recommendations. Anna Wu now proposes to impose sunset provision of 2 years, the validity of all such legislation which stipulate an age restriction would be in doubt after 2 years unless they are covered by other exceptions in the Bill. This uncertainty is highly undesirable and unacceptable.

PERSONAL

Clause

Object

Administration's Comments

For the private sector

- A retail shop specialising in youth products wish to employ salespersons who are young and energetic to create a youthful image. The shop stipulates an age requirement of 45. This will be unlawful under the Bill because arguably, those over 45 can still look young and energetic. As a result, the employer would be obliged to give interviews to more applicants than it otherwise would be necessary.
- A supermarket posts up notices that they would not sell alcoholic drinks to youngsters below 18. There is no statutory requirement for it to adopt this policy. A 17 years old could argue that this is discriminatory and unlawful under the bill.
- A bank specifying in a recruitment exercise for "trainees" that applicants should be under 50. This may be challenged as discriminatory.
- An employer refusing to send an employee who is approaching retirement age for overseas training. This is sensible commercial decision but could be regarded as discriminatory.

Clause

Object

Administration's Comments

Discrimination on the ground of Age in Education

C 62 to make it unlawful to discriminate on the grounds of age in education

Example of difficulties/ uncertainties arising from this provision

- Age criterion in admittance to courses

The Instrumental Music Training Scheme run by the Music Office caters for young people between the ages of 6 and 23. Separately, the upper age limit for playing in the Music Office's orchestras/bands/choir is 25. Many courses run by private sector may have age as one criterion for admission. Would it be unlawful for these courses organisers to refuse those applicants outside the age range on the ground of their age?

Discrimination on the ground of Age in the Provision of Services

C 64 To make it unlawful to discriminate on the grounds of age in the provisions of goods, services, etc

Examples of difficulties/ uncertainties arising from this provision

- Many programmes run by the Government have age as admission criterion. These may be challenged as discriminatory

PROVISIONAL

Clause

Object

Administration's Comments

- A violin teacher only accepts children who are under 12 as students. This may be challenged as unlawful discrimination under the Bill
- C 64(2) provides that it is lawful to provide bone fide benefits to a person by reason of his/her age. This clause does not appear to make it lawful to deny persons access to goods, services, facilities, etc that are deemed unsuitable or harmful to them e.g. access to a bookstore selling publications not suitable to persons under a certain age?

C 66
71

Discrimination on the grounds of age in land
Discrimination on the grounds of age in the administration of
laws and government programmes.

Examples of difficulties/ uncertainties arising from this provision

- Application of the small house policy is restricted to those male indigenous villagers who are at least 18 years old. This could be challenged as discriminatory by persons under that age.
- Marriage between members of the same family is invalid under common law and legislation. Would this provision make it unlawful to refuse to register such marriages on the grounds that this constitutes discrimination because of family status?

PERSONAL

Clause

Object

Administration's Comments

Civil Service Terms and Conditions

- Some civil service terms and conditions are age-related, e.g. overseas officers aged 40 or over who are on vacation leave terms enjoy a higher leave earning rate; under various housing benefits schemes, officers aged 45 and above are permitted to repay their loans by paying interest only, with the principals to be repaid on the date of retirement by offsetting the amounts against their pension gratuities. (There is no reason why the same arrangement cannot be applied to persons who are, say 43 and above) All these administrative policies will be made unlawful by virtue of the Bill. Government may then have to remove the age requirements and there could be financial implications

Early Retirement in the civil service

- Civil Servants are entitled to apply for early retirement and an age requirement of 45 is stipulated in the CSR. An officer say at 38 can challenge that this age requirement is unlawful under the Bill. There could also be financial implications.

PERSONAL

Clause

Object

Administration's Comments

In respect of adoption services, The Social Welfare Department has an administrative practice of setting an upper age limit of 45. This could be challenged as unlawful age discrimination under the EOB. SWD cannot, therefore reject the application for adoption from a 60 year old couple who are fit and healthy at the time when they submit their application

Other Matters

C 88(2)(c) Remedies to empower the court to order that the defendant should employ or reemploy or to promote the plaintiff

88(2)(d) The question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into LegCo in the next session. It is premature to enact these clauses at this stage

PERSONAL

Equal Opportunities (Race) Bill

Administration's Comments

Object

Clause

MATTERS OF PRINCIPLE

C 2, C 7 To link the interpretation of the Bill with international treaties and instruments (regardless of whether they extended to or create obligations binding on Hong Kong or not e.g. CEDAW) To amend the Bill of Rights Ordinance to make it applicable to all legislation

This is not acceptable. In any case, international treaties are not justiciable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject matter of which is not relevant to the entire BORO, to amend the BORO generally.

DISCRIMINATION ON THE GROUND OF RACE IN EMPLOYMENT

C 11 Discrimination on the grounds of race in employment

Civil Service Localisation Policy

The legality of the policy is brought to doubt under this bill. Given the current controversy over the policy and pace of localisation and the definition of "local", the passing of race discrimination legislation would no doubt add fuel to the debate.

PERSONAL

Clause

Object

Administration's Comments

DISCRIMINATION ON THE GROUND OF RACE IN GOVERNMENT PROGRAMMES

C25

Adoption Matters

- SWD's current practice in arranging adoption of local (Hong Kong) children by couples is in the following order of priority:
 - local adoptive parents of same race,
 - local adoptive parents of different race,
 - overseas adoptive parents of same race; and
 - overseas adoptive parents of different raceThis may be challenged under the Bill

OTHER MATTERS

C 46(2)(c)
& (d)

Remedies

- empower the court to order that the defendant should employ or reemploy the plaintiff
- empower the court to order that the defendant should promote the plaintiff

The question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into LegCo in the next session. It is premature to enact these clause at this stage

PERSONA

Clause

Object

Administration's Comments

Overseas Education Allowance in the civil service

- CSR766(2) gives differential treatment to overseas officers in terms of overseas education allowances. This could be discriminatory under EOB. The passing of the bill could have a strong adverse effect on government's effort to contain the payment of the allowance. (For example, government may have to offer a flat rate of allowance to all officers.)

In respect of the private sector

- Localisation Policy in the private sector can be subject to challenge.
- Some companies may require receptionist to speak fluent Cantonese without any foreign accent. This may be regarded as indirect discrimination.
- An Asian Airline which claims to provide oriental services employ only Asian air hostess. This may be challenged as racial discrimination.
- An advertisement of a school recruiting "Native Speaker" of a certain language. This may constitute indirect discrimination.
- In selecting a teacher to teach English, a school headmaster decides only to employ an English person. This may constitute indirect discrimination under the Bill.

PERSONAL

Clause

Object

Administration's Comments

- An ethnic restaurant only employs persons of a particular ethnic (including e.g. the cook). This may constitute unlawful discrimination.

DISCRIMINATION ON THE GROUND OF RACE IN THE PROVISION OF GOODS, SERVICES AND FACILITIES

C 20

To make it unlawful to discriminate on the ground of race in provision of goods, services and facilities

Insurance

- Race is a relevant factor (e.g. mortality rates or life expectancy pertaining to a race) to be taken into account in assessing the risk covered by, and the premium for, a life insurance policy. This is a sound and prudent business practice in properly evaluating and pricing the risk. If there is no exemption in the Bill, this may create difficulties for the insurance companies in Hong Kong.

DISCRIMINATION ON THE GROUND OF RACE IN ACCOMMODATION AND LAND

C 21

Discrimination on the grounds of race in accommodation

- A Chinese landlord lets his/her flat only to a Chinese-speaking person. Would this be regarded as indirect discrimination?

PERSONAL

Administration's Comments

Object

Clause

C 22

Discrimination on the grounds of race in land

Small House Policy

- Only male indigenous villagers of the Chinese race are allowed to apply for small house grants. Could this be regarded as discrimination on the ground of race (i.e. descent). For both political and practical reasons, it would be difficult to consider abandoning the Small House Policy or extending it to include non-indigenous people.

Rent Concession provided for under the Joint Declaration

- This clause may be inconsistent with the rent concession to indigenous villagers. The rent concession is provided for in Annex III to the Joint Declaration and for obvious reason cannot be removed. There would be huge loss of revenue if the concession were to be extended to non-indigenous community.

PERSUASION

Equal Opportunities (Religious or political conviction, trade union activities and spent conviction) Bill

Clause

Object

Administration's Comments

MATTERS OF PRINCIPLE

C 2, C 7 To link the interpretation of the Bill with international treaties and instruments (regardless of whether they have been extended to or create binding obligations on Hong Kong or not e.g. CEDAW) To amend the Bill of Rights Ordinance to make it applicable to all legislation

This is unacceptable. International treaties are not justiciable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject matter of which is not relevant to the entire BORO, to amend the BORO generally.

DISCRIMINATION ON THE GROUNDS OF RELIGIOUS OR POLITICAL CONVICTION IN EMPLOYMENT

C 11 To make it unlawful to discriminate on the grounds of religious or political conviction in work.

Examples of difficulties/ uncertainties arising from this provision

A fast food shop requires its employees to wear uniform, which comes with paper hats. An employee refuses to comply, saying that his religion does not allow followers to wear hats. Can the employer dismiss him on this basis? If the employer insists on the practice, would it constitute indirect discrimination?

Administration's Comments

- An employer of a certain religion sincerely believes that he should only employ people of his same religion to work in his company. Such an employment policy may be made unlawful under the Bill.
- An employer hires a person to look after his mother who is a follower of a certain religion. The mother specifies that she only wants a helper of the same religion. Would that constitute discrimination?
- Some religious schools (which are not private educational authorities) prefer to employ teachers of the same religion even if they are not directly involved in teaching religious subjects. This is to help promote all round education based on a certain religion. This may be challenged as unlawful.

Employment in ICAC

- The existing policy restricts people with spent conviction from employment in ICAC, especially offences involving dishonesty and breach of trust.

Police Force Ordinance

Discrimination on the grounds of union activities in work.

C 47

- Under S.8(1) of Police Force Ordinance a police is prohibited from becoming a member of any trade union, and any police officer who contravenes this provision shall be disqualified from continuing to be member of the police force. To remove this section would not be in the public interest.

DISCRIMINATION ON THE GROUNDS OF RELIGIOUS OR POLITICAL CONVICTION IN THE PROVISION OF SERVICES

C 57 Discrimination on the grounds of union activities in provision of goods, services and facilities. Insurance

Union membership may be a relevant factor to be taken into account in assessing the risk covered by, and the premium of, a personal accident insurance policy. This is because a person, being a union member, is likely to take part regularly in its activities, and therefore is more prone to accidents. Such an assessment of risk may be challenged as unlawful.

OTHER MATTERS

C 73 Remedies

- empower the court to order that the defendant should employ or reemploy the plaintiff
- empower the court to order that the defendant should promote the plaintiff

The question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into LegCo in the next session. It is premature to enact these clause at this stage.

Ref : HB/C/61/1

Report to the House Committee on 14 July 1995

**Bills Committee to study
the Disability Discrimination Bill**

Purpose

This paper reports on the deliberations of the Bills Committee to study the Disability Discrimination Bill and seeks Members' agreement for the Bill to resume Second Reading debate on 26 July 1995.

Background

2. This Bill, introduced by the Administration, is substantially based on the provisions of the Sex Discrimination Ordinance (SDO) enacted on 28 June 1995. The subject matter of the Bill overlaps, in substance, Part VI of the Equal Opportunities Bill (EOB) introduced by Hon Anna Wu. In view of that and in order to facilitate Members in considering their preferences when voting on the different parts of the EOB, Hon Anna Wu has restructured the EOB into three separate bills, excluding discrimination relating to sex and disability. The three new Equal Opportunities Bills will resume Second Reading debate on 19 July 1995.

The Bill

3. The objects of the Bill are:
- (a) to render unlawful discrimination against persons on the ground of their or their associates' disability and harassment and vilification of such persons; and
 - (b) require the Equal Opportunities Commission (EOC) under the SDO to work towards their elimination of such discrimination, harassment and vilification and

to promote equality of opportunity between persons with a disability and persons without a disability.

The Bills Committee

4. At the House Committee meeting on 5 May 1995 it was agreed that this Bill should be assigned to the Bills Committee to study the EOB and Sex Discrimination Bill (SDB). The membership of the Bills Committee can be extended to those Members who are interested only in this Bill. Dr Hon LEONG Che-hung was elected Chairman of the re-constituted Bills Committee. A membership list is at **Appendix I**.

5. The re-constituted Bills Committee has held five meetings, including four with the Administration and one with deputations. A list of deputations met and written submissions received is at **Appendix II**.

Deliberations of the Bills Committee

Comparison between the DDB and Part VI of the EOB

6. Members note that both the DDB and Part VI of the EOB cover similar scope of grounds of discrimination, namely, disability and harassment. The definition of "disability" under both are substantially the same. Under the DDB, 'harassment' is defined as "unwelcome conduct" that could be anticipated would offend, humiliate or intimidate a person. Under the EOB, threats, abuse, insults or taunts on the grounds of disability constitute unlawful harassment when the victim suffers any disadvantage for objecting, or reasonably believes objection would result in disadvantage. Both Bills also cover similar scope of areas of discrimination. They cover the employment field, education field, provision of premises, goods, services and facilities and other miscellaneous areas.

7. To oversee the implementation of the provisions of the Bill, it provides for the establishment of a statutory body, the EOC (i.e. the same EOC established under the SDO). The EOB does not make provision for the establishment of any similar body (principally because of the **difficulties** faced by a Private Member under Standing Order No.23).

General

8. Having the experience of scrutiny of the SDB and EOB, the Bills Committee studied the DDB much more quickly. Members of the Bills Committee and deputations all support the Bill. Amendments have been proposed to make it more comprehensive.

9. The Administration accepts all amendments parallel to those made to the SDB. It also proposes some amendments in response to Members and deputations' concerns to the DDB. Whilst recognising individual Members' rights to move amendments to any Bill, the Bills Committee expresses strong objection to the Administration's support to an amendment made to the SDB putting a ceiling of \$150,000 on damages to a claimant because this involves a significant policy issue which has not been fully discussed at the Bills Committee meetings. The Administration finally decides not to propose this and any other CSAs which were passed for the SDB, but were not moved by it.

10. After reconsidering those similar amendments moved by the Bills Committee to the SDB, but defeated at the LegCo sitting on 28 June 1995, Members consider that most of these amendments should be viewed from a different perspective when applied to disability discrimination, as opposed to sex discrimination. These will therefore be moved again in the DDB together with two other amendments which the Bills Committee recommended and passed for the SDB. The outline of all proposed Committee Stage Amendments is at **Appendix III(i)-(ii)**.

(Note: Appendix III to follow.)

Committee Stage Amendments (CSAs)

11. The CSAs to be moved by the Administration and the Bills Committee are at **Appendices IV and V** respectively.

Recommendation

12. The Bills Committee recommends that the Second Reading debate of the Bill be resumed at the LegCo sitting on 26 July 1995.

Advice Sought

13. Members are invited to support the recommendation of the Bills Committee at paragraph 12 above.

LegCo Secretariat
12 July 1995

**Bills Committee to study
the Disability Discrimination Bill**

Membership List

Dr Hon LEONG Che-hung, OBE, JP (Chairman)

Dr Hon YEUNG Sum (Deputy Chairman)

Hon Mrs Selina CHOW, OBE, JP

Hon HUI Yin-fat, OBE, JP

Hon TAM Yiu-chung

Hon Andrew WONG, OBE, JP

Hon Ronald Arculli, OBE, JP

Hon Mrs Miriam LAU Kin-yea, OBE, JP

Hon J D McGregor, OBE, ISO, JP

Hon Moses CHENG Mo-chi

Rev Hon FUNG Chi-wood

Hon Simon IP Sik-on, OBE, JP

Dr Hon Conrad LAM Kui-shing, JP

Hon Emily LAU Wai-hing

Hon Eric LI Ka-cheung, JP

Hon LI Wah-ming

Hon James TO Kun-sun

Hon Zachary WONG Wai-yin

Hon Roger LUK Koon-hoo

Hon Anna WU Hung-yuk

Hon LEE Cheuk-yan

Total : 21 Members

**Bills Committee to study
the Disability Discrimination Bill**

List of deputations/written submissions

1. Joint Council for the Physically and Mentally Disabled
2. Coalition of AIDS Organisations Against Discrimination
3. ReHabAid
4. Movement Against Discrimination
5. Hong Kong & Yaumatei Ferry Co
- 6.* Society for the Welfare of the Autistic Persons
- 7.* Federation of Hong Kong Industries
- 8.* Mr KONG Siu-hong, City University of Hong Kong
- 9.* Advisory Council on AIDS

* Written submission only

**Outline of Committee Stage Amendments
to be moved by the Administration**

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Views
Part I - Preliminary			
A1	2(1) 9	The term auxiliary aid is currently defined in terms of what it is not i.e. such an aid is not a palliative or therapeutic device whereas the latter two are defined by referring to Schedule 2. The Administration proposes to have all these three terms defined in a consistent way.	Technical amendment.
Part II - Discrimination which Ordinance Applies			
A2	7	Amend to extend definition of victimisation to cover circumstances where a person is victimised because of proceedings, etc. taken out by another person under the DDB.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Views
Part III - Employment Field			
A3	11(2)	Amend to expressly prohibit discrimination in terms and conditions of employment.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A4	11(5)	Amend the transitional period of five years for small business establishment to three years.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A5	12(3)(b)	Amend genuine occupational qualifications (GOQ) relating to employer-provided premises to limit it to cases where modification of the premises would impose unjustifiable hardship.	To bring GOQ relating to premises in line with other provisions relating to premises.
A6	12(3)(b)	Amend GOQ relating to employer-provided premises to give the applicant the right to make necessary modifications at the applicant's own expense.	To bring GOQ relating to premises in line with other provisions relating to premises. (Cf. DDB 27(2)(c))
A7	12(3)(c)	Delete GOQ based on the essential character of the establishment.	Duplicates effect of exception recognising inherent requirements of the job.
A8	12(3)(d)	Delete GOQ for personal services best provided by person without disability.	GOQ is unnecessary in relation to disability.
A9	12(3)(f)	Delete GOQ recognising prejudice against the disabled outside Hong Kong.	GOQ unnecessary in relation to disability.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Views
A10	new (19A)	New clause prohibiting discrimination against commission agents.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A11	20	Make harassment of an employer by an employee unlawful.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
Part IV - Other Fields			
A12	25(d)	Ensure that the services offered by the Examination Authority are caught by the Bill.	Amendment in response to deputations' concern.
A13	29(5)	Limit exception for voluntary bodies' discrimination in the provision of services to the public.	Voluntary bodies' service to the public should not be exempted. Voluntary bodies are already exempted in relation to their own membership (DDB 29(2)), and other legitimate differential treatment is adequately covered by exceptions for special measures and for charitable benefits (DDB 47-8).
A14	30(1)	Delete exception for facilities for special care in hospitals.	Exception unnecessary in relation to disability.
A15	new (33A)	New clause prohibiting discrimination by Government.	Parallel amendment accepted by Administration for the SDB. (See also Appendix II ref.B2)
A16	34	Amend prohibition of harassment to include harassment of students by students, and of educational staff by students.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.

Ref No.	Clause No.	Outline of Proposed Amendment	Administration's Views
Part V - Other unlawful acts			
A17	39	Amend to make it unlawful to request for unnecessary information as in the case of Queensland and the USA.	Amendment in response to Members and deputations' concern.
Part VI - General Exceptions			
A18	56	Delete exemption for acts done to safeguard the security of Hong Kong.	Although a similar CSA proposed for the JDB was not supported by the Administration, it has agreed that the exception is unnecessary in relation to disability
A19	59	Define "infectious diseases" to include diseases referred to in the First Schedule of the Quarantine and Control of Diseases Ordinance (Cap.141) and other communicable diseases. e.g. HIV	Remove concern on public health will list out specific diseases in the schedule.
Part VII - Equal Opportunities Commission			
A20	63(3)	Amend to specify disability groups as bodies to be consulted when the EOC is drafting the codes of practice.	Amendment in response to deputations' concern.
Part VIII - Enforcement			
A21	70(1)(c)	Delete the reference made to clause 44 which is a criminal offence whereas clause 70 is about civil claims.	Technical amendment.

Ref No.	Clause No.	Outline of Proposed Amendment	Administrations' Views
A22	new	New clause providing that, in proceedings under Ordinance, District Court not bound by rules of evidence and may inform self as sees fit.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A23	new	New clause providing that, in proceedings under Ordinance, each party shall pay own costs unless court finds exceptional circumstances justify otherwise.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A24	71(5)	Delete (EOC must give prior notice to persons against whom enforcement notice to be issued, and hear and take account of such persons' representations opposing issuance of enforcement notice.)	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A25	71(2)	Amend to authorise enforcement notices to include, in addition to a requirement that a person cease an act of unlawful discrimination, a requirement that the person cease any specific practice(s) that led to the unlawful discrimination.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.
A26	80(1)-(2)	Amend to permit proceedings to be brought under the Ordinance for a period of 2 years from the act complained of.	Parallel amendment accepted by the Administration for the Sex Discrimination Bill.

Ref. No.	Clause No.	Outline of Proposed Amendment	Administrations' Views
A27	80	New subclause to provide an additional period within which proceedings under the Ordinance may be brought, of 2 years following publication of a formal investigation report that finds unlawful discrimination, for persons who claim to have suffered from the reported discrimination	Parallel amendment accepted by the Administration for the Sex Discrimination Bill
Part IX - Miscellaneous			
A28	82(2)(a)	Amend to ensure that such factors as the location of the building (e.g. whether it is located in a stepped street) is taken into account.	Amendment in response to deputations' concern
A29	83A	EOC should be empowered to bring proceedings in its own name.	Provisions will be made to empower Secretary for Home Affairs to make regulations, subject to LegCo approval Parallel amendment accepted by the Administration for the Sex Discrimination Bill
Others			
A30		Change the Chinese term of disability from "弱能" to "殘疾".	"殘疾" is a more appropriate term as recommended by deputations

Disability Discrimination Bill

**Outline of Committee Stage Amendments
to be moved by the Bills Committee**

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
Part III - Employment Field			
B1	12(3)(e), 54-5 & Sch.3	Delete GOQ and other exceptions in relation to Sched.3 protective regulations to expire in one year, subject to extension by LegCo resolution.	Parallel amendment approved by the LegCo for the Sex Discrimination Bill.
Part IV - Other fields			
B2	New	New clause prohibiting discrimination in administration of laws and government programmes.	<p>The same amendment was proposed for the SDB. The Administration accepts this in principle, but subject to exception for any act done under immigration legislation and any act done to comply with an existing statutory provision. The Bills Committee considers that the Administration's version, which was passed for the SDB, incorporates new and unnecessary exceptions. The wording in EOB (cl.27) is preferred.</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
Part V - Other unlawful acts			
B3	40 & 76	Amend to make unlawfully discriminatory advertisements subject to a civil penalty (of \$10,000 for a first contravention and \$30,000 for additional contraventions).	Parallel amendment approved by the LegCo for the Sex Discrimination Bill.
Part VII - Equal Opportunities Commission			
B4	60(1)	New subclause expressly authorising EOC to promote observation of relevant international instruments and obligations as they relate to disability discrimination.	Despite apparent breadth, the EOC's functions are limited to discrimination as defined in the DDB. In its roles other than law-enforcement (such as research, promoting, and conciliation), the EOC should be clearly empowered to address any matters connected with discrimination under broad, international non-discrimination standards.
B5	60(1)	New subclause expressly authorising EOC to examine any proposed legislation that it consider may affect equality of opportunity in relation to disability and reporting results to legislation's sponsor.	The proposed subclause gives the EOC an express, statutory role in respect of proposed legislation. A similar role is conferred on the Privacy Commissioner under cl.8(1)(d) of the Personal Data (Privacy) Bill.
B6	65(4)	Amend to enable EOC to carry out an investigation into named persons or organisations for any purpose connected with its functions, irrespective of whether it believes unlawful acts have occurred.	The proposed amendment is in line with the key recommendations of the UK EOC. The EOC is unlikely to investigate a person unless it believes the person has discriminated. Cl.65(4), however, requires the EOC to incorporate that belief expressly in the investigation's terms of reference. This undesirably restricts investigations: if the investigation uncovers discrimination

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
Part VIII - Enforcement			
B7	70(3)-(4)	Amend to empower a court in proceedings under the Ordinance to order any remedy the court considers just and appropriate, including reinstatement.	<p>outside the EOC's initial belief the EOC must redraft the terms of reference and restart the investigation. This has caused unreasonable delay to the UK EOC's investigations.</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>
<p>In relation to the SDB, the Administration initially accepted this amendment in principle, but then rejected it after further consideration.</p> <p>The Administration considers that although reinstatement as a remedy is provided in the United Kingdom against unfair dismissal of employees, experience there has shown that there are many enforcement problems. For example, relations between the employee and the employer may often have broken down to such an extent that reinstatement would not be a welcome remedy to either party. Compensation should therefore be the appropriate remedy. Moreover, the question of reinstatement has been addressed in a review of labour relations conducted by</p>			

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B8	70(5)	Delete bar against damage awards for indirect discrimination in cases of unintentional discrimination.	<p>Secretary for Education and Manpower and legislative proposals to take forward the review will be introduced into the Legislative Council in next session.</p> <p>The Bills Committee considers that because of the scarcity of jobs available for disabled persons reinstatement is particularly important for the DDB. The remedy should therefore be made available now at the discretion of the court.</p> <p>Similar provisions in UK law have been repealed after being found inconsistent with European human rights standards. It is preferable to leave the court flexibility to take account of intentions by varying the size of awards.</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>
B9	New	New clause empowering EOC to bring proceedings in its own name with respect any act or practice made unlawful by Ordinance.	<p>The same amendment was proposed for the SDB. The Administration accepts this in principle, but its version of amendment, which was passed for the SDB empowers Secretary for Home Affairs to provide by subsidiary legislation.</p> <p>The Bills Committee considers that it will be more proper to provide this power in the principal Ordinance.</p>

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B10	New	New clause empowering EOC to bring proceedings seeking a declaration that legislation has been repealed by reason of inconsistency with the Bill or Rights Ordinance as it relates to disability discrimination.	<p>DDB (unlike EOB) has no clause repealing inconsistent legislation. EOC is therefore unable to seek judicial declarations repealing discriminatory laws. This function is restored by the proposed amendment.</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>
B11	New	New clause empowering EOC to intervene by leave of court in any proceedings under the Ordinance.	<p>Where an individual is litigating an important test case under the DDB, the EOC should be able to participate (to the extent permitted by the court) in order to assist in shaping the law's development. Similar provisions exist in Australian equal opportunity laws</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>
B12	79	Amend to enable EOC to take over proceedings in own name if a claimant receiving EOC assistance withdraws from proceedings.	<p>Where the EOC has already provided assistance to a person litigating an important case under the DDB, the EOC should be able to pursue the case in its own name if the person withdraws.</p> <p>Although a similar CSA by the Bills Committee to the SDB was not supported, Members consider that it should be viewed from a different perspective when applied to disability discrimination.</p>

Ref No.	Clause No.	Outline of Proposed Amendment	Bills Committee's Views
B13	80(4)	Amend period within which proceedings under the Ordinance may be brought, to provide that time in conciliation will not be taken into account.	DDB should clearly provide that time in conciliation does not count against the time allowed to bring legal proceedings. A complainant in conciliation should not need to commence proceedings (possibly disrupting conciliation) merely to be certain of preserving the right to litigate if conciliation fails

LegCo Secretariat
11 July 1995

(ii) before, on or after this Ordinance was enacted.

(10) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (9) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted."

- 7(1) (a) By adding "or any other person ("the third person")" after "that the person victimised".
- (b) By adding "or the third person, as the case may be," after -
- (i) "knows the person victimised";
 - (ii) "suspects the person victimised".
- 9 (a) In paragraph (a), by deleting "possesses -" and subparagraphs (i) and (ii) and substituting "possesses a palliative or therapeutic device or an auxiliary aid".
- (b) In paragraph (b), by deleting "such -" and subparagraphs (i) and (ii) and substituting "such a palliative or therapeutic device or an auxiliary aid."
- 11(2)(a) By deleting "; or" and substituting a semicolon.

- 11(2) By adding -
 "(aa) in the terms of employment he affords that person; or".
- 11(5) By deleting "5th" and substituting "3rd".
- 12(3)(b) (a) By adding ", subject to subsection (4A)," before "are not".
 (b) By adding "where the alteration of those premises to be so equipped would impose an unjustifiable hardship on the employer" at the end.
- 12(3) (a) By deleting paragraphs (c), (d) and (f).
 (b) In paragraph (e), by deleting "; or" and substituting a full stop.
- 12 By adding -
 "(4A) Paragraph (b) of subsection (3) shall not apply in relation to the filling of a vacancy where the applicant for that vacancy, being a person with a disability, proposes to the employer that, on appointment to the vacancy, he will make reasonable alterations to that part of the premises to be occupied by him as accommodation if -
 (a) the applicant undertakes to restore the premises to their condition before alteration on leaving the premises;
 (b) in all the circumstances it is likely that the applicant will perform the undertaking;

- (c) in all the circumstances, the action required to restore the premises to their condition before alteration is reasonably practicable;
- (d) the alteration is at that applicant's expense; and
- (e) the alteration does not involve alteration of other premises occupied by any other person."

New By adding -

"19A. Discrimination against commission agents

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("commission agents") as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a person with a disability who is a commission agent -

- (a) in the terms on which he allows the person with a disability to do that work;
- (b) by not allowing that person to do it or continue to do it;
- (c) in the way he affords that person access to any benefits, facilities or services or by refusing or

deliberately omitting to afford that person access to them; or

(d) by subjecting that person to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person with a disability at a time when if the work were to be done by a person taken into his employment being a person without a disability would be a genuine occupational qualification for the job.

(4) Subsection (2)(b) shall not apply to a principal who discriminates against commission agent with a disability, if taking into account -

- (a) the commission agent's past training, qualifications and experience relevant to working as a commission agent;
- (b) where the person is already working for the principal as a commission agent, the commission agent's performance as a commission agent; and
- (c) all other relevant factors that it is reasonable to so take into the account,

the commission agent because of the commission agent's disability -

- (i) would be unable to carry out the inherent requirements of a commission agent; or
- (ii) would, in order to carry out those requirements, require services or

facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the principal.

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

Government

19B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

(a) as regards a person with a disability not having the right to enter and remain in Hong Kong, any act done

under any immigration legislation governing entry into, stay in and departure from Hong Kong; or

- (b) any act done in relation to a person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

By adding -

"(9) It is unlawful for the principal, in relation to work to which section 19A applies, to harass a person with a disability who is a commission agent.

(10) It is unlawful for a commission agent to harass a person with a disability who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a person with a disability at an establishment in Hong Kong to harass that person.

(12) It is unlawful for a person residing in any premises to harass a person with a disability -

- (a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and

(b) carrying out in those premises all part of that person's work in relation to that person's employment (and whether or not that person also resides in those premises).".

25(d) Add ", including the conduct of public examinations" at "education".

29(1) By deleting "This" and substituting "Subject to subsection (5), this".

29 By adding -

"(5) This section shall not apply to a body whose recurrent expenditure is funded wholly or in part by the Government."

30 (a) By deleting subclause (1).

(b) In subclause (2), by deleting "(2)".

New By adding -

"Government

33A. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions this Part in relation to the Government, it is unlawful for the Government to discriminate against person with a disability in the performance of its functions or the exercise of its powers.

- (2) Subsection (1) shall not render unlawful -
- (a) as regards a person with a disability not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
 - (b) any act done in relation to a person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

By adding -

- "(3) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to harass a person with a disability -
- (a) who is, or is a member of, the responsible body for; or
 - (b) who is a member of the staff of, the establishment."

- (a) By renumbering the clause as subclause 39(1).
- (b) By adding -

"(2) Subject to subsection (3), if, because of section 11(1), it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the

first-mentioned person to request or require that other person to provide information of a medical nature (whether by completing a form or otherwise) in connection with or for the purposes of the doing of the act.

(3) Nothing in subsection (2) shall render it unlawful for a person to request or require another person to provide information of a medical nature that is necessary to determine if that other person would be unable to carry out the inherent requirements of the job or would require services or facilities that are not required by persons without a disability."

55(1) By deleting "within the meaning of section 54".

56 By deleting the clause.

59 By adding -

"(3) In this section, "infectious disease

()" includes -

(a) any disease specified in the First Schedule to the Quarantine and Prevention of Disease Ordinance (Cap. 141); and

(b) any communicable disease specified by the Director of Health by notice in the Gazette."

By adding -

"(aa) any provisions of any regulations made under section 83A which are specified in the regulations as provisions which shall not be subject to section 59 of the relevant Ordinance;".

By adding ", including any of the associations, organizations, associations of organizations or bodies specified by the Secretary for Health and Welfare by notice in the Gazette" at the end.

By deleting "or 44".

By deleting "or 44".

By adding after "acts" -

"(which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof)".

By deleting subclause (5).

By adding "except to the extent permitted under rules made in accordance with section 73C of the District Court Ordinance (Cap. 336)" at the end.

80 By deleting subclause (1) and substituting -

"(1) The District Court shall not consider a claim under section 70 unless proceedings in respect of the claim are instituted before the end of the period of 24 months beginning -

(a) when the act complained of was done;

(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 67,

whichever is the later."

80(2)(a) By deleting "12" and substituting "24".

80(6) (a) By deleting "(a) or (b)".

(b) By deleting "any" and substituting "the".

80 By adding -

"(7) In this section, "relevant report"

(), in relation to an act referred to in subsection (1), means a report -

(a) published or made available for inspection under section 67; and

(b) from which it can reasonably be construed (and whether or not the report mentions, or 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 III, IV or V."

82(2)(a) By adding ", bearing in mind the physical location and immediate environs of the building" after "building".

83(1) Add before (a) -

"(aa) to enable the Commission to make any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 66;"

New By adding -

"83A. Regulations to empower Commission to bring certain proceedings

(1) The Secretary for Health and Welfare may make regulations -

(a) where any person may bring proceedings under section 70(1) 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 70(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."

Schedule 2 By deleting Schedule 2 and substituting

"SCHEDULE 2

ss. 2, 61 & 84]

DEVICES OR AIDS SPECIFIED AS
PALLIATIVE OR THERAPEUTIC
DEVICES OR AUXILIARY AIDS

Item	Description of device or aid (including trade or manufacturer's name if applicable)
1.	Optacon reading aid for persons with visual impairment
2.	Braille writing machine
3.	Braille writing device
4.	Low vision aid
5.	Hearing aid
6.	A telecommunications device for persons with hearing impairment
7.	Wheelchair or buggy
8.	Prosthesis
9.	Orthosis
10.	Walking aid
11.	Aid or dialysis therapy

- 12. Speech aid
- 13. Oxygen unit
- 14. Aid for any activities of a personal nature, including a feeding aid and an aid in respect of toilet needs
- 15. Urinary bag
- 16. Stoma bag

Schedule 6 In item 4, in the proposed section 73C -

(a) in subsection (2), by deleting "rules as to proceedings by or against the Crown." and substituting -

"rules -

- (a) as to proceedings by or against the Crown;
- (b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;
- (c) to make special provision for any proceedings in the Court where regulations made under section 63A of the Disability Discrimination Ordinance (of 1995) apply to the proceedings.";

(b) by adding -

"(2A) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) 1472

shall bear its own costs unless the Court otherwise orders on the ground that -

(a) the proceedings were brought maliciously or frivolously;
or

(b) there are special circumstances which warrant an award of costs.";

(c) in subsection (3) -

(A) in paragraph (c), by deleting the semicolon at the end and substituting a full stop;

(B) by deleting paragraph (d);

(d) by adding -

"(3A) The Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.";

(e) in subsection (4), by deleting "Any" and substituting "Subject to subsection (3A), any";

(f) in subsection (6), by adding -

"(aa) where there is any conflict or inconsistency between -

- (i) any rules made under subsection (2)(b); and
- (ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings therein,

then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice:".

DISABILITY DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Hon LEONG Che-hung, O.B.E., J.P.

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by adding -</p> <p>““relevant international instruments” (有關國際文書)</p> <p>means -</p> <ul style="list-style-type: none">(a) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly of the United Nations on 20 December 1993;(b) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975; and(c) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971; <p>“relevant international obligations” (有關國際義務)</p> <p>means obligations applicable to Hong Kong under international treaties to take appropriate steps, including legislative measures, to eliminate discrimination. on the ground of disability, in</p>

particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong;”.

(b) By adding -

“(9) For the purposes of the definition of “relevant international obligations”, “discrimination” (歧視) means discrimination within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 6, 7, 9 or 10, is not limited to discrimination so falling.”.

New

By adding -

“Laws and Government programmes

33A. Discrimination in the administration of laws and Government programmes

It is unlawful for a person who exercises a prerogative power, who performs a function or exercises a power under a law or for the purposes of a Government programme, or who has any other responsibility for the administration of a law or the conduct of a Government programme, to discriminate against another person in the performance of that function, the exercise of that power or the fulfilment of that responsibility.”.

54

By adding -

“(5) Subject to subsection (6), the provisions of

subsections (1)(ii) and (2)(b), section 12(3)(e) and Schedule 3 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) Prior to the expiry of the provisions referred to in subsection (5), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of 1 year.”.

60

By adding -

“(1A) Without prejudice to the generality of subsection (1), the Commission may -

- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments; and
- (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between persons with a disability and persons without a disability or affect the understanding and acceptance of relevant international obligations and of the standards contained in relevant international instruments, and report the results of the examination to the person proposing the legislation and to the Legislative Council.”.

65

By deleting subclause (4) and substituting -
 (4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act which a person so named may have done, the Commission shall -

- (a) inform that person of its proposal to investigate the act; and
- (b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks

New

By adding -
 (f) and Government programmes and a person so named who avails himself of an opportunity under this subsection of making oral representations may be

- represented -
- (i) by counsel or a solicitor; or
 - (ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable."

66(2)(b)

By deleting everything after "formal investigation" and substituting "confine it to activities of persons named in them."

70

(a) In subclause (3) by deleting everything after "District Court" and substituting "and where the court is satisfied (3) Subject to subsection (6), the provisions of that the respondent has committed an unlawful act of

discrimination, vilification or harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances ”.

(b) By deleting subclause (4) and substituting -

“(4) Without limiting the generality of 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 full compensation for any loss or damage suffered by reason of the respondent's conduct or act on the first occasion on which a
- (f) order that the respondent shall pay to the claimant punitive or exemplary

- (g) ~~make an order declaring void in whole or in part either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.”.~~

(c) By deleting subclause (5).

By adding -

“70A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 70(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) The Commission may bring proceedings in the High Court seeking a declaration that an enactment or part of an enactment is inconsistent with -

- (a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the ground of disability; or
- (b) Article VII(5) of the Hong Kong Letters Patent 1917 to 1993 as it relates to discrimination on the ground of disability.

(3) In this section, “discrimination” (歧視)

means -

- (a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and

- (b) for the purposes of subsection (2)(b),
discrimination within the meaning of the
International Covenant on Civil and
Political Rights,

and, although including every form of discrimination
falling within section 6, 7, 9 or 10, is not limited to
discrimination so falling.

70B. Commission may intervene in proceedings

The Commission may, where it considers it to be
appropriate to do so, with the leave of the court hearing
the proceedings and subject to any conditions imposed by
the court, intervene in proceedings in which -

- (a) a claim under section 70(1); or
(b) a declaration of the kind referred to in
section 70A(2),

is an issue.”.

76

By adding-

“(5) Without prejudice to subsection (4), if it appears
to the Commission that a person has done an act which was
unlawful by virtue of section 40, the Commission may apply
to the District Court for an order imposing a financial
penalty on such person; and the District Court, if satisfied
that the application is well-founded, may make such an
order.

(6) The financial penalty imposed under subsection
(5) shall not exceed \$10,000 for the first occasion on which a
penalty is imposed, and \$30,000 for the second and any
subsequent occasion on which a penalty is imposed in
respect of the same person.”.

79

By adding -

- “(5A)(a) Where any person, who has received assistance in respect of proceedings under this Ordinance under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.
- (b) As from the date of any such taking over of proceedings under paragraph (a), the Commission shall be deemed to be a party to those proceedings in place of the person who has withdrawn therefrom.”.

80

By adding -

“(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 78(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 78 was conducted, as certified in writing by the Commission, shall be disregarded.”.



Our Ref.: HW CR 2/5091/94 Pt 21

Your Ref.

Tel. 2810 3195

Fax: 2840 0467

2869 4376

17 July, 1995

Mrs Anna Lo
Legislative Council Secretariat
Legislative Council Chamber
8 Jackson Road
Hong Kong.

Dear

Disability Discrimination Bill

As promised on the telephone this morning, I am writing to let you know of the four amendments to be made to the Administration's Committee Stage amendments. These amendments, which are set out below, were not included in the third draft faxed to you on 12 July

- (a) Clause 24(2)(b) We have added "and to the extent that those facilities are physical in nature" before "those";
- (b) Clause 28(2)(a) We have added the words "where such registration is reasonable having regard to the main object of the body" before, "or";
- (c) Clause 54 We have put back in the amendment to delete sub-clauses (3) and (4) since this was deleted by mistake; and
- (d) Schedule 2 has been amended to delete "braille writing machine". It was not required since we already have "braille writing device".

Yours sincerely,

(Ms A E Shepherd)
for Secretary for Health and Welfare

bcc Mr Adam Mayes

Many of the document's claims misrepresent the Bills or represent issues previously considered in detail by the Bills Committee as if new. We have prepared a detailed response to the Administration's comments, and believe the Bills may safely be enacted as they stand. Because, however, of the extremely short time in which to discuss the many issues raised by the document with Members (whose identities are not necessarily known to us), Ms. Wu believes it is essential to provide the proposed new CSAs as well. The CSAs avoid doubt and provide enhanced flexibility in implementation to the Administration. The new clauses concerning "Regulations to provide temporary exceptions" are the most important CSAs.

The English version of the CSAs is attached and the Chinese version will be ready late today. Thank you very much for your consideration.

Yours sincerely,

Adam C. Mayes
for Anna Wu

Mr. Michael Suen, CBE, JP
Secretary for Home Affairs
31st Floor
Southern Centre
130 Hennessy Road
Wanchai
Hong Kong



Dear Mr. Suen,

Re: Equal Opportunities Bills

平等機會

As you know, my three private members bills, which replace the original Equal Opportunities Bill I introduced in July 1994, will resume reading on July 19, 1995. These bills cover the following areas:

1. Age, Family Responsibility and Sexuality,
2. Race, and
3. Religious or Political Conviction, Trade Union Activities and Spent Conviction.

Each Bill may now be voted upon and passed separately.

When I first presented the original bill to you 1 1/2 years ago, the situation was quite different. The Bill then was one single Bill. Now, we have three bills and the Government is free to consider one or two or three of these bills.

I understand your concerns over my bills stem from a number of factors:

- whether the community is ready for these laws,
- whether there are areas of uncertainties and ambiguities and perhaps areas that we are not aware of at this point,
- whether there are areas that will need transitional provisions because of entrenched practices which cannot immediately be changed.

I have already advanced committee stage amendments, amongst others, for the following :

1. Preserve the right to prescribe mandatory retirement age,
2. Clarify that protective laws relating to minors will not be affected,
3. Prescribe a 2-year period extendible up to a total of 4 years for government to review age specific laws,
4. Clarify that marriage and adoption laws will not be affected by laws prohibiting discrimination arising from sexual preference,
5. Remove the exception relating to the hiring stage of domesti

f



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- helpers,
6. Provide for flexible and variable commencement dates to be made for different provisions of the Ordinance as well as by size and type of business,
 7. Remove references to associates and de facto spouse to avoid arguments,
 8. Delete reference to punitive damages.

It must be remembered that all the reservations under the Bill of Rights have been repeated in these bills and they include the area of immigration.

This list reflects the views of the Bills Committee Members, who have gone through a year of weekly deliberations. It removes controversial areas and clarifies others. The Bills have been well studied and many sectors of the public, business, grass root groups and victims have all made extensive submissions. The business world in particular have now drawn up detailed codes of practice covering, amongst others, age, race and religious conviction discrimination. The community is ready and willing to advance the agenda.

To ensure that the programme can be planned in a measured and orderly way, I have proposed that the government may provide for different commencement dates for different sectors and size of business. This, together with the ability of government to make regulations, gives you plenty of leeway over the proper pace to take these matters forward. This is not to say that any aspect of these Bills has not been properly thought through. The Bills do not provide for positive obligations of any nature. It simply requires an employer to consider someone, a person above 30 or a divorcee, objectively and to match the person's ability against the job requirements.

I understand you have belatedly expressed quite a number of concerns to various legislators after the committee stage amendments closed. Most of these concerns, I believe, have been addressed by the Bills Committee and resolved. Some of these could have been further clarified, quite easily, by provisions



平等機會

could have been further clarified, quite easily, by provisions for the avoidance of doubt. Where you still need comfort, these could easily have been handled by provisions enabling you to provide for exceptions through regulations or on applications for waiver. This is in addition to the power to set different commencement dates. In other words, although I do not share your concerns, your mind can be set at ease with some touch ups. The suggested provisions are annexed for your reference.

Furthermore, while it may not be necessary, should you prefer to have some kind of consultation with Legco over the commencement dates, it is, of course, possible to provide for consensual commencement dates to be resolved between yourself and Legco. I leave this entirely to you and would be happy to retain or delete Clause 1 (b) proposed.

The committee stage amendment period having passed, I will have considerable difficulty getting these amendments onto the agenda. Nevertheless, please let me know as a matter of urgency whether you find the proposals satisfactory. I would be obliged if you could address each Bill specifically. As I have offered in the past, you are free to step in as proposer to move any or all of these bills even at this stage if you wish.

Yours sincerely,

Anna Wu
17 July 1995

c.c. The Hon Mrs. Anson Chan, CBE, JP
Unofficial Members of the Executive Council

URGENT—BY FAX & BY HAND

DOCUMENT

17th July 1995

Mr. Michael Suen, CBE, JP
Secretary for Home Affairs
31st Floor
Southorn Centre
130 Hennessy Road
Wanchai
Hong Kong



Dear Mr. Suen,

Equal Opportunities Bills

You will recall that the Bills Committee met weekly to discuss my Bills for over a year. It was a thorough and intensive exercise, and included public consultation with business and grass root groups as well as victims. Most unfortunately, the Administration chose, quite deliberately, not to participate in the Bills Committee meetings on my Bills.

Just a few days ago — after the deadline for the submission of amendments had passed — the Administration for the first time issued its own detailed criticism of the Bills, claiming that the Bills were flawed. The documents were issued only to selected Legco Members, not including the Bills' sponsor (myself), the chairman of the Bills Committee, or any other Bills Committee member as such.

These actions seem to indicate clearly that the Administration's objective is not to improve the Bills but to sabotage them. The Administration's actions also subvert the legislative process, which seeks to make legislative work transparent and subject to public vetting.

Although I was not given the courtesy of a copy of the documents, I have obtained a set. Attached please find responses to the issues raised.

Yours sincerely,

Anna Wu

c.c. The Hon. Mrs. Anson Chan, CBE, JP

Room 415 Central Government Offices (West Wing), 11, Cecil Street, Hong Kong
Telephone: 537 2466, 537 2467 Facsimile: 530 2018 Law Office: 545 7755
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香港立法局 立法局政府合署辦事處

Response to the Administration's Comments on the
Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

All "Administration's Comments" are reproduced (in slightly revised order)

Response

Administration's Comments

Discrimination on the ground of family responsibility

Family responsibility discrimination in employment

- Reference to s. 14(2)(d) of the Employment Ordinance is somewhat misleading, inasmuch as the Administration plans to repeal that provision next session as recommended by the Labour Advisory Board.

In general, the Bill regards maternity benefits as measures taken to meet the special needs of persons with particular family responsibilities (cl. 26), and neither affects nor requires them.

- The Bill does not prohibit any differential treatment that is reasonably justified by material circumstances.
Sec. 2 of the Employee's Compensation Ordinance appears to concern employees whose familial relationship with employers raises the risk of collusion. It is not discrimination under the Bill sensibly to take account of such a risk, which is clearly a material circumstance. (The Bill expressly recognises such risks as material in cl. 28.)

in existing legislation

Some provisions of the Employment Ordinance give differential treatment to a person of a certain family status e.g. S.1(2)(d) denies a female employee who is the mother of more than 2 existing surviving children the rights to maternity leave pay upon pregnancy. S.2 of the Employees' Compensation Ordinance excludes from its protection a member of the employer's family who is employed by the employer, resides with the employer and is not covered by valid employees' compensation insurance policy. This provision may create uncertainties in these areas.

Family responsibility discrimination in government and administration

This and many other comments inaccurately imply that the Bill prohibits any differential treatment, no matter how reasonable and justifiable. The contrary is true: the Bill combats arbitrary discrimination by *encouraging* differential treatment that is based on relevant, material circumstances. This is fundamental to understanding the Bill's operation.

- It is absurd to suggest that the Bill would legalise incestuous relationships. That two persons are closely related is clearly a relevant, material reason to bar their marriage. Any claim to the contrary would be thrown out of Court without hesitation, with an award of costs against its maker.

marriage between members of the same family is invalid under common law and legislation. Would this provision make it unlawful to refuse to register such marriages on the grounds that this constitutes discrimination because of family status?

Administration's Comments

Response

Discrimination on the ground of sexuality

Sexuality discrimination in employment / provision of services

- This clause would make it unlawful for a Government Department not to post, for e.g., homosexual officer to a boys' homes despite the knowledge of a particular officer's sexuality. Both Immigration Department and the Correctional Services Department have officers whose duties include the escorting and guarding of detainees and prisoners. For reasons of decency and to avoid allegation of harassment, detainees and prisoners are escorted and guarded by officers of the same sex. If officers with homosexual or bisexual preference are recruited to guard detainees and prisoners, problems of decency and vulnerability to allegations of harassment will arise. Similar problems will arise in the cases of the deployment of, for example, nurses where there would be physical contact between the service provider and recipient and that the service recipient may object to being served by a person with homosexual preference.
- A family with young children refuses to rent a room in their flat to a homosexual couple. This may be challenged as discrimination under the Bill
- female beautician refuses to provide facial service.
- ... to a person of a particular age group and sexual preference. This may be discrimination under the bill
- A person refuses to hire a homosexual person to look after his child in his place of residence. This may constitute discrimination.
- An employer dismisses a domestic helper on the ground that he/she is a homosexual. This could be unlawful under

The Bill prohibits discrimination on the ground of sexuality, i.e. the status of being heterosexual, homosexual, etc. It does not recognise or require preferential treatment of any particular sexuality, nor does it affirmatively recognise or authorise any sexual acts or activity.

Nothing in the Bill prevents due regard being taken of inappropriate or unlawful activity. The Bill does not displace ordinary legal and social standards, for example:

- disciplinary standards that forbid any abusive or sexual behaviour by prison guards;
- a lessor's right to refuse to continue renting to an unreliable or disruptive tenant; etc.

A person's sexuality as such, however, has no relevance in any of the contexts the Administration cites. The value of anti-discrimination law is that it requires judgments to be made on the basis of individual background, character, and qualifications rather than stereotypes. An individual's propensity for harassment, child molestation, or the like cannot be fairly or accurately predicted from his sexuality. (The vast majority of such cases involve, of course, opposite sex offenders.)

- Certain comments disregard specific provisions in the Bill:

1. Provision of accommodation in a person's own home, or in the home of a person's near relative, is exempt under the Bill (cl. 21(3)(a)).
2. Exceptions for religious schools (and other religious bodies; cl. 82-3) grant considerable flexibility to discriminate in any way genuinely required by their religious doctrines honoured by the school. This may authorise sexuality discrimination, for example, in hiring and employment if there is legitimate religious basis for it.

Administration's Comments

Response

- A secondary school refuses to employ a homosexual/bisexual person as a teacher to teach ethic or to counsel youngsters. This may constitute unlawful discrimination
- A school run by a religious body requiring all teachers to support its policy in condemning homosexuality as a sin A teacher who refuses to comply is dismissed. This may constitute discrimination.
- A school employs a homosexual person as a teacher but requires him and not other teachers not to encourage or preach his way of life to his students This may be challenged as discrimination
- Under existing laws, providers of reproductive technology services should not be permitted to make these available to gay couples. This is intended to reflect public feedback that reproductive technology should be available only as an aid to infertility within the (traditional) family setting. This may be discrimination under the Bill

- Several comments concern homosexual teachers. As discussed above, nothing in the Bill recognises or requires recognition of any particular sexuality. It is not discrimination to dismiss a teacher who actively "teaches" his own sexuality; such activity is a material factor that can justify differential treatment.
On the other hand, it is discrimination to dismiss a teacher who teaches the same curriculum in the same way as other teachers, merely because he is homosexual. (Note, however, that religious schools have some flexibility even in such cases, as discussed above.)
- The principled response to the type of concerns and fears that the comments raise in regard to sexuality would be an educational campaign against prejudice. The Bill leaves the Administration ample flexibility for a staged implementation, gradually bringing different provisions into operation in tandem with such educational efforts.

Sexuality harassment/vilification

- A school headmaster condemns homosexuality as a sin in the morning assembly. It can be argued that this constitutes harassment in employment as it creates a hostile work environment for homosexuals working in the school
- A headmaster giving a speech condemning homosexual behaviour as a sin and incites contempt for homosexual members in the school. This may constitute vilification

As mentioned above, the Bill allows religious schools flexibility to act in accordance with genuine religious requirements. It seems unlikely, however, that conduct amounting to harassment or vilification is endorsed by the actual religious doctrines honoured by schools.
Aside from such religious concerns, does the Administration approve of the harassment and vilification of homosexuals?
These comments (and many above) both rely on and fuel the prejudice that the Bill means to combat. It is difficult to reconcile them with the Administration's claim that it supports the Bill in principle and should be allowed to draft legislation in its place

Administration's Comments

Response

Discrimination on the ground of age

Age discrimination in employment-related ordinances

• Employment related Ordinances

Some employment-related ordinances set minimum age for employment and prohibit employment of children and young persons in certain trades and tasks or for certain periods of time. Removal of such protective legislation may mean that we cannot continue with the application of some International Labour Organisation Conventions and Recommendations. Anna Wu now proposes to impose a sunset provision of 2 years, the validity of all such legislation which stipulate an age restriction would be in doubt after 2 years unless they are covered by other exceptions in the Bill. This uncertainty is highly undesirable and unacceptable.

The Bills Committee has recommended 2 amendments to remove any uncertainty in this area:

1. New clause cl. 74A provides that the Bill has no effect on laws concerning or protecting persons under 18. This removes any doubt about laws restricting young persons' work (e.g. pursuant to ILO Conventions), their access to goods and services (e.g. obscene or otherwise restricted items), etc.
2. New clause cl. 74B exempts all statutory age restrictions for 2 years. Legco may extend the period of exemption for an additional 2 years. This allows for a comprehensive review of age-restrictive laws and for orderly amendment of any that are discriminatory (and, if necessary, for addition of further exceptions to the Bill itself).

Civil service terms and conditions

- Some civil service terms and conditions are age-related, e.g. overseas officers aged 40 or over who are on vacation leave terms enjoy a higher leave earning rate; under various housing benefits schemes, officers aged 45 and above are permitted to repay their loans by paying interest only, with the principals to be repaid on the date of retirement by offsetting the amounts against their pension gratuities. (There is no reason why the same arrangement cannot be applied to persons who are, say 43 and above.) All these administrative policies will be made unlawful by virtue of the Bill. Government may then have to remove the age requirements and there could be financial implications

1493

- Civil Servants are entitled to apply for early retirement and an age requirement of 45 is stipulated in the CSR. An officer say at 38 can challenge that this age requirement

The Bill expressly allows bona fide benefits on the basis of age, as well as measures taken to meet the special needs of persons of particular ages. If civil service terms and conditions fit these descriptions, the Bill has no effect on them.

If, however, the Administration is using age criteria as a proxy for other concerns such as seniority, then the age criteria are inaccurate, unfair and discriminatory and should be replaced with the actual matters of concern (e.g. years of service). Arbitrary use of age criteria by Government is poor administrative practice, as well as contravening the BORO's non-discrimination provisions.

Early retirement in the civil service

The comment is inaccurate. The Bill expressly allows voluntary, age-based retirement schemes and incentives (cl. 73(1)). (Mandatory retirement ages will also remain lawful under the Bills Committee's proposed amendment to

Administration's Comments

Response

Age discrimination in private sector employment

A retail shop specialising in youth products wish to employ salespersons who are young and energetic to create a youthful image. The shop stipulates an age requirement of 45. This will be unlawful under the Bill because arguably, those over 45 can still look young and energetic. As a result, the employer would be obliged to give interviews to more applicants than it otherwise would be necessary.

Individual retailers' insistence on a "young and energetic" image may be collectively the main cause of age-based unemployment and underemployment, particularly for women.

Even supermarkets pay employees over 30 lower hourly wages than younger employees, with no discernible, performance justification. Until recently, the Government itself advertised for clerical workers under 25.

Nothing in the Bill requires an employer to hire a less capable or "energetic" individual merely because he or she is older; there is no affirmative action requirement. All the Bill requires is that fair consideration be given to applicants regardless of age, and that terms and conditions be performance-based.

The comment suggests that consideration of older applicants wastes an employer's time. This assumes that age as such accurately reflects the qualities needed by a salesperson, a dubious and stereotyped assumption. It would in any case cost retailers (and others) little or nothing to give older applicants a chance.

More importantly, the expense incurred (if any) is trivial compared to the harm otherwise done—

- to women over 40 and others who are almost entirely shut out of the retail (and many other) employment sectors; and
- to an economy that throws away the skills of its workers as they age (and eventually has to support them with public funds).

The Bill expressly allows age restrictions that address reasonable health and safety concerns (cl. 72). This permits restrictions on sale of alcohol to minors.

(Note that a statutory drinking age, or any other legal restriction to protect minors, is also preserved under the Bills Committee's recommended new clause 74A.)

A supermarket posts up notices that they would not sell alcoholic drinks to youngsters below 18. There is no statutory requirement for it to adopt this policy. A 17 years old could argue that this is discriminatory and unlawful under the bill.

Administration's Comments

- A bank specifying in a recruitment exercise for "trainees" that applicants should be under 50. This may be challenged as discriminatory.

- An employer refusing to send an employee who is approaching retirement age for overseas training. This is sensible commercial decision but could be regarded as discriminatory

Age discrimination in education

- Age criterion in admittance to courses

The instrumental Music Training Scheme run by the Music Office is open for young people between the ages of 6 and 23. Separately, the upper age limit for playing in the Music Office's orchestras/bands/choir is 25. Many courses run by private sector may have age as one criterion for admission. Would it be unlawful for these courses organisers to refuse those applicants outside the age range on the ground of their age?

- A violin teacher only accepts children who are under 12 as students. This may be challenged as unlawful discrimination under the Bill

Response

- The cited age restriction seems to be a waste of ink because few persons over 50 seek to become bank trainees. If a person over 50 does apply, the recruiter may legitimately take into account relevant, age-related factors such as (over)qualification or projected time with the company, so long as they are objectively relevant and gauged on an individual rather than stereotypical basis. And if that person turns out to be objectively the best person for the job, everyone benefits.
- The comment is inaccurate because the Bill does not affect commercially sensible decisions. Reasonable differential treatment does not constitute discrimination under the Bill. It is clearly justifiable to restrict participation in a costly training programme to those whose employment will last long enough to repay the investment in them.

These comments are misleading.

The Bill expressly permits minimum age limits for admission to educational institutions (cl. 62(4)).

The Bill also expressly allows measures taken to meet special needs of a particular age group (cl. 75(b)). This covers any course or programme designed specially for a particular age group, such as a youth orchestra or a literacy programme for seniors. Where relevant, it would authorise an upper age limit on participation. The same exception covers a teacher who specialises in a particular age group, e.g. children under 12.

Courses and programmes of this type, designed to serve particular age groups, are clearly legitimate and have posed no problems under anti-discrimination laws in other jurisdictions.

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Response

Administration's Comments

Age discrimination in provision of services

- Many programmes run by the Government have age as admission criterion. These may be challenged as discriminatory.
- C 64(2) provides that it is lawful to provide bone fide benefits to a person by reason of his/her age. This clause does not appear to make it lawful to deny persons access to goods, services, facilities, etc that are deemed unsuitable or harmful to them e.g. access to a bookstore selling publications not suitable to persons under a certain age
- Where age is materially relevant to a particular Government programme or service, age-based admissions are legitimate and remain lawful. The Bill's requirements in this respect are no more than good administrative practice. Moreover, Government is already bound in this respect by the BORO's anti-discrimination provisions.
- The Administration cites no specific problems. There is no evident reason why Government should be exempt in this area.
- First, age-based restrictions on services may be imposed to address any reasonable health and safety considerations (cl. 72).
- Second, an amendment recommended by the Bills Committee exempts any legal restrictions imposed on persons under 18 (new clause 74A)
- Finally, genuine unsuitability or risk are material circumstances that can justify differential treatment. Any reasonable restriction based on such factors would not amount to discrimination under the Bill in any case

Age discrimination in relation to land

- Application of the small house policy is restricted to those male indigenous villagers who are at least 18 years old. This could be challenged as discriminatory by persons under that age.
- This comment is spurious. This age restriction is imposed because persons under 18 lack legal capacity to enter contractual obligations. The right to refuse contracts with minors is expressly recognised by the Bill (cl. 74). Although the small house policy is discriminatory (on the basis of sex), is scheduled for review, and should be reformed as soon as possible, it is wholly irrelevant to this Bill.

Age discrimination in government and administration

- In respect of adoption services, The Social Welfare Department has an administrative practice of setting an upper age limit of 45. This could be challenged as unlawful age discrimination under the EOB. SWD cannot, therefore reject the application for adoption from a 60 year old couple who are fit and healthy at the time when they submit their application.
- It is not discrimination to take account of relevant, material circumstances. Anything that affects parenting capability, such as life expectancy or certain health considerations, is a legitimate factor in relation to adoption. If the SWD is not confident that its current adoption policy is justifiable in light of such factors, then it should review the policy pending commencement of the relevant provisions of the Bill (which may, of course, be deferred by the Administration).

Administration's Comments

Response

General

Interpretation in accord with relevant international instruments /
Consequential BORO amendment

To link the interpretation of the Bill with international treaties and instruments (regardless of whether they have been extended to or create a binding obligation on Hong Kong or not e.g. CEDAW). To amend the Bill of Rights Ordinance to make it applicable to all legislation.

This is unacceptable. International treaties are not justiciable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject matter of which is not relevant to the entire BORO, to amend the BORO generally.

This Bill (like the Sex Discrimination Ordinance) is in fulfilment both of obligations under certain international treaties and instruments, and of the undertaking under the BORO to legislate specifically against discrimination.

- The comment is misleading because the Bill does not make treaties justiciable. Ordinary legal principles, however, encourage courts to interpret local law by reference to relevant international instruments, whether binding or not. Clauses 2 and 7 underline that principle's importance to this Bill and state which instruments are relevant to it. (Note also that at least 6 Ordinances enacted in the last 6 months expressly refer to or incorporate provisions of international instruments)
 - The cl. 96 amendment negates a particular court decision that restricted the BORO's effect on pre-existing laws (see the Bill's explanatory memo for details). The deciding court itself stated that the decision undermined the BORO's intended effect.
- The BORO amendment is relevant and consequential to this Bill because if the BORO is not so amended, laws that condone inter-citizen discrimination will remain immune to challenge under the BORO.

Remedy of reinstatement

The question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into LegCo in the next session. It is premature to enact these clauses at this stage

The Administration initially accepted in principle that reinstatement should be available as a remedy (in the Sex Discrimination Ordinance). It then reversed position and to oppose reinstatement pending implementation of its general labour relations review.

Reinstatement is, however, an essential remedy in certain cases of employment discrimination. It is widely available for that purpose in other jurisdictions. Reinstatement is granted at the discretion of the Courts, which are well-equipped to determine when the remedy is appropriate.

Response to the Administration's Comments on the
Equal Opportunities (Race) Bill

All "Administration's Comments" are reproduced (in slightly revised order)

Administration's Comments

Response

Discrimination on the ground of race

Localisation

Civil Service Localisation Policy

- The legality of the policy is brought to doubt under the bill (given the current controversy over the policy and pace of localisation and the definition of "local", the passing of race discrimination legislation would no doubt add fuel to the debate.

respect of the private sector

- Localisation Policy in the private sector can be subject to challenge.

The Bill does not affect localisation policies. Although the Bill does not require affirmative action to remedy the effects of past discrimination, it does expressly permit such measures (cl. 37(a), "measures intended to achieve equality").

Note that the Government is already bound not to discriminate racially, both by the BORO and by international obligations such as the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination [CERD]. Unlike the Bill, the BORO does not contain language expressly permitting measures to achieve equality (although a similar rule may eventually be constructed by the Courts).

Equal Opportunities (Race) Bill

Response

Administration's CommentsLanguage skills, cultural background, etc.

- Some companies may require receptionist to speak fluent Cantonese without any foreign accent. This may be regarded as indirect discrimination.
- An Asian Airline which claims to provide oriental services employ only Asian air hostess. This may be challenged as racial discrimination
- An advertisement of a school recruiting "Native Speaker" of a certain language. This may constitute indirect discrimination.
- Interviewing a teacher to teach English, a school headmaster decides only to employ an English person. This may constitute indirect discrimination under the Bill.
- An ethnic restaurant only employs persons of a particular ethnic (including e.g. the cook). This may constitute unlawful discrimination.
- A Chinese landlord lets his/her flat only to a Chinese-speaking person. Would this be regarded as indirect discrimination?

Language skills, cultural background, etc.

- An employer may demand any level of language skill that is appropriate for a particular job. Requirements such as "native speaker" or "no accent" are permissible if they are genuinely employment-related, even though they may tend to limit hiring to a particular race.
- On the other hand, demanding an English person to teach the English language is a racial rather than a skill criterion, and is discriminatory.
- The same considerations apply to job-related cultural skills. An employer may, for example, demand "authentic" cooking skills, or a high level of familiarity with a particular culture, if those skills are materially relevant to the job.
- Similar conditions may be imposed in other areas of activity, e.g. accommodation, if they are justifiable. A landlord may, for example, reject a tenant with whom he or she is genuinely incapable of communicating.

Administration's Comments

Response

Issues relating to indigenous villagers in the New Territories

Small House Policy

- Only male indigenous villagers of the Chinese race are allowed to apply for small house grants. Could this be regarded as discrimination on the ground of race (i.e. descent). For both political and practical reasons, it would be difficult to consider abandoning the Small House Policy or extending it to include non-indigenous people.

The Bill expressly allow measures to meet the special needs of a particular racial group. The Bill therefore would not affect any reasonable measures taken to enhance the welfare or preserve the culture of indigenous villagers in the New Territories.

Although the Bill allows such measures, it does not require them. In particular, nothing requires the Administration to 'equalise upwards' by extending such measures to everyone.

While the "race" (descent) aspect of the Small House Policy and attendant rent concessions is not particularly troubling, the Administration knows that the Policy is sexually discriminatory, arbitrary in other respects, and legally suspect under the BORO. It is the Administration that bears the burden of reviewing and reforming the policy until the measures taken are demonstrably justifiable.

Rent Concession provided for under the Joint Declaration

This clause may be inconsistent with the rent concession to indigenous villagers. The rent concession is provided for in Annex III to the Joint Declaration and for obvious reasons cannot be removed. There would be huge loss of revenue if the concession were to be extended to non-indigenous community.

Administration's Comments

Response

Other discrimination issues

- CSK766(2) gives differential treatment to overseas officers in terms of overseas education allowances. This could be discriminatory under EOB. The passing of the bill could have a strong adverse effect on government's effort to contain the payment of the allowance. (For example, government may have to offer a flat rate of allowance to all officers.)

- SWD's current practice in arranging adoption of local (Hong Kong) children by couples is in the following order of priority:
 - local adoptive parents of same race;
 - local adoptive parents of different race;
 - overseas adoptive parents of same race; and
 - overseas adoptive parents of different race.
 This may be challenged under the Bill

- Race is a relevant factor (e.g. mortality rates or life expectancy pertaining to a race) to be taken into account in assessing the risk covered by, and the premium for, a life insurance policy. This is a sound and prudent business practice in properly evaluating and pricing the risk. If there is no exemption in the Bill, this may create difficulties for the insurance companies in Hong Kong.

The Bill does not regard any differential treatment, no matter how reasonable and justifiable, as discrimination. On the contrary, the Bill combats arbitrary discrimination by encouraging differential treatment based on relevant, material circumstances.

- Nothing in the Bill affects any reasonable provisions made to accommodate the particular needs of overseas officers.

On the other hand, such provisions may be discriminatory if they are not objectively and reasonably related to overseas officers' needs. If a particular provision is unjustifiable, nothing in the Bill requires the Administration to 'equalize upwards' by extending it to everyone.

The same criteria apply to SWD adoption policy. It is not discrimination to take account of relevant, material circumstances. If the SWD is not confident that its current adoption policy is objectively justifiable, then it should review the policy pending commencement of the relevant provisions of the Bill (which may, of course, be deferred by the Administration).

In regard to both matters, the Government is, of course, already bound to essentially the same non-discrimination standards under the BORO and international obligations.

- Although an exemption could have been provided for avoidance of doubt had this concern been timely expressed, an exemption is not necessary. Differential treatment may legitimately be based on any consideration that is relevant and material. Recourse to reasonable actuarial data does not constitute discrimination under the Bill.

Administration's Comments

Response

General

Interpretation in accord with relevant international instruments /
Consequential BORO amendment

to link the interpretation of the Bill with international treaties and instruments (regardless of whether they extended to or create obligations binding on Hong Kong or make it applicable to all legislation.

This is not acceptable. In any case, international treaties are not justiciable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject-matter of which is not relevant to the entire BORO, to amend the BORO generally.

This Bill (like the Sex Discrimination Ordinance) is in fulfilment both of international obligations (e.g. under the ICCPR and CERD), and of the undertaking under the BORO to legislate specifically against discrimination

- The comment is misleading because the Bill does not make treaties justiciable. Ordinary legal principles, however, encourage courts to interpret local law by reference to relevant international instruments, whether binding or not. Clauses 2 and 7 underline that principle's importance to this Bill and state which instruments are relevant to it.

(Note also that at least 6 Ordinances enacted in the last 6 months expressly refer to or incorporate provisions of international instruments)

- The cl. 54 amendment negates a particular court decision that restricted the BORO's effect on pre-existing laws (see the Bill's explanatory memo for details). The deciding court itself stated that the decision undermined the BORO's intended effect.

The BORO amendment is relevant and consequential to this Bill because if the BORO is not so amended, laws that condone inter-citizen discrimination will remain immune to challenge under the BORO.

Remedy of reinstatement

The question of reinstatement has been addressed in the review on labour relations and legislative proposals are now being worked out. They will be introduced into LegCo in the next session. It is premature to enact these clause at this stage

The Administration initially accepted in principle that reinstatement should be available as a remedy (in the Sex Discrimination Ordinance). It then reversed position and opposed reinstatement pending implementation of its general labour relations review.

Reinstatement is, however, an essential remedy in certain cases of employment discrimination. It is widely available for that purpose in other jurisdictions. Reinstatement is granted at the discretion of the Courts, which are well-equipped to determine when the remedy is appropriate.

Response to the Administration's Comments on the
Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill

All "Administration's Comments" are reproduced (in slightly revised order)

Administration's Comments

Response

Religious or political conviction discrimination

- A fast food shop requires its employees to wear uniforms which comes with paper hats. An employer refuses to comply, saying that his religion does not allow followers to wear hats. Can the employer dismiss him on this basis? If the employer insists on the practice, would it constitute indirect discrimination?

- As explained in detail at several Bills Committee meetings and in a note to Committee members, an employment condition that tends to disadvantage followers of a particular religion is nonetheless not discrimination if it reasonable in the circumstances

An employer may, for example, require headgear for health reasons (e.g. a hard hats on a construction site) or sanitary reasons (e.g. hair nets in a kitchen).

The Bill also permits dress codes for less pressing reasons such as image, although a reasonable degree of compromise and flexibility is required. For example, an employer may require religious garments to be as similar as possible (e.g. in colour or style) to the preferred image

- An employer of a certain religion sincerely believes that he should only employ people of his same religion to work in his company. Such an employment policy may be made lawful under the Bill

- The comment provides an example of discriminatory conduct that the Bill is intended to prohibit. The principle of the Bill is that in work (and in other areas of activity covered), a person should not be made to suffer because of his or her religious or political beliefs. While an exclusive preference for a particular religion may seem less suspect than an active dislike of a particular religion, the effect is the same for those barred from employment

- An employer hires a person to look after his mother who is a follower of a certain religion. The mother specifies that the only wants a helper of the same religion. Would that constitute discrimination?

- This is not discrimination if there is an objective reason she needs a co-religionist as carer. Personal prejudice alone is ordinarily not sufficient. Religious conviction may freely be taken into account, however, if the carer lives in her home (cl. 58(3)(a)), or the carer's duties involve religious observances (cl. 67(c)). The Bill also provides a general exemption for homes for the aged (cl. 69).

- Some religious schools (which are not private educational authorities) prefer to employ teachers of the same religion. This is not directly involved in teaching religious subjects. Thus it is to help promote all round education on a certain religion. This may be challenge

- The Bill allows religious schools to discriminate in any way genuinely required by the religious doctrines honoured by the school (cl. 67-8)

Administration's Comments

Response

Spent conviction discrimination

Employment in ICAC

- The existing policy restricts people with spent conviction from employment in ICAC, especially offences involving dishonesty and breach of trust

- The Objection is misleading. The Bill merely extends the protection in respect of spent convictions already provided by the Rehabilitation of Offenders Ordinance [ROO] (Cap 257).
Under the ROO, it is a criminal offence to disclose or obtain dishonestly any information relating to a spent conviction. The ROO also provides that a spent conviction (or its non-disclosure) is not a lawful ground to exclude or disadvantage a person in relation to work

We are unaware of an exception for the ICAC in the ROO. The ICAC's policy more likely bars employment of persons with *convictions*, not *spent convictions*. A policy of not hiring persons with *spent convictions* would require violations of the ROO. If an exception for ICAC hiring is available under the ROO, the same exception would apply in relation to this Bill, cl 44 of which makes it subject to the ROO

Union membership or activities discrimination

Ordinance

- Article 58(1) of Police Force Ordinance a police is prohibited from becoming a member of any trade union, and any police officer who contravenes this provision shall be disqualified from continuing to be member of the police force. To remove this section would not be in the public interest

- Although an exception could have been provided for avoidance of doubt had this concern been timely expressed, an express exception is not necessary. Differential treatment that is objectively justifiable, e.g. in the public interest, does not constitute discrimination under the Bill
Certain provisions of the Bill (cl 47-8) also provide civil remedies in respect of anti-union acts which carry criminal liability under ss 21B and 21C of the Employment Ordinance (Cap. 57). These provisions do not affect employment to which those sections of the Employment Ordinance do not apply.

- Union membership may be a relevant factor to be taken into account in assessing the risk covered by, and the premium of, a personal accident insurance policy. This is because a person, being a union member, is likely to take part regularly in its activities, and therefore is more prone to accidents. Such an assessment of risk may be challenged as unreasonable

- The assertion that persons who are union members are more "prone to accidents" than others is bizarre, and would appear to be an extremely dubious basis for insurance assessment
If, however, there is reasonable actuarial data to support the assertion, recourse to that data would not constitute discrimination under the Bill
Differential treatment may legitimately be based on any consideration that is relevant and material

Administration's Comments

Response

General

Interpretation in accord with relevant international instruments /
Consequential BORO amendment

Do not link the interpretation of the Bill with international treaties and instruments (regardless of whether they have been extended to or create binding obligations on Hong Kong or not e.g. CEDAW). To amend the Bill of Rights Ordinance to make it applicable to all legislation

It is unacceptable. International treaties are not enforceable in the courts of Hong Kong. The amendment to the BORO is irrelevant to the objects of the Bill. One should not casually make use of a piece of legislation, the subject matter of which is not relevant to the entire BORO, to amend the BORO itself.

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- The comment is misleading because the Bill does not make treaties justiciable. Ordinary legal principles, however, encourage courts to interpret local law by reference to relevant international instruments, whether binding or not. Clauses 2 and 7 underline that principle's importance to this Bill and state which instruments are relevant to it (Note also that at least 6 Ordinances enacted in the last 6 months expressly refer to or incorporate provisions of international instruments)
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Reinstatement is, however, an essential remedy in certain cases of employment discrimination. It is widely available for that purpose in other jurisdictions. Reinstatement is granted at the discretion of the Courts, which are well-equipped to determine when the remedy is appropriate.

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德輔中心三十一樓



Secretary for Home Affairs
31st Floor, Southorn Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong

18 July 1995

The Hon Anna Wu,
c/o 17 & 18th Floor,
Nine Queen's Road Central,
HONG KONG.

Dear Ms. Wu,

Equal Opportunities Bills

Thank you for your letter of 17 July.

Thanks to Vincent Cheng, through his hospitality, we were able to discuss the more important points covered in your letter under reference. I am afraid we have now reached a stage in our discussions that we have to agree to disagree on certain basic issues which reflect our different approach to the problem. Mine is a step by step approach and only to positive legislative measures after extensive consultation through the well-tried system of government's advisory boards and committees. I share your commitment to uphold the laudable principles of equal opportunities. The fact that I cannot, at this stage, support the passage of your Bills should not be taken to suggest that I am in any way lacking in resolve. I will be speaking on this theme in much greater detail tomorrow in the Legislative Council.

You have done a lot for Hong Kong. I would like to take this opportunity to register my admiration for your remarkable efforts in raising public awareness of the issue of discrimination and in proposing anti-discrimination legislation. A lot have been achieved within the last two years. We already have the Sex Discrimination Ordinance on our statute books and hopefully the Disability Discrimination Bill too by the end of next week.

Yours sincerely,

(Michael M. Y. Suen)
Secretary for Home Affairs

c.c. AA/CS

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電話中心三十一樓

Secretary for Home Affairs
31st Floor, Southorn Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong.

18 July 1995

The Hon Anna Wu
Room 17/F & 18/F,
Nine Queen's Road Central,
Hong Kong.

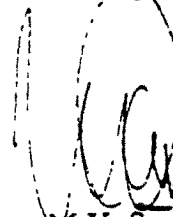
Dear Ms Wu,

Equal Opportunities Bills

Thank you for your second letter dated 17 July on this same subject, the original of which has just been received. The fax copy (dated at 21st on 17 July) was unfortunately sent to the Human Resources Department and I did not get to see it until I came back from a meeting on Employment Opportunities about half an hour ago.

I thank you for your list of comments on the proposed Equal Opportunities Bill. However, as I told you this morning at the meeting organised by Vincent Cheng, mine is a list which is certainly not exhaustive and is indeed quite superficial. Its purpose is to illustrate that the Administration is uncomfortable with the detailed provisions of your Bill as regards their import and their implications.

Yours sincerely,



(Michael M.Y. Suen)
Secretary for Home Affairs

c.c. AA/CS

TOTAL F.01

1508

PRESS RELEASE

Legislative Councillor Anna Wu

18 July 1995

Anna Wu: 843-7353

Eric Chow: 537-2466 or 1128635 x8939

Adam Mayes: 537-2467 or 1128028 x1325

Debate on Equal Opportunities Bills deferred to last Legco sitting as Government issues hitlist of provisions targeted for deletion

Last-minute scuttling tactics by the Government have forced Anna Wu to change the date for debate on her 3 Equal Opportunities Bills* from this Wednesday to the last Legco sitting on 26-7 July.

It was reported today that the Administration has in the last week secretly circulated 23 pages of detailed objections to the Bills to selected legislators. The Administration had previously raised no specific objections during a full year of weekly Legco deliberations on the Bill, in which it refused entirely to participate. It is not known to which legislators the Government sent the document, which bore no sign of the responsible Government Branch and was marked "personal". Neither Anna Wu nor Dr. C. H. Leong (the chairman of the Bills Committee that examined the Bills) was sent a copy.

After obtaining a copy of the document, Ms. Wu suggested several new amendments to alleviate the Government's concerns [copies of 2 letters attached]. Because so little time remained before the Legco debate however, the President ruled that the amendments could not be introduced unless the debate were deferred.

"The Government's objections are spurious, but I would like to put forward these amendments to rest legislators' minds. They are being given so little time to think through these new objections."

One new amendment would give the Secretary of Home Affairs authority to make any general or temporary exemptions to the Bills that he thinks necessary. "This amendment, together with flexibility that the Bills already give Government to stage their commencement gradually, gives the Administration plenty of leeway to provide a measured pace forward. That meets the main objection the Government is making."

"But I don't expect the Government to respond reasonably. It seems very clear that the Administration is determined to scuttle the Bills because of the challenge to their authority that Private Members Bills pose, not because of any genuine worries about the Bills' substance."

"I regret that the Administration's last-minute scuttling tactics have exploded any chance for orderly debate tomorrow," Ms. Wu added. "I hope we can restore some semblance of reason by next week, though I am sure that the Administration's disruption and disinformation campaign will continue."

The Government has also made arrangements to enable legislators to gut the Bills clause-by-clause, in case some legislators feel embarrassed about rejecting the Bills outright.

* The 3 Bills are:

1. Equal Opportunities (Family Responsibility, Sexuality and Age) Bill;
2. Equal Opportunities (Race) Bill; and
3. Equal Opportunities (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill.

The Government has notified the Legco Secretariat that it should single out 42 sections in the 3 Bills for separate, individual votes. The Government is not proposing to amend the sections, but will simply ask legislators to delete each of them.

Fully one fifth of the Bills' sections are on the Government's hitlist, including nearly every important section, e.g. on age discrimination in employment, every section prohibiting Government's own discrimination, etc. Deletion of all the sections on the hitlist would leave the Bills, once enacted, as little more than empty shells.

"The Government's tactics are extraordinarily underhanded," Ms. Wu remarked. "This hitlist would gut the Bills. It is terribly discouraging to see Government waging this secret war against the victims of discrimination."

"I hope legislators will be able to stand up to Government pressure and use their own judgement in voting on the Bills."

Some of the sections on the hitlist are:

- 6 of the Bills' 7 provisions prohibiting employment discrimination (specifically, the 6 sections covering respectively discrimination on the basis of age; family responsibility; sexuality; race; religious or political beliefs; and trade union activities);
- 6 of the Bills' 7 prohibiting prohibiting discrimination in the provision of services;
- every section that prohibits discrimination by the Government (7 clauses);
- every section that permits reinstatement of unfairly dismissed workers (3 clauses, 1 for each Bill).

Broken down by Bill, the targeted clauses include 20 clauses are in the E. O. (Family Responsibility, Sexuality and Age) Bill, 11 in the E. O. (Race) Bill, and 11 in the E. O. (Religious or Political Conviction, Trade Union Activities, and Spent Conviction) Bill.

"This Administration could write the definitive manual on legislative guerilla warfare." Ms. Wu added.

— 4 pages follow —

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電話中心三十一號



Secretary for Home Affairs
31st Floor, Southwin Centre,
130 Hennessy Road,
Wan Chai,
Hong Kong.

By Hand and By Fax

21 July 1995

Dr. the Hon C.H. Leong, OBE, JP,
1101, Central Building,
Pedder Street,
Hong Kong.

Dear

We have not produced any substantial paper of the sort described by you. However, we have indeed prepared a list of clauses, drawn from the three PMBs of the Honourable Anna Wu as a result of a rather superficial examination. This is not an exhaustive list and is not backed by detailed study of all the clauses. Its purpose is one more for illustration, giving examples of areas of uncertainty and other matters which we feel should have no place in the Bills. Its hasty production is the direct result of the last minute gazetting of the three PMBs, they being gazetted on 30 June 1995.

A copy of this list is enclosed with this letter as requested.

Yours sincerely,

(Michael M. Y. Suen)
Secretary for Home Affairs

Encl.

- (4) **Legal Adviser's report on the subsidiary legislation tabled in the Legislative Council on 19.7.95**
(LegCo Paper No. LS 171/94-95)

The Legal Adviser said that there was a typographical error in the first line of p. 3. The year "1979" quoted should read "1974".

Members noted that Mr James TO had given notice to move a motion at the sitting on 26/27.7.95 to extend the scrutiny period of the subsidiary legislation to the third sitting of the next session (item 5 (b) below refers).

- (5) **Outstanding business for the LegCo sitting on 26 & 27.7.95**

- (a) **Bills - resumption of debate on 2nd Reading, Committee Stage and 3rd Reading**

- (i) **Equal Opportunities (Family Responsibility, Sexuality and Age) Bill**
- (ii) **Equal Opportunities (Race) Bill**
- (iii) **Equal Opportunities (Religious or Political Conviction, Trade Union Activities and Spent Conviction) Bill**

The Chairman said that Ms Anna WU, the Member in charge of the above Bills, had deferred the resumption of the Second Reading debates on the three Bills to 26/27.7.95.

- (b) **Motions**

Two resolutions under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1)

Members noted that Mr James TO would move the above motions to extend to the third sitting of the next session the period for scrutiny of the subsidiary legislation tabled at LegCo on 12.7.95 and 19.7.95.

Disability Discrimination Bill
Position Paper of the Administration

OVERVIEW

- The Administration, the Legislative Council, and Disability Groups are all agreed that there is a need in Hong Kong for the Disability Discrimination Bill and that it should be enacted this session.

- The Bill will give people with a disability the means to fight for equal opportunities and to fight against discrimination, harassment or vilification in areas of life including employment, education, access to buildings and services, transport, clubs and sports.

- Central to our approach has been our aim to strike a balance between the interests of people with a disability and the community as a whole. So, while providing protection against discrimination, the Bill will not require employers to employ a certain quota of people with a disability. It will not require all existing buses and ferries to be altered. It will not require all existing buildings to be modified unless the owners plan to carry out major additions or alterations in which case the opportunity will be taken to improve access as necessary.

- We achieve this balance through the two key exemptions “unjustifiable hardship” and “genuine occupational qualification”. The first means that developers, landlords or transport service operators, for example, could defeat a claim of discrimination by proving that it would cause them “unjustifiable hardship” to make special arrangements to meet the needs of a person with a disability. The second, “genuine occupational qualification”, means that where a person could not meet the requirements of a particular position because of their disability, the employer would not be breaking the law in not hiring him or her.
- The provisions of the Bill will be enforced by the courts and the Equal Opportunities Commission which is going to be set up under the Sex Discrimination Ordinance. The Commission will receive and investigate complaints of discrimination. Most of these cases are likely to be settled through conciliation by the Commission. But complainants could take their cases to the courts either directly or in the event that conciliation fails.
- Since July 1994 we have consulted a wide range of organisations representing both people with a disability and those who might be

affected by the Bill. These comprise the Joint Council for the Physically and Mentally disabled, 37 disability groups and the following -

- the Labour Advisory Board ;
 - the Land and Buildings Advisory Committee ;
 - the Board of Education ;
 - the Building Committee of the Hong Kong Housing Authority ;
 - the Telecommunications Users & Consumers Advisory Committee ;
 - transport operators (KMB, CMB, MTR, Yaumatei Ferry Co. Ltd. etc.);
 - broadcasters (ATV, TVB, Cable TV) ; and
 - the banking sector (Hong Kong Association of Banks and the Deposit Taking Companies Association).
-
- There was a strong consensus in support of the Disability Discrimination Bill in principle. Those who may face a claim of discrimination under the legislation, for example, employers, developers or transport operators, are naturally concerned as to how it

will affect them in practice. We have briefed them on our proposals and explained to them the exemptions provided in the legislation.

- We have looked at similar legislation in Australia, Canada and the United States. We have also visited Australia to discuss with the Human Rights and Equal Opportunity Commission and the Office of Disability how their Disability Discrimination Act is working. In drafting the Disability Discrimination Bill we have been able to benefit from their experience and aim to avoid potential problems as far as possible.

COMMITTEE STAGE AMENDMENTS

- The Bills Committee will propose twelve amendments - two of which we will support. The Hon Li Wah-ming will propose one. In the light of discussions with the Bills Committee, disability groups and others, the Administration will propose 31 amendments. All of the Bills Committee amendments, that from Li Wah-ming and the most significant of the Administration's amendments are discussed below.

A. Bills Committee's Amendments (at Annex A)

1. Acts done for purposes of protection of persons with a disability: Clause 54

The Bills Committee amendment would mean that the exemption provided to cover unlawful acts done to comply with a requirement of an existing statutory provision concerning the protection of persons with a disability (to be listed in Schedule 3) should lapse one year after the enactment of the Bill unless the Legislative Council extends the provisions by resolution by one year. Since Schedule 3 in the Disability Discrimination Bill is presently empty and this amendment was passed by the Legislative Council for the Sex Discrimination Bill, **the Administration will SUPPORT this amendment.**

2. Enforcement of Section 40 on Discriminatory Advertisements: Clause 76

The Bills Committee proposes to amend this so that a financial penalty may be imposed on a person who has published a discriminatory advertisement. This penalty would not exceed \$10,000 for the first occasion and \$30,000 for the second and subsequent

occasions. A similar amendment was passed by the Legislative Council for the Sex Discrimination Bill. **The Administration will, therefore, SUPPORT this amendment.**

3. International Obligations and Instruments: Clause 2 and 60

The Bills Committee has proposed that the Equal Opportunities Commission should have two new powers relating to international obligations and instruments. One is for the Commission to promote the understanding, acceptance and public discussion of them and the other is for the Commission to examine any proposed legislation that :

- (i) may affect the equality of opportunity between those with and without a disability; or
- (ii) affect the understanding and acceptance of relevant international obligations and instruments. In this case, the Commission would report on its examination to the person proposing the legislation and to the Legislative Council.

The relevant international instruments are general declarations of what states should aim to achieve to provide equal

opportunities for those with a disability. The Disability Discrimination Bill, on the other hand, is a comprehensive piece of legislation which spells out clearly what constitutes unlawful behaviour towards people with a disability in specific and clearly defined areas of activity.

We believe it would be more appropriate for the Commission to focus on promoting acceptance and discussion of the Disability Discrimination Ordinance than these more general international documents. However, should the Commission come to the view that it should indeed promote their acceptance or examine legislation which may affect their acceptance, then it could do so under its powers to “work towards the elimination of discrimination” and to “promote equality of opportunity between persons with a disability and persons without a disability”.

A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill.

The Administration will OPPOSE this amendment on the grounds that it is unnecessary and potentially confusing to the public.

4. Laws and Government programmes : New clause 33A

The Government is bound by the Bill of Rights Ordinance not to discriminate in the discharge of its functions generally and will be bound by the Disability Discrimination Ordinance, in those areas covered by it, by virtue of Clause 5. We have accepted the Bills Committee's suggestion that it should also be made unlawful for the Government to discriminate against a person with a disability in the performance of its functions, subject to certain limited exceptions, (at para C 4 on page 17).

The Bills Committee has, however, proposed an alternative amendment which is much broader and whose impact is much less clear. This would make it unlawful, for example, for any person who performs a function or exercises a power under a law or for the purpose of a Government programme, to discriminate against another person.

In addition, unlike the Administrations's amendment on Government activities, the Bills Committee amendment provides for no exceptions. Under the Bill of Rights Ordinance, an exception is provided for the exercise of immigration control under immigration legislation. This exception reflects a reservation entered for Hong Kong in respect of the International Covenant on Civil and Political Rights. The Bills Committee's amendment would therefore, go beyond the ICCPR as applied to Hong Kong. A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill. **The Administration will OPPOSE the Bills Committee's amendment.**

5. Formal investigations: Clause 65 & 66(2)(b)

As presently drafted, the Bill requires the Commission to draw up terms of reference for a formal investigation. This is an investigation into, for example, a sector-wide or company-wide discriminatory practice. Where the terms of reference are confined to activities of persons named in them and the Commission proposes to investigate any act made unlawful by the Bill, it has to inform the

person of its belief that such an act has occurred and of its proposal to investigate. The person then has the chance to make representations and to be represented by counsel or a solicitor in this process.

The Bills Committee amendment to this clause would mean that :

- (i) the Commission would not have to inform the person of its belief that his or her act may have been unlawful ;
- (ii) the act would not be restricted to those made unlawful by the Ordinance ; and
- (iii) it would place a time limit of 28 days on the persons being investigated to make their representations.

We believe it is reasonable to require the Commission to state its belief as to what unlawful act has been perpetrated since this would be the reason for its investigation. And as bad publicity could be generated for those being investigated, it is all the more important that the belief or reason for the Commission's action be stated. It is also reasonable that the Commission should only investigate acts unlawful under the Disability Discrimination Ordinance and the Sex Discrimination Ordinance. The problem with a set time limit is that

it is inflexible and does not allow for particular circumstances to be taken into account including the complexity of the case and the availability of the person being investigated. The Bill as drafted would allow the Commission to set its own time limit as appropriate. A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill. **The Administration will OPPOSE this amendment.**

6. District Court remedies : Clause 70

The Bills Committee amendment states in explicit terms the various remedies which the District Court may order, including the reemployment or promotion of a claimant, the payment of damages to the claimant and an order that the respondent should not repeat or continue his or her unlawful conduct.

As drafted, the Bill provides that all such remedies shall be obtainable as would be obtainable in the High Court. This follows the equivalent provision in the Sex Discrimination Ordinance. The remedies obtainable would not cover reemployment or promotion of a claimant. While reinstatement is available in the United Kingdom

for unfair dismissal and in Australia for discrimination cases, experience in these places is that there are problems of enforcement involved and that, as a result, it is rarely used.

The question of reinstatement has been addressed by the Secretary for Education and Manpower in a general review of labour relations and legislative proposals to take forward the review will be introduced into the Legislative Council in the next session. If a change to the remedies available to the District Court is deemed to be appropriate and reasonable in Hong Kong in the context of this review, we believe that it would be better introduced generally rather than only in respect of the Disability Discrimination Bill. A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill. **The Administration will OPPOSE this amendment.**

7 Commission to Bring Proceedings in its Own Name etc.
Clause 70A, 70B and 79

The Bills Committee has proposed that the Equal Opportunities Commission should have the power to bring proceedings in its own name, intervene in proceedings and take them over where the

claimant withdraws. The Administration will introduce an amendment to enable the Secretary for Health & Welfare to make regulations for the Commission to bring proceedings in its own name for example, where there is a sector-wide discriminatory practice. The purpose of these regulations will be to set out clearly in the law how the Commission should exercise its power in this regard. We will in the process of drawing up the regulations fully consult the Commission. And, as subsidiary legislation, the Legislative Council will have the right to examine them. The Bills Committee amendment, however, would enable the Commission to bring proceedings where the claimant had chosen not to do so for whatever reason. We believe that the Commission should not have the power to override the decision of an individual whose rights should be respected. A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Bill. **The Administration will OPPOSE this amendment.**

8 Period within which proceedings to be brought to : Clause 80

The Bills Committee proposes that an explicit provision be made to the effect that time taken for conciliation will not be taken into

The Bills Committee proposes that an explicit provision be made to the effect that time taken for conciliation will not be taken into account by the District Court when considering the period within which proceedings may be brought. The Administration will introduce an amendment to extend this period from 12 months to 24 months. The Bill, in any case, provides for the District Court to consider any claim which is out of time if in all the circumstances of the case, it is just and equitable to do so. Since we do not envisage that conciliation will take more than 24 months and the court can consider cases brought to it beyond this time, we do not see that the proposed Bills Committee amendment is necessary. A similar amendment was not passed by the Legislative Council in respect of the Sex Discrimination Ordinance. **The Administration will OPPOSE this amendment.**

B. The Hon Li Wah-ming's amendment (at Annex B)

1. "Grace period" for small firms : Clause 11

Mr Li proposes to delete subclauses (3), (5), (6) and (7) of Clause 11. The effect of his amendment is to remove the 'grace period' of five years for firms employing no more than five people. The

Administration will propose an amendment to reduce the period from five to three years. A similar amendment was passed by the Legislative Council in respect of the Sex Discrimination Bill. We believe that three years is a reasonable period to allow small firms to adjust to the new requirements and to learn from the experience of larger firms.

The Administration will, therefore, OPPOSE Mr Li's amendment.

- C. The Administration's Amendments (at Annex C)
1. The Chinese term for "disability"

In our discussions with disability groups, they have recently suggested that the term "弱能" is not one they are comfortable with since it implies weakness. We will, therefore change it to "殘疾".

2. Genuine Occupational Qualification. Clause 12

We have accepted the suggestions made by the Bills Committee to improve the provisions relating to Genuine Occupational Qualification. For example, where an employer provides premises

for his or her employees and these premises are not equipped for persons with a disability, he can then only refuse to hire a person with a disability if the alteration of these premises would impose unjustifiable hardship on him.

We will add a clause to enable an applicant with a disability to propose to make such alterations at his or her own expense and to reinstate them to their original condition on leaving. This means that where the employer would find it too difficult to do so, the potential employee would have the flexibility to offer to make the alterations him or herself.

We will also delete the exemption for jobs needing to be held by a person without a disability because they include duties outside Hong Kong where the laws or customs are such that the jobs could not be performed effectively by a person with a disability. This is because while we see its relevance in the context of the Sex Discrimination Bill, we agree that there is no need for it in practice for people with a disability.

3. Commission Agents: New Clause 19A and Clause 20

We will propose that the Bill covers discrimination against and harassment of commission agents on the ground of their disability. This is necessary because commission agents may not be caught by the provisions on discrimination against employees. The same amendment was passed by the Legislative Council for the Sex Discrimination Bill.

4. Government functions and powers :
New clause 19B and 33A

We have accepted the Bills Committee's suggestion that Government's activities should be covered explicitly in the Disability Discrimination Bill. Our proposed amendment is the same as that passed by the Legislative Council for the Sex Discrimination Bill. It makes it unlawful for Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

5. Exceptions for Voluntary Bodies . Clause 29

As drafted, the Bill exempts voluntary bodies (defined as those whose activities are carried on otherwise than for profit) from, for example, restricting their membership to persons without a disability and offering services, goods or facilities to these Members. We and disability groups were concerned that this created a potential loophole for government subvented non-governmental organizations (NGO's) offering, for example, welfare services through Membership of a particular body. Although also remote and unlikely to occur in practice, we could see the possibility that a body whose membership was based on one criteria, for example, MENSAs which is an organization which restricts its membership to those with a very high IQ level, could theoretically and legally exclude a person who had the required IQ level, but was, for example, in a wheelchair. We will, therefore, amend the clause to ensure :

- (i) bodies funded wholly or in part by Government are not exempt;
and that
- (ii) restrictions on membership should be "reasonable having regard to the main object of the body"

We have no intention whatever of interfering with the right of voluntary bodies who raise their own funds to define their main objects in a way which enables them to restrict membership or offer benefits to their members or others in a way which might otherwise be discriminatory.

6. Requests for Information : Clause 39

As presently drafted, the Bill would make it unlawful for an employer to single out a job applicant with a disability by asking for information where others would not be asked for such information. The potential problem with the clause was that it would not apply where all applicants were asked for information. Following discussions with disability groups, and taking into account concerns expressed by the AIDS Advisory Council and the Coalition of AIDS Organisations Against Discrimination, we will propose an amendment to the clause. This will mean that where it would be unlawful for an employer to discriminate against an applicant for a job with a disability e.g. by refusing him or her employment, it would be unlawful for the employer to request medical information, unless it were necessary to determine whether they could carry out the inherent requirements of the job. In other words, an employer could

words, an employer could not, for example, require an AIDS test of all job applicants unless he could demonstrate that there was a practical need to do so in relation to the nature of the job concerned.

7. Infectious diseases : Clause 59

We will add a sub-clause to this clause to include diseases listed in the First Schedule of the Quarantine and Control of Diseases Ordinance and other communicable diseases. This will enable the Director of Health or others to take decisions, which might otherwise be discriminatory, in order to protect the public against infectious and communicable diseases.

8. Formal investigations: Clauses 66 and 83

The Bills Committee and disability groups have expressed concern that people with a disability, and those with a mental impairment in particular, are potentially more vulnerable in the process of giving information in the context of formal investigations conducted by the Equal Opportunities Commission. We will address this concern by proposing an amendment to give the Commission, under its rule-

making powers (clause 83), an additional power to make rules to enable it to make “any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 66 ”

Should there be any queries arising from the above, Members are invited to call :

Mr R C Wilson : 2810 2508
(Deputy Secretary for Health and Welfare)

Ms Anne Shepherd : 2810 3195
(Principal Assistant Secretary for Health and Welfare)

Health and Welfare Branch
Government Secretariat
22 July 1995

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health and Welfare

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 2(1) | <p>(a) By deleting the definition of "auxiliary aid".</p> <p>(b) In the definition of "palliative or therapeutic device" -</p> <p style="padding-left: 40px;">(i) by adding "or auxiliary aid" after "therapeutic device";</p> <p style="padding-left: 40px;">(ii) by adding " 或 輔 助 器 材 " after " 裝 置 ";</p> <p style="padding-left: 40px;">(iii) by adding "or aid" after "a device".</p> <p>(c) By adding -</p> <p style="padding-left: 80px;">"commission agent" (佣 金 經 紀 人) means commission agent as construed in accordance with section 19A;".</p> |
| 2 | <p>By adding -</p> <p style="padding-left: 40px;">"(9) Subject to subsection (10), in this Ordinance "existing statutory provision" (現 有 法 例 條 文) means any provision of -</p> <p style="padding-left: 80px;">(a) any Ordinance enacted before this Ordinance was enacted;</p> <p style="padding-left: 80px;">(b) any subsidiary legislation made -</p> |

(i) under an Ordinance enacted before this Ordinance was enacted; and

(ii) before, on or after this Ordinance was enacted.

(10) Where an Ordinance enacted after this Ordinance was enacted re-enacts (with or without modifications) a provision of an Ordinance enacted before this Ordinance was enacted, then that provision as re-enacted shall be treated for the purposes of subsection (9) as if it continued to be contained in an Ordinance enacted before this Ordinance was enacted."

7(1) (a) By adding "or any other person ("the third person")" after "that the person victimised".

(b) By adding "or the third person, as the case may be," after -

(i) "knows the person victimised";

(ii) "suspects the person victimised".

9 (a) In paragraph (a), by deleting "possesses -" and subparagraphs (i) and (ii) and substituting "possesses a palliative or therapeutic device or auxiliary aid".

(b) In paragraph (b), by deleting everything after ", of" and substituting "such a palliative or therapeutic device or auxiliary aid".

11(2)(a) By deleting "; or" and substituting a semicolon.

11(2) By adding -

"(aa) in the terms of employment he affords that person; or".

11(5) By deleting "5th" and substituting "3rd".

12(3)(b) (a) By adding ", subject to subsection (4A)," before "are not".

(b) By deleting the semicolon and substituting "where the alteration of those premises to be so equipped would impose an unjustifiable hardship on the employer; or".

12(3) (a) By deleting paragraphs (c), (d) and (f).

((b) In paragraph (e), by deleting "; or" and substituting a full stop.

12 By adding -

"(4A) Paragraph (b) of subsection (3) shall not apply in relation to the filling of a vacancy where the applicant for that vacancy, being a person with a disability, proposes to the employer that, on appointment to the vacancy, he will make reasonable alterations to that part of the premises to be occupied by him as accommodation if -

(a) the applicant undertakes to restore the premises to their condition before alteration on leaving the premises;

- (b) in all the circumstances it is likely that the applicant will perform the undertaking;
- (c) in all the circumstances, the action required to restore the premises to their condition before alteration is reasonably practicable;
- (d) the alteration is at that applicant's expense; and
- (e) the alteration does not involve alteration of other premises occupied by any other person."

New By adding -

"19A. Discrimination against commission agents

(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("commission agents") as the agents of the principal and who are remunerated, whether in whole or in part, by commission.

(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a person with a disability who is a commission agent -

- (a) in the terms on which he allows the person with a disability to do that work;
- (b) by not allowing that person to do it or continue to do it;

- (c) in the way he affords that person access to any benefits, services or facilities or by refusing or deliberately omitting to afford that person access to them; or
- (d) by subjecting that person to any other detriment.

(3) The principal does not contravene subsection (2)(b) by doing any act in relation to a person with a disability at a time when if the work were to be done by a person taken into his employment being a person without a disability would be a genuine occupational qualification for the job.

(4) Subsection (2)(b) shall not apply to a principal who discriminates against a commission agent with a disability, if taking into account -

- (a) the commission agent's past training, qualifications and experience relevant to working as a commission agent;
- (b) where the person is already working for the principal as a commission agent, the commission agent's performance as a commission agent; and
- (c) all other relevant factors that it is reasonable to so take into the account,

the commission agent because of the commission agent's disability -

- (i) would be unable to carry out the inherent requirements of a commission agent; or

(ii) would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the principal.

(5) Subsection (2)(c) shall not apply to benefits, services or facilities of any description if the principal is concerned with the provision (with or without payment or not) of benefits, services or facilities of that description to the public, or to a section of the public to which the person with a disability belongs, unless that provision differs in a material respect from the provision of the benefits, services or facilities by the principal to his commission agents.

Government

19B. Government

(1) Subject to subsection (2), without prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful

(a) as regards a person with a disability not having the right to enter and

remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or

- (b) any act done in relation to a person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

20 By adding -

"(9) It is unlawful for the principal, in relation to work to which section 19A applies, to harass a person with a disability who is a commission agent.

(10) It is unlawful for a commission agent to harass a person with a disability who is a fellow commission agent.

(11) It is unlawful for a person who is seeking to be, or who is, employed by a person with a disability at an establishment in Hong Kong to harass that person.

(12) It is unlawful for a person residing in any premises to harass a person with a disability -

- (a) employed by another person at an establishment in Hong Kong (and whether or not that other person also resides in those premises or those premises are that establishment); and

(b) carrying out in those premises all or part of that person's work in relation to that person's employment (and whether or not that person also resides in those premises)."

24(2) (b) By adding "and to the extent that those facilities are physical in nature," before "those".

25(d) By adding ", including the conduct of public examinations" after "education".

29(1) By deleting "This" and substituting "Subject to subsection (5), this".

29(2) (a) By adding "where such restriction is reasonable having regard to the main object of the body" before "; or".

29 By adding -

"(5) This section shall not apply to a body whose recurrent expenditure is funded wholly or in part by the Government."

30 By deleting subclause (1).

New By adding -

"Government

33A. Government

(1) Subject to subsection (2), without

prejudice to the operation of the other provisions of this Part in relation to the Government, it is unlawful for the Government to discriminate against a person with a disability in the performance of its functions or the exercise of its powers.

(2) Subsection (1) shall not render unlawful -

- (a) as regards a person with a disability not having the right to enter and remain in Hong Kong, any act done under any immigration legislation governing entry into, stay in and departure from Hong Kong; or
- (b) any act done in relation to a person with a disability if it was necessary for that act to be done in order to comply with a requirement of an existing statutory provision."

34

By adding -

"(3) It is unlawful for a person who is seeking to be, or who is, a student of an educational establishment to harass a person with a disability -

- (a) who is, or is a member of, the responsible body for; or
- (b) who is a member of the staff of, the establishment."

39

(a) By renumbering the clause as clause 39(1).

(b) By adding -

"(2) Subject to subsection (3), if, because

of section 11(1), it would be unlawful, in particular circumstances, for a person to discriminate against another person, in doing a particular act, it is unlawful for the first-mentioned person to request or require that other person to provide information of a medical nature (whether by completing a form or otherwise) in connection with or for the purposes of the doing of the act.

(3) Nothing in subsection (2) shall render it unlawful for a person to request or require another person to provide information of a medical nature that is necessary to determine if that other person would be unable to carry out the inherent requirements of the job or would require services or facilities that are not required by persons without a disability."

54 By deleting subclauses (3) and (4).

55(1) By deleting "within the meaning of section 54".

56 By deleting the clause.

59 By adding -

"(3) In this section, "infectious disease"

(傳染病) includes -

(a) any disease specified in the First Schedule to the Quarantine and

Prevention of Disease Ordinance (Cap. 141); and

(b) any communicable disease specified by the Director of Health by notice in the Gazette."

- 62 (a) By deleting "59" where it twice appears and substituting "67".
- (b) By adding -
- "(aa) any provisions of any regulations made under section 83A which are specified in the regulations as provisions which shall not be subject to section 67 of the relevant Ordinance;"

63(3) By adding ", including any of the associations, organizations, associations of organizations or bodies specified by the Secretary for Health and Welfare by notice in the Gazette" at the end.

70(1)(c) By deleting "or 44".

70(6) By deleting "or 44".

71(2)(a) By adding after "acts" -

"(which may include discontinuing or changing any of his practices or other arrangements which occasioned those acts, in particular to avoid any repetition thereof)".

71 By deleting subclause (5).

79(3) By adding "except to the extent permitted under rules made in accordance with section 73C of the District Court Ordinance (Cap. 336)" at the end.

80 By deleting subclause (1) and substituting -

"(1) The District Court shall not consider a claim under section 70 unless proceedings in respect of the claim are instituted before the end of 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

67,

whichever is the later."

80(2)(a) By deleting "12" and substituting "24".

80(6) (a) By deleting "subsection (2)(a) or (b)" and substituting "subsection (1)".

(b) By deleting "any" and substituting "the".

80 By adding -

"(7) 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 67; and
- (b) from which it can reasonably be construed (and whether or not the report mentions, or 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 III, IV or V."

82(2)(a) By adding ", bearing in mind the physical location and immediate environs of the building" after "building".

83(1) By adding before paragraph (a) -

"(aa) to enable the Commission to make any arrangements necessary to assist any person with a disability to attend before it and provide information pursuant to section 66;"

New By adding -

"83A. Regulations to empower Commission to bring certain proceedings

(1) The Secretary for Health and Welfare may make regulations -

(a) where any person may bring proceedings under section 70(1) 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 70(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."

Schedule By deleting the Schedule and substituting -
2

"SCHEDULE 2 [ss. 2, 61 & 84]

DEVICES OR AIDS SPECIFIED AS
PALLIATIVE OR THERAPEUTIC
DEVICES OR AUXILIARY AIDS

Item	Description of device or aid (including trade or manufacturer's name if applicable)
1.	Optacon reading aid for persons with visual impairment
2.	Braille writing device
3.	Low vision aid

4. Hearing aid
5. A telecommunications device for persons with hearing impairment
6. Wheelchair or buggy
7. Prosthesis
8. Orthosis
9. Walking aid
10. Aid for dialysis therapy
11. Speech aid
12. Oxygen unit
13. Aid for any activities of a personal nature, including a feeding aid and an aid in respect of toilet needs
14. Urinary bag
15. Stoma bag".

Schedule In item 4, in the proposed section 73C -

6

- (a) in subsection (2), by deleting "rules as to proceedings by or against the Crown." and substituting -

"rules -

- (a) as to proceedings by or against the Crown;
- (b) as to the persons who may appear in, conduct, defend and address the Court in, any proceedings therein;
- (c) to make special provision for any proceedings in the Court where regulations made under section 83A of the

Disability Discrimination

Ordinance (of 1995)

apply to the proceedings.";

(b) by adding -

"(2A) Each party to any proceedings in the Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) shall bear its own costs unless the Court otherwise orders on the ground that -

(a) the proceedings were brought maliciously or frivolously;

or

(b) there are special circumstances which warrant an award of costs.";

(c) in subsection (3) -

(i) in paragraph (c), by deleting the semicolon at the end and substituting a full stop;

(ii) by deleting paragraph (d);

(d) by adding -

"(3A) The Court in the exercise of its jurisdiction under the Disability Discrimination Ordinance (of 1995) shall not be bound by the rules of evidence and may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to proceedings therein to a fair hearing, the need to

determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.";

(e) in subsection (4), by deleting "Any" and substituting "Subject to subsection (3A), any";

(f) in subsection (6), by adding -

"(aa) where there is any conflict or inconsistency between -

(i) any rules made under subsection (2)(b); and

(ii) any law and practice regulating the description of persons who may appear in, conduct, defend and address the Court, in any proceedings therein,

then those rules shall, to the extent of that conflict or inconsistency, as the case may be, prevail over that law and practice;".

DISABILITY DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Hon LEONG Che-hung, O.B.E., J.P.

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (1), by adding -</p> <p>““relevant international instruments” (有關國際文書)</p> <p>means -</p> <p>(a) the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly of the United Nations on 20 December 1993;</p> <p>(b) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975; and</p> <p>(c) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971;</p> <p>“relevant international obligations” (有關國際義務)</p> <p>means obligations applicable to Hong Kong under international treaties to take appropriate steps, . including legislative measures, to eliminate discrimination, on the ground of disability, in</p>

particular obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong.”.

(b) By adding -

“(9) For the purposes of the definition of “relevant international obligations”, “discrimination” (歧視) means discrimination within the meaning of the treaties referred to in that definition and, although including every form of discrimination falling within section 6, 7, 9 or 10, is not limited to discrimination so falling.”.

New

By adding -

“Laws and Government programmes

33A. Discrimination in the administration of laws and Government programmes

It is unlawful for a person who exercises a prerogative power, who performs a function or exercises a power under a law or for the purposes of a Government programme, or who has any other responsibility for the administration of a law or the conduct of a Government programme, to discriminate against another person in the performance of that function, the exercise of that power or the fulfilment of that responsibility.”.

54

By adding -

“(5) Subject to subsection (6), the provisions of

subsections (1)(ii) and (2)(b), section 12(3)(e) and Schedule 3 shall expire on the 1st anniversary of the day on which this Ordinance is enacted.

(6) Prior to the expiry of the provisions referred to in subsection (5), the Legislative Council may, by resolution, amend that subsection to extend those provisions for a period of 1 year.”.

60

By adding -

“(1A) Without prejudice to the generality of subsection (1), the Commission may -

- (a) promote the understanding and acceptance, and the public discussion, of relevant international obligations and of the standards contained in relevant international instruments; and
- (b) examine any proposed legislation (including subsidiary legislation) that the Commission considers may affect equality of opportunity between persons with a disability and persons without a disability or affect the understanding and acceptance of relevant international obligations and of the standards contained in relevant international instruments, and report the results of the examination to the person proposing the legislation and to the Legislative Council.”.

65

By deleting subclause (4) and substituting -

“(4) Where the terms of reference of the formal investigation confine it to activities of persons named in them and the Commission in the course of it proposes to investigate any act which a person so named may have done, the Commission shall -

- (a) inform that person of its proposal to investigate the act; and
- (b) offer him an opportunity of making oral or written representations, within 28 days after the notification of the proposal to investigate, with regard to it (or both oral and written representations if he thinks fit),

and a person so named who avails himself of an opportunity under this subsection of making oral representations may be represented -

- (i) by counsel or a solicitor; or
- (ii) by some other person of his choice, not being a person to whom the Commission objects on the ground that he is unsuitable.”.

66(2)(b)

By deleting everything after “formal investigation” and substituting “confine it to activities of persons named in them.”.

70

(a) In subclause (3), by deleting everything after “District Court” and substituting “and where the court is satisfied that the respondent has committed an unlawful act of

discrimination, vilification or harassment against the claimant in contravention of this Ordinance, the court may make an order which it considers just and appropriate in the circumstances.”.

(b) By deleting subclause (4) and substituting -

“(4) Without limiting the generality of 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 either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Ordinance.”.

(c) By deleting subclause (5).

New

By adding -

“70A. Commission may bring proceedings in its own name

(1) Where any person may bring proceedings under section 70(1) but has not done so, the Commission may, in such circumstances, bring proceedings in its own name, as if the Commission were that person.

(2) The Commission may bring proceedings in the High Court seeking a declaration that an enactment or part of an enactment is inconsistent with -

- (a) the Hong Kong Bill of Rights Ordinance (Cap. 383) as it relates to discrimination on the ground of disability; or
- (b) Article VII(5) of the Hong Kong Letters Patent 1917 to 1993 as it relates to discrimination on the ground of disability.

(3) In this section, “discrimination” (歧視) means -

- (a) for the purposes of subsection (2)(a), discrimination within the meaning of the Hong Kong Bill of Rights Ordinance (Cap. 383); and

- (b) for the purposes of subsection (2)(b), discrimination within the meaning of the International Covenant on Civil and Political Rights.

and, although including every form of discrimination falling within section 6, 7, 9 or 10, is not limited to discrimination so falling.

70B. Commission may intervene in proceedings

The Commission may, where it considers it to be appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, intervene in proceedings in which -

- (a) a claim under section 70(1); or
- (b) a declaration of the kind referred to in section 70A(2),

is an issue.”.

76

By adding -

“(5) Without prejudice to subsection (4), if it appears to the Commission that a person has done an act which was unlawful by virtue of section 40, the Commission may apply to the District Court for an order imposing a financial penalty on such person; and the District Court, if satisfied that the application is well-founded, may make such an order.

(6) The financial penalty imposed under subsection (5) shall not exceed \$10,000 for the first occasion on which a penalty is imposed, and \$30,000 for the second and any subsequent occasion on which a penalty is imposed in respect of the same person.”.

79

By adding -

“(5A)(a) Where any person, who has received assistance in respect of proceedings under this Ordinance under subsection (2), withdraws from those proceedings, the Commission may take over and maintain those proceedings.

(b) As from the date of any such taking over of proceedings under paragraph (a), the Commission shall be deemed to be a party to those proceedings in place of the person who has withdrawn therefrom.”.

80

adding -

“(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 78(1), then the period that elapsed between the date when the complaint was lodged and the date when conciliation under section 78 was conducted, as certified in writing by the Commission, shall be disregarded.”.

DISABILITY DISCRIMINATION BILL

COMMITTEE STAGE

Amendments to be moved by the Hon Li Wah-ming

<u>Clause</u>	<u>Amendment Proposed</u>
11	(a) By deleting subclause (3) (b) By deleting subclause (5) (c) By deleting subclause (6) (d) By deleting subclause (7)



Our Ref.: (17) in HW CR 2/5091/94 Pt26

Your Ref.: HB/C/61/94

5 September 1995

Tel: 2810 2711

Fax: 2840 0467

2869 4376

*Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Mr Colin Chiu)*

Dear Mr Chiu,

**Bills Committee to study the
Equal Opportunities Bill,
Sex Discrimination Bill and
Disability Discrimination Bill**

As a matter arising from the meeting on 23 June 1995, I attach a letter from the MTRC for you retention.

Yours sincerely,

(Donald Chen)
for Secretary for Health and Welfare



Our Ref O/Disabled/DOD

Please quote reference in all replies

Your Ref (1) in HW CR 2/5091/94 Pt. 21

Date 11 July 1995

Government Secretariat
Lower Albert Road
Hong Kong

Attention: Ms Anne Shepherd

Dear Ms. Shepherd,

Disability Discrimination Bill

Thank you for your letter of 27 June to Mike Legge requesting additional information regarding improvements in accessibility to our system.

With regard to a timetable for all stations being fully accessible, some care needs to be taken on what is actually meant by this question.

We have undertaken the following:

- a) Each station will be equipped with a wheelchair-aid if there is no other suitable routing between either entrance and concourse, or concourse and platform.
- b) Each station will have one-entrance equipped with tactile strips to allow seriously visual and disabled people to make their way to and from the trains.

In the attached table, you will also find other improvements planned between now and 1998, for wheelchair users. There is no ongoing programme which specifically deals with those items marked with a 'X', although a serious look will be taken at the time that major works are being undertaken at any station, as for instance the provision of a new entrance. However, there are enormous practical difficulties at a number of stations, particularly where they have been built under roads (for instance Nathan Road stations), or where internal lifts are in secure areas. This programme will be reviewed on an annual basis as part of the Capital & Revenue Works Budget, which has to accommodate all claims on our available resources.

1561

/P.2 ...

Regarding "booking times", our pamphlet "Caring for the Disabled" which gives the operational arrangements for use of the wheelchair-aid indicates that passengers should phone the station of origin one hour in advance of their arrival. This request is intended to allow sufficient time for station staff to reschedule their duties and provide a prompt service. Passengers arriving without notification will of course be welcomed by staff and given assistance, but this may not be immediate.

In fact, during the trial of the wheelchair-aid, less than 5% of users did not make advance bookings.

I ~~attach~~ for your information Section B of our Station Procedures Manual - "Delivery of Service by Wheelchair-Aid", which hopefully clarifies the modus operandi. I have marked two relevant clauses for your particular attention. One relates to the one hour advance notification, and the other requests staff to make every effort to serve wheelchair-users who do not give advance notice, within 10 minutes.

With regard to gap between the platform and the train, this has not proved to be a problem to date with a number of regular users. However, you will note from the instructions that provided the staff are aware of the customer, then they will provide assistance for embarking and disembarking, if required.

It is too early for us to assess at this stage, whether the reduction or elimination of the recommended one hour notification period can be achieved without impact on staff, and the situation will be monitored and adjusted as appropriate.

/P.3 ...



I trust that the above information is useful to Council Members, and would be delighted to answer any further queries should they arise.

Yours sincerely,

R.T. Kynaston
Deputy Operations ~~Director~~

Encls.

c.c. Mr. Peter Chan, Rehabilitation Alliance HK
Mr. Charles Leung, Rehab Power
Mr. Joseph Kwan, RehabAid Environmental
Advisory Service
Ms. Karen Mak, HK Federation of Handicapped
Youth

RTK/MJL/an/sl

ACCESS FACILITIES FOR WHEELCHAIR-USERS IN MTR STATIONS BY JULY 1998

Priority	Station	Designated Entrance	Means of Access	Access Status	S to C	C to P	Predicted Wheelchair Accessibility by July 1998	Comment
1	GEN	A	New vertical lift by LAB project	Concourse to Platform				
2	KOI	KCRC's Entrance	Via KCRG's lift	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				New vertical lift completed by July 1998
3	LAK	D1	Via lift in area Entrance D available in July 1995	Via public lift. New passenger lift to be constructed in 1998				
4	LAK	Entrance	New lift to be provided by LAB project	Via public lift. New passenger lift to be constructed in 1998				
5	MOK	C2	Wheelchair Aid	Via ramp only provided by LAB project				
6	PRE	B1	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				New vertical lift completed by July 1998
7	AUM	E1	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 1 in 1995/96				
8	LOF	A	New ramp in Sept 1995	Via cash lift in staff area with staff escort				
9	LSI	A1	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
10	LSW	A	Via existing short ramp and link bridge (completed in 1995)	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
11	LAI	C	New ramp in Sept 1995	Via cash lift in staff area with staff escort				
12	QUB	A	New ramp in Sept 1995	Via public lift. Existing cash lift to be converted in Phase 1 in 1995/96				
13	GRW	A	Access from commercial complex	Via cash lift in staff area with staff escort				
14	SWH	A	Wheelchair Aid	Via cash lift in staff area with staff escort				
15	KOB	A	Access from Island Centre	Via public lift. Existing cash lift to be converted in Phase 1 in 1995/96				
16	KWF	A1	New lift will be provided by MTR in station refurbishment project or by other developer	Via public lift. Existing cash lift to be converted in MTR Refurbishment project in 1995/1996				
17	STR	L, S, E, Z	Wheelchair Aid	Via cash lift in staff area with staff escort				
18	CHH	C	New ramp in end 1995	Cash lift conversion with fabrication of existing entry gates and new barrier in 1998				Assume cash lift conversion completed before April 1998
19	SKM	A	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
20	CAD	C	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
21	WA	B1	Wheelchair Aid	Via cash lift in staff area with staff escort or 2. Cash lift construction with new AFC gates and barrier				New entrance under consideration by consultants if proposed access could be achieved by 1998
22	TNT	A1	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				Integrated entrance to Dragon Centre may have facilities
23	SSP	C1	New entrance from future commercial complex	Via cash lift in staff area with staff escort				
24	JOP	B1	Wheelchair Aid	Via cash lift in staff area with staff escort				
25	KWH	B	New ramp in Sept 1995	Via cash lift in staff area with staff escort				
26	WIS	C1	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
27	MEF	C2	Wheelchair Aid	Via cash lift in staff area with staff escort				
28	CSW	C1	Wheelchair Aid	Via cash lift in staff area with staff escort				Access may be achieved if WCN to built and MEF is an interchange
29	JOR	B2	Wheelchair Aid	Via cash lift in staff area with staff escort				
30	MTK	A	New ramp in Sept 1995	Via public lift. Existing cash lift to be converted in Phase 1 in 1995/96				
31	MFC	A1	Access from west commercial complex	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
32	KWF	D	New ramp in Sept 1995	Via cash lift in staff area with staff escort				Access may be achieved by 2001 if HKMIL goes ahead
33	SKW	A	Wheelchair Aid	Via cash lift in staff area with staff escort				
34	LCK	C	Wheelchair Aid	Via cash lift in staff area with staff escort				
35	TWH	B	Wheelchair Aid	Via cash lift in staff area with staff escort				
36	JNH	B	Wheelchair Aid	Via cash lift in staff area with staff escort				
37	DNH	B	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 2 in 1998				
38	FOH	A	Wheelchair Aid	Via public lift. Existing cash lift to be converted in Phase 1 in 1995/96				

Notes:
 1 Stations expected to be fully independently accessible by July 1998
 2 GEN, KOI, LAK, LAO, KOB, KWF, CHH, WAC, NIF and RIFC. Total No. 11 stations
 3 Wheelchair accessible access gates to be installed in all stations by July 1998
 4 Wheelchair Aids available from March 1998

1. Delivery of Service by Wheelchair Aid

Introduction On a trial basis, three MTR stations have been provided with a Wheelchair Aid. Each station will have its own designated entrance with a staircase at least 2 meters in width to allow smooth operation of the Wheelchair Aid. A telecom facility has also been installed at the street level of that entrance for calling of the service by the needy.

Stations with Wheelchair Aid The table below indicates which stations are currently equipped with the Wheelchair Aid facility.

Station	Designated entrance	Storage site
ADM	E1	Concourse unpaid area near Ent. E
TST	A1	Up end concourse plantroom
LOF	B	Concourse unpaid area near Ent. B

General guidelines All staff are required to observe the following general guidelines when delivering a Wheelchair Aid service.

- * ● Wheelchair persons are requested to make prior booking by phone one hour in advance for using such service.
- * ● Disabled persons can also choose to directly contact the duty Station Controller upon their arrival at the designated entrance via the entrance telecom facility and efforts should be made to serve them in 10 minutes.
- Each Wheelchair Aid operation must be carried out by 2 station staff - one as the operator and the other as the assistant.
- Staff should greet the wheelchair passenger and explain to him the operational steps each time a Wheelchair Aid service is rendered.
- DOCK ADJUSTERS, BATH CHAIR BELT & SAFETY BELT must be properly applied before moving a Wheelchair Aid.
- Staff are expected to exercise maximum care and personal initiative to prevent occurrence of any potential hazard during the operation and it is important that the wheelchair passenger has confidence in the operator's ability.

1. Delivery of Service by Wheelchair Aid, Continued

Service delivery process This table presents the sequence of events in the delivery of a Wheelchair Aid service:

Stage	Responsibility	What happens
1. Acknowledgement of request	Duty Station Controller of the commencement station	<ul style="list-style-type: none"> • Enquiry made about passenger's destination to confirm the availability of Wheelchair Aid facility. • Advice given on the time and place to wait for MTR staff. • Staff deployed with the duty Station Controller of destination station advised.
2. Response at the commencement station	Assigned staff from commencement station	<ul style="list-style-type: none"> • Wheelchair Aid checked and moved out of storage site on its RUBBER WHEEL under manual control. • Staff waited outside designated entrance.
3. Service Delivery [into station concourse]	Assigned staff from commencement station	<ul style="list-style-type: none"> • Wheelchair loaded onto Wheelchair Aid. • Wheelchair Aid operated to descend staircase. • Wheelchair unloaded from Wheelchair Aid upon arrival at concourse level. • Assistance offered to purchase ticket and validation at entry gate. • Wheelchair passenger escorted to platform via station lift after unloading.
4. Train boarding	Assigned staff from commencement station	<ul style="list-style-type: none"> • Train Operator being told of the special guest on board. • Train number given to duty Station Controller. • Wheelchair passenger assisted to board train in the leading car.

Continued on next page

1. Delivery of Service by Wheelchair, Continued

Service delivery process This table is continued from the previous page.

Stage	Responsibility	What happens				
5. Communication	Duty Station Controller of commencement station	<ul style="list-style-type: none"> • Train number relayed to the duty Station Controller at the destination station. 				
6. Response at the destination station	Duty Station Controller of destination station	<ul style="list-style-type: none"> • Adequate staff deployed to assist the wheelchair passenger to alight train on arrival at platform. • Is the station equipped with a Wheelchair Aid? If <u>yes</u>, get the Wheelchair Aid ready at concourse level, If <u>no</u>, go to stage 7. 				
7. Train alighting	Assigned staff from destination station	<ul style="list-style-type: none"> • Passenger assisted to alight and take station lift to concourse. 				
8. Service delivery [Out to street level]	Assigned staff from destination station	<ul style="list-style-type: none"> • Exit via Manual Service Gate with ticket validated. 				
		<table border="1"> <thead> <tr> <th>If a Wheelchair Aid is available, then</th> <th>If a Wheelchair Aid is <u>not</u> available, then</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> • load wheelchair onto Wheelchair Aid, • operate Wheelchair Aid to ascend stairs, • unload wheelchair, and • return Wheelchair Aid to storage site for recharging. </td> <td> <ul style="list-style-type: none"> • enquire passenger of his destination, • direct passenger to the most convenient entrance for exit, • render all possible assistance to ensure passenger safety. </td> </tr> </tbody> </table>	If a Wheelchair Aid is available, then	If a Wheelchair Aid is <u>not</u> available, then	<ul style="list-style-type: none"> • load wheelchair onto Wheelchair Aid, • operate Wheelchair Aid to ascend stairs, • unload wheelchair, and • return Wheelchair Aid to storage site for recharging. 	<ul style="list-style-type: none"> • enquire passenger of his destination, • direct passenger to the most convenient entrance for exit, • render all possible assistance to ensure passenger safety.
		If a Wheelchair Aid is available, then	If a Wheelchair Aid is <u>not</u> available, then			
<ul style="list-style-type: none"> • load wheelchair onto Wheelchair Aid, • operate Wheelchair Aid to ascend stairs, • unload wheelchair, and • return Wheelchair Aid to storage site for recharging. 	<ul style="list-style-type: none"> • enquire passenger of his destination, • direct passenger to the most convenient entrance for exit, • render all possible assistance to ensure passenger safety. 					

Issues Related to Equal Opportunities and Discrimination

INFORMATION PAPER FOR THE LEGCO PANEL ON HOME AFFAIRS MEETING ON 24 NOVEMBER 1995

This paper sets out progress in relation to the preparatory work for the establishment of the Equal Opportunities Commission, the preparation of the codes of practice on employment matters in the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO), and the studies on discrimination on the grounds of sexuality and family status.

I. EQUAL OPPORTUNITIES COMMISSION

2. The SDO and DDO were enacted in July and August this year respectively. The two Ordinances make it unlawful to discriminate against a person on the grounds of sex, marital status, pregnancy and disability, to harass or vilify a person on the grounds of disability and to sexually harass a person.

3. Section 63 of the SDO provides for the establishment of the Equal Opportunities Commission to oversee the implementation of the Ordinance. The Commission shall work towards the elimination of discrimination on the grounds of gender and disability, and to promote equality of opportunities between men and women, and people with and without a disability.

4. To ensure that the Commission can come into operation as soon as possible, the Home Affairs Branch set up a preparatory team to start the planning for its establishment immediately after the enactment of the two Ordinances. The tasks for the preparatory team include, amongst others -

- to develop a staffing structure (including the job descriptions and entry requirements) for the Commission;
- to draw up the terms and conditions of service for staff of the Commission;
- to formulate plans for the recruitment of staff;

- to prepare the budget of the Commission and to develop funding proposals for submission to the Finance Committee;
- to identify office accommodation and plan for fitting-out work;
- to assist the Commission in developing an internal administrative framework, including policies and procedures for decision making, operation, personnel, accounting system and handling of complaints; and
- to prepare publicity plans to enable the Commission to promote its work, and provisions of the SDO and the DDO once it comes into operation.

5. The preparatory work has progressed well. Among other things, the preparatory team has drawn up staffing and funding proposals which are described at paragraphs 6 to 10 below.

Proposed Staffing and Funding

6. Having regard to the functions and powers of the Commission and the experience of similar statutory bodies, it is estimated that the annual recurrent budget of the Commission will be around \$65 million at the 1995/96 price level. The preparatory team has drawn up a proposal for a Secretariat with around 60 staff members, to be headed by a Chief Executive who will work directly to the Chairperson. The Secretariat will be organised into four divisions : Gender Division, Disability Division, Legal Service Division, and Administration and Promotion Division.

7. Under the proposed structure, the Chief Executive will be pitched at Directorate Pay Scale (DPS) Point 3, the Heads of the Gender and Disability Divisions at DPS Point 2, the Head of the Legal Service Division at DPS (Legal Group) Point 2 and the Head of the Administration and Promotion Division at DPS Point 1.

8. Staff members of the Secretariat will provide executive and secretarial support to the Commission, such as the preparation of codes of practice, handling enquiries and complaints (including investigation and

Annex I and
Annex II

conciliation), providing assistance to aggrieved persons, and undertaking public education and research programmes. A brief description of the responsibilities of the four proposed divisions of the Secretariat and a proposed organisation chart are attached at Annex I and Annex II respectively.

9. The terms and conditions of service proposed for staff of the Commission Secretariat will be broadly comparable to those offered by the Government. The proposed remuneration package will be similar to the package of staff of the Legislative Council Commission, and would comprise a basic salary and a monthly cash allowance.

10. It is hoped that a funding proposal could be submitted to the Finance Committee shortly with a view to bringing the Commission into operation in early 1996. This will enable the SDO and the DDO, except provisions relating to employment matters, to come into operation in early 1996.

II. CODES OF PRACTICE ON EMPLOYMENT

11. Under the SDO and the DDO, the Commission is empowered to issue codes of practice which would provide practical guidance to assist the public in understanding and complying with the law. Provisions in the areas of employment in the two Ordinances will not come into force until the Commission has developed and issued the relevant codes of practice as anti-discrimination legislation is a new area of law in Hong Kong and its application in the employment field is particularly complex.

12. To expedite the preparation of the codes of practice on employment by the Commission, the preparatory team has begun background research on experience overseas in respect of promoting fair employment practices. Apart from the relevance of overseas legislation, codes of practice and guidelines to local circumstances, the preparatory team has obtained information from a number of relevant overseas organisations experienced in enforcing anti-discrimination legislation including the UK Equal Opportunities Commission, the Australian Human Rights and Equal Opportunity

Commission, the Canadian Human Rights Commission, the US Equal Employment Opportunity Commission, and the European Union.

13. The preparatory team is studying the materials gathered with a view to compiling useful information for submission to the Commission so that drafting of the codes of practice can commence once it comes into operation. As the purpose of the codes of practice is to assist employers and employees to comply with the SDO and the DDO, we envisage that the codes will provide guidelines on various areas covered by these two Ordinances. For example:

- equal pay for work of equal value;
- what constitute genuine occupational qualifications and/or inherent requirements of the job in recruitment;
- what factors would be taken into account by the Commission in assessing whether “unjustifiable hardship” would be imposed on the employer in providing services or facilities for a potential employee with a disability; and
- in the areas of recruitment, selection, staff training, appraisal and promotion, standards applied should relate to job requirements and should be free from bias.

14. The Commission will prepare the codes of practice on employment in consultation with relevant non-governmental organisations, including employer and employee organisations. Members of the general public will also have an opportunity to comment on the draft Codes by making representations to the Commission.

III. STUDIES ON DISCRIMINATION ON THE GROUNDS OF SEXUALITY AND FAMILY STATUS

15. In line with Government’s commitment to promoting equal opportunities for all and in response to calls for further measures to combat discrimination, the Administration undertook in July this year to conduct studies on the issues of discrimination on the grounds of age, sexuality, and

family status to assess the extent of the problems and identify possible measures to address them.

16. The study on age discrimination is undertaken by the Education and Manpower Branch while the studies on discrimination on the grounds of sexuality and family status are undertaken by the Home Affairs Branch.

17. An extensive research is being carried out in respect of the studies on discrimination on the grounds of sexuality and family status. We have researched into relevant literature and legislation overseas in the US, Australia, Canada, and New Zealand etc. in respect of tackling discrimination in the two areas. A series of discussions with interested non-governmental organisations, groups and individuals, such as employer and employee organisations, social service groups, and academics, have been conducted.

18. In respect of the study on discrimination on the ground of sexuality, we have also met a number of homosexual and bisexual groups. In addition, an opinion survey has been commissioned to ascertain public attitude in this area and the issues which may arise in measures proposed to tackle the problem. The survey has recently been completed. Findings are being analysed and will be incorporated into the consultative document on sexuality.

19. Our target is to publish two consultation documents before the end of the year for a two-month consultation. This will give members of the community the opportunity to fully express their views. Findings will be reported to the Legislative Council within the current legislative session. If, after this exercise is completed, it is concluded that the legislative option should be pursued, the Administration would aim to introduce legislation into the Council before the end of the session.

Home Affairs Branch
22 November 1995

Proposed Division of work of the Equal Opportunities Commission (EOC)

The Chairperson will be assisted by a Chief Executive in the overall administration and supervision of the EOC Secretariat and in co-ordinating the work and operational procedures of different divisions in the Secretariat. The Chief Executive in turn will be assisted by two Directors responsible for gender and disability matters, a Legal Adviser and a Principal Assistant Secretary responsible for administration and promotion work.

(a) Gender Division

- To handle enquiries from members of the public and various organisations (employers, educational institutes, voluntary agencies and women groups, etc.) concerning the provisions of the SDO.
- To handle complaints lodged under the SDO, including screening, investigation and conciliation.
- To undertake formal investigation and issuance of enforcement notices.
- To formulate the relevant codes of practice under the SDO.

(b) Disability Division

- To perform functions similar to the Gender Division with respect to the DDO.

(c) Legal Service Division

- To tender legal advice to the EOC and its Secretariat.

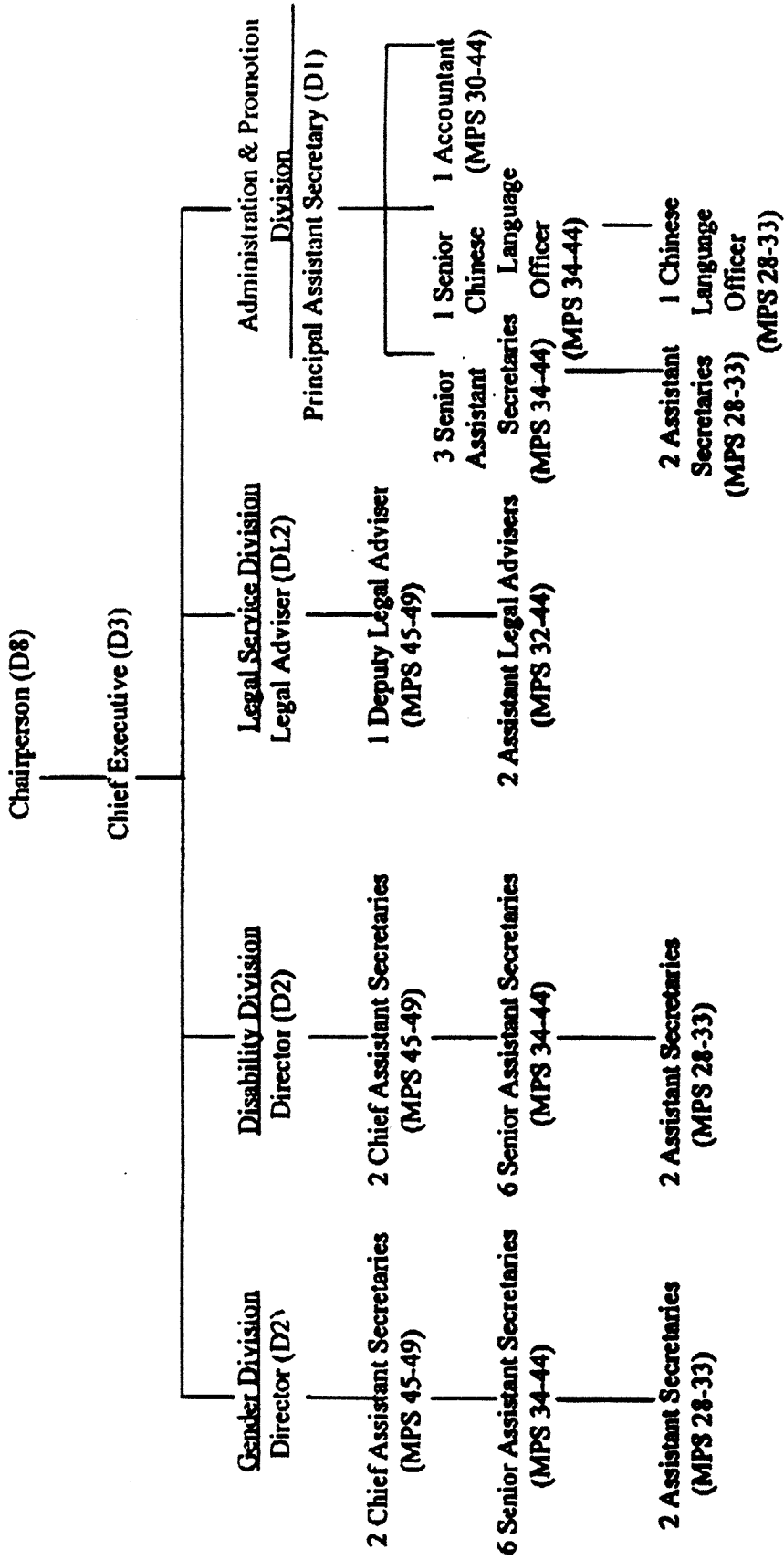
- To assist the EOC to exercise the legal powers as provided under the SDO and the DDO.
- To provide assistance to aggrieved persons in respect of proceedings under the SDO and the DDO.
- To assist the EOC to draw up proposals for legislative amendments (e.g. amendments to the SDO and the DDO) as necessary.

(d) Administration and Promotion Division

- To provide secretarial support to the EOC and its Committees.
- To provide administrative support to the EOC Secretariat.
- To arrange for research and survey projects on matters of concern to the EOC.
- To arrange for publicity and public education programmes such as seminars, conferences and workshops.
- To establish and maintain contacts with non-governmental organisations and other interested parties.

[hpm1-anz]

**Equal Opportunities Commission
Proposed Staffing**



Note : There are 36 officer grade posts and around 30 secretarial/clerical grade posts in the proposed Secretariat.

Ref FP/P/18/1

LegCo Panel on Home Affairs

Notes of Meeting
on Friday, 24 November 1995 at 10:45 a.m.
in the Chamber of the Legislative Council Building

Present : Hon HO Chun-yan (Chairman)
Hon LO Suk-ching (Deputy Chairman)
Hon Emily LAU Wai-hing
Hon LEE Wing-tat
Hon James TO Kun-sun
Hon Zachary WONG Wai-yin
Hon LEE Cheuk-yan
Hon CHOY Kan-pui, JP
Hon LAW Chi-kwong
Hon NGAN Kam-chuen
Dr Hon John TSE Wing-ling
Hon Mrs Elizabeth WONG CHIEN Chi-lien, CBE, ISO, JP

Non-Panel Member

Hon Bruce LIU Sing-lee

Absent with : Hon Allen LEE Peng-fei, CBE, JP
apologies Hon LAU Wong-fat, OBE, JP
Hon Christine LOH Kung-wai
Hon CHEUNG Hon-chung
Hon LAU Hon-chuen, JP

By Invitation : **For Item III**

Mr Michael SUEN, CBE, JP
Secretary for Home Affairs

Mrs Stella HUNG
Deputy Secretary for Home Affairs

Action

Mrs Erika HUI
Principal Assistant Secretary for Home Affairs

For Item IV

Mr Michael SUEN, CBE, JP
Secretary for Home Affairs

Mrs Stella HUNG
Deputy Secretary for Home Affairs

Mr Jeremy Croft
Principal Assistant Secretary for Home Affairs

Staff : Miss Polly YEUNG
in attendance Chief Assistant Secretary (Panels) 3

Mr Raymond LAM
Senior Assistant Secretary (Panels) 6

**I. Confirmation of Notes of Meeting and Matters Arising
(LegCo Paper Nos. PL 97/95-96 and PL 224/95-96)**

The notes of the meetings held on 26 October 1995 and 7 November 1995 were confirmed

II. Date of Next Meeting and Items for Discussion

2. Members went through the list of outstanding issues (Appendix A) and agreed that the next meeting would be held on Wednesday, 20 December 1995 at 10 45 a.m. to discuss the following items :

- (a) Integration of new immigrants from China into the community
- (b) The Thirteenth Periodic Report in respect of Hong Kong under the International Convention on the Elimination of All Form of Racial Discrimination
- (c) Representation to the United Nations Human Rights Commission (UNHRC) scheduled to meet in Geneva in March 1996

Action

Hon LEE Cheuk-yan 3 Members agreed to invite the Administration to attend the discussion on items (a) and (b) Hon LEE Cheuk-yan, who proposed item (c), undertook to prepare a paper to facilitate discussion.

Chairman/
CAS(P)3 4 Members noted that the issue of "age discrimination in employment" would be discussed at the next meeting of the Manpower Panel to be held on 18 December 1995 and Members of this Panel had been invited to attend. In view of the possible involvement of a number of Panels in different issues of discrimination, Members agreed that the Chairman would liaise with the Chairmen of relevant Panels with a view to coordinating the discussions on various types of discrimination.

5. In response to a Member's suggestion to organise open hearings to receive the views of non-government organisations on various forms of discrimination, five Members including the Chairman expressed interest. Members agreed that they should meet to work out some preliminary arrangements.

(Post-meeting note: The meeting for interested Members was scheduled on 11 December 1995 at 9:00 a.m.)

HAB 6. For the meeting of the Panel in January 1996, Members agreed to discuss "issues related to the formation of owners' corporations in multi-storey buildings" and invite the newly appointed Chairperson of the Equal Opportunities Commission (EOC) to brief the Panel on his/her work plans. The Administration was also requested to arrange an informal meeting for Members with the Chairperson after the latter had assumed duty. Meanwhile, the Administration was also asked to provide an information paper on "activities centres for overseas domestic helpers" for the Panel's consideration.

III. Issues Related to Equal Opportunities and Discrimination
(LegCo Paper Nos. PL257/95-96 and PL261/95-96)

7. Mr Michael SUEN briefed Members on the salient points of the paper provided by the Administration. He informed Members that the Administration planned to submit a funding proposal for setting up the Equal Opportunities Commission (EOC) to the Finance Committee in December 1995.

The Equal Opportunities Commission

8 On the setting up of the EOC, Mr SUEN advised as follows:

- (a) The EOC was a statutory body whose terms of reference was prescribed by law. Its work would be subject to public scrutiny and monitoring by the media.

- (b) The appointment of the Chairperson and Members of the EOC would be announced in one to two weeks' time. The Commission would be composed of over ten members who were well versed with issues related to sex and disability discrimination. The Commission could also co-opt members and set up committees.
- (c) A preparatory team under the Home Affairs Branch would assist the EOC in its initial operations and in recruiting staff for its Secretariat.

Preparation of Code of Practice on Employment Matters

9. A Member expressed disappointment over the delay in the implementation of the Sex Discrimination Ordinance (SDO) and the preparation of the code of practice on employment matters (the code) and asked whether the SDO could come into effect by 1 March 1996. Mr SUEN in response explained that a preparatory team in the Home Affairs Branch had undertaken some background research for the preparation of the code and collected information on overseas practices. This would provide the EOC with useful groundwork for preparing the code. While he could not provide a firm timetable on behalf of the EOC, he believed that the EOC would accord priority to the preparation of the code so that the SDO could be implemented at an early date.

10. In reply to the Chairman's question, Mr SUEN explained that the code was devised with a view to implementing certain provisions of the legislation. Although the code would not be legally binding, it was incumbent upon the court to make reference to it in adjudicating cases.

Study of Discrimination on Grounds of Family Status and Sexual Preference

11. As for the study of discrimination on grounds of family status and sexual preference, Mr SUEN and Mrs Stella HUNG informed Members that apart from conducting research, meetings had been held with a wide spectrum of organisations, including labour groups, employers' associations, and homosexual groups to collect their views on the subject and the problems they had encountered. The views gathered would be carefully studied and reflected in consultative document. Two consultative documents would be published before the end of 1995 for public consultation. Although the findings of the opinion survey on sexuality would not be separately published, Mr SUEN agreed to consider a Member's suggestion to attach the findings of the survey to the consultative document in the form of an appendix.

HAB

Action

12. Some Members commented that the Administration's survey might yield biased findings as a result of some leading questions in the questionnaire. A Member however was of the view that since the purpose of the survey was to gauge the genuine views of the public, specific questions were necessary to solicit a clear response. Mr SUEN also assured Members that the Administration's recommendation on the way forward would not be based solely on the findings of the survey. At Members' request, a copy of the questionnaire would be provided to the Panel for reference.

HAB

Issue Related to the Sex Discrimination Ordinance

13. On the issues of job reinstatement for women dismissed due to sex discrimination and the upper limit of \$150,000 on damages that could be awarded, the Chairman informed Members that he had received a letter from Hon Christine LOH requesting written explanation from the Administration on its position regarding the questions of providing for reinstatement as a remedy in the SDO and removing the \$150,000 cap on damages. Mr SUEN undertook to provide a written reply.

HAB

14. A Member referred to the Disability Discrimination Ordinance where there were reinstatement provisions and where damages were not subject to an upper limit. He queried the inconsistency between the two anti-discrimination ordinances as far as remedies were concerned. In reply, Mr SUEN explained that the issues should best be reviewed by the EOC which was also empowered to propose legislative amendments where necessary. Meanwhile, the Education and Manpower Branch was conducting a comprehensive review on issues related to unfair dismissal and the findings would be useful to the EOC in its future review.

IV. The Administration's stance with respect to the Preliminary Working Committee's recommendations to reinstate the provisions of six Ordinances which have been repealed/amended in the light of the Bill of Rights Ordinance
(LegCo Paper Nos. PL244/95-96 and PL265/95-96)

15. Referring to the Administration's stance as stated in its paper that the reinstatements recommended by the Preliminary Working Committee (PWC) would be in conflict with Article 39 of the Basic Law (BL), a Member questioned whether the Hong Kong and UK Governments had raised this view through the Joint Liaison Group (JLG) to the Chinese side, and whether the Administration was of the opinion that the proposed reinstatements were also in conflict with the Joint Declaration (JD). In his opinion, since Article 39 of the BL was largely based on the relevant provisions of the JD, if the proposals of the PWC were in conflict with Article 39 of the BL, they would also be in conflict with the JD. As the UK Government was a signatory of the

JD, it had a responsibility to take up the issue with the Chinese Government if the provisions of the JD were contravened

16 Mr SUEN confirmed that the views of the Hong Kong and UK Governments had been conveyed to the Chinese side on a number of occasions including at the JLG. The Administration would continue to explain to the Chinese Government the misconceived nature of the PWC's proposals. On the compatibility or otherwise of the proposed reinstatements with the JD, Mr SUEN reiterated the Administration's view that the proposals were in conflict with Article 39 of the BL. He nevertheless pointed out that at the present stage, the proposed reinstatements were only the recommendations of the PWC.

17 The Chairman suggested that as the UK Government was requested by the UNHRC to submit a special report on Hong Kong by May 1996, the recommendations of the PWC and the controversy raised should also be included in this report.

18 After discussion, Members decided by majority that the Hong Kong and British Governments should be urged to take the following courses of action:

- (a) Since the United Kingdom was a signatory of the JD, the British Government should be asked in writing to clarify whether in its opinion, the recommendations of the PWC in respect of the re-instatement of the ordinances in question were also in conflict with the JD, and
- (b) In preparing the special report on Hong Kong as requested by the UNHRC for submission by 31 May 1996, the Hong Kong and British Governments should be asked to include in the report the PWC's recommendations and the issues they had raised, as well as the stance of the Administration, with a view to seeking a jurisprudential opinion from the UNHRC.

It was also agreed that the House Committee be requested to issue the letters to the Hong Kong and British Governments urging them to take the aforesaid courses of action.

(Post-meeting note: The paper for the House Committee meeting on 1 December 1995 was issued vide LegCo Paper PL284/95-96)

Action

19 The meeting ended at 12 25 p m

LegCo Secretariat
12 12 1995

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Agenda 29/11/95

- Division of Bills and allocation of responsibility for them
- Plans to amend Sex Discrimination Ordinance
- Timing issues
(target Legco dates; public hearings; advance notice to Legco Legal Adviser, Law Draftsman, SHA; etc.)
- Policy decisions needed to complete drafting -- see attachment
- Other matters
(how expand EOC jurisdiction; BORO amendment; HRC Bill; etc.)

Sex Discrimination (Amendment) Bill
(re. sex, marital status, & pregnancy discrimination)

- SDO is very poor law: formulated by Home Affairs Branch & reflects hostility in principle.
 - No clear statement of principle, uses sexist language throughout
 - Unnecessarily complex drafting style, difficult to understand
 - Consistently weak in policy, with pervasive exceptions
- High profile amendment issues:
 - set near-term operational date (without waiting for EOC or Codes of Practice)
 - provide remedy of reinstatement
 - remove \$150,000 cap on damage awards
 - delete exception for Small House Policy
 - define work of equal value/comparable worth
- Many lower-profile amendments, some quite important in practice.
 - strengthen EOC power to litigate in own name
 - streamline formal investigation procedure for EOC
 - take less restrictive approach to indirect discrimination
 - expressly link (a) interpretation and (b) EOC terms of reference to international standards (such as CEDAW, discrimination provisions of ICCPR, etc.)
 - delete various exceptions (e.g. in relation to death & retirement provisions; civil service benefits, HOS flat eligibility; disciplined services; security of HK; adoption; etc.)
 - various other technical improvements; many follow recommendations of UK EOC (re. UK law on which SDO based)
- Can use Bills Committee's defeated amendments as basis for new amendment Bill
 - Need to consider whether parallel amendments necessary to Disability Discrimination Ordinance, based on SDO

Other grounds of discrimination addressed by Anna Wu's Equal Opportunities Bills
(family status, sexuality, age, race, religious or political beliefs, trade unionism, spent criminal conviction)

- Charging effect rule
 - prevents any administrative enforcement; only possible enforcement option is via individual civil actions in court (cf. EOB)
 - prevents addition of new grounds into the SDO (because SDO includes EOC)
 - therefore these grounds must be dealt with in new Ordinance(s) conferring jurisdiction on District Court
- Which grounds should be taken forward? (see notes below on individual grounds)
- All grounds in one, unified Bill? Or split into multiple, separate Bills? If separate Bills, in what combinations? E.g., Anna Wu's final 3 Bills combined the various grounds as follows:
 - Age; family status; & sexuality
 - Race
 - Religious/political beliefs; trade union membership; & spent criminal conviction
- For each Bill, who will be the Member-in-charge for procedural (Standing Orders) purposes?
- Some likely Administration responses
 - characterise initiative as hasty and economically disruptive
 - "consultation" exercises encourage and orchestrate public opposition
 - withhold Admin. technical cooperation, attack initiative as technically flawed and disruptive to Admin. programs
 - delay, then attack initiative for leaving too little time for implementation
 - target disinformation to influential persons (legislators, community leaders) on private, confidential basis
 - disinformation to news media if media not already well-informed

Age

- Difficult issues:
 - compulsory retirement ages
 - effect on age-based statutory welfare schemes (e.g. long-service payments)

- use of years of service criteria in hiring, promotion (indirect age discrimination)
- traditional recruitment and promotion systems based on age assumptions (in both public and private sector)
- retail employers' preference for "youthful energy"

Family status

- May possibly be added into SDO by amendment (because of similarity to "marital status" already in SDO); depends on charging effect ruling
- Difficult issue: effect on eligibility criteria for government welfare programs

Sexuality

- Remote possibility could be added into SDO by amendment (because of technical connection between "sexuality" and "sex" in ICCPR jurisprudence); depends on charging effect ruling
- Difficult issues: same privacy issues as sex discrimination law (e.g. prison guards, domestic helpers); also jobs involving contact with children (e.g. teachers, child minders).

Race

- Difficult issues: localisation, immigration, permanent residency criteria, Basic Law criteria for top office-holders

Religious or political conviction

- Difficult issue: employer adaptation to minority religious holidays, clothing
- Some religious groups oppose (want right to discriminate against others on religious grounds)

Trade Union Membership

- Currently addressed inadequately in Employment Ordinance

Spent criminal conviction

- Currently addressed in Rehabilitation of Offenders Ordinance; discrimination approach would enhance remedy
- Rehabilitation of Offenders (Amendment) Bill already introduced (22 Nov.), expands scope of "spent conviction"

For discussion
on 8 December 1995

FOR(D-95)0

ITEM FOR FINANCE COMMITTEE

**HEAD 177 - SUBVENTIONS : NON-DEPARTMENTAL PUBLIC BODIES
New Recurrent Account Subhead "Equal Opportunities Commission"**

Members are invited to

- (a) approve the creation of a new recurrent account subventions subhead "Equal Opportunities Commission" under Head 177 Subventions Non-Departmental Public Bodies;
- (b) accept the financial implications of establishing the Equal Opportunities Commission at an estimated annually recurrent cost of \$66.5 million; and
- (c) note the financial implications, estimated at \$6 million, of creating under delegated authority a new commitment for meeting the setting up costs of the Equal Opportunities Commission.

PROBLEM

We require funds to set up an Equal Opportunities Commission (EOC) and a secretariat under it to implement the provisions of the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO).

/PROPOSAL

FCR(95-96)89

Page 2

PROPOSAL

2. The Secretary for Home Affairs (SHA) proposes that the EOC shall receive full and direct subvention from Government as an autonomous statutory body. For this purpose we propose to create a new recurrent account subhead under Head 177 Subventions - Non-Departmental Public Bodies for subventing EOC's activities. SHA will be the Controlling Officer of this new expenditure subhead.

JUSTIFICATION**Functions of the Commission**

3. The SDO and the DDO enacted in July and August 1995 respectively make it unlawful to discriminate against a person on the basis of marital status, pregnancy and disability; to harass or bully a person on the basis of disability and to sexually harass a person. The Ordinance covers a wide range of activities including employment, education, provision of goods and services, activities of clubs and activities of Government.

4. Section 63 of the SDO provides for the establishment of the EOC. The SDO and the DDO provide for the EOC to oversee the implementation of the two Ordinances. The role and responsibilities of the EOC include

- (a) to work towards the elimination of discrimination;
- (b) to promote equal opportunities between the sexes and between persons with and without a disability;
- (c) to investigate into complaints, encourage conciliation between parties in dispute and provide assistance to aggrieved persons;
- (d) to develop and issue codes of practice under the relevant Ordinances; and
- (e) to undertake the necessary public education and research programmes.

/Structure

Structure of the Commission

5. The EOC will be headed by a Chairperson to be appointed by the Governor. Given the strong leadership qualities required of the Chairperson and his or her statutory duties, we consider it appropriate to rank the position of Chairperson at that of a Secretary in the Government Secretariat, that is, equivalent to Point 8 on the Government Directorate Pay Scale.

6. The EOC Chairperson will be supported by a Chief Executive and supported by a Secretariat of 15 staff. In order to ensure that the Commission effectively, we expect the secretariat to be divided into the following divisions:

(a) Gender Division

- to handle enquiries from members of the public and various organisations (employers, trade unions, community groups, and women groups);
- to handle complaints lodged under the SDO; (including screening, investigation and conciliation);
- to undertake formal investigations and (issues of enforcement notices); and
- to formulate the relevant codes of practice under the SDO.

(b) Disability Division

- to perform functions similar to the Gender Division with respect to the DDO;

(c) Legal Service Division

- to tender legal advice to the EOC and its Secretariat;
- to assist the EOC to exercise the legal powers as provided under the SDO and the DDO;

/to

- to provide assistance to aggrieved persons in respect of proceedings under the SDO and the DDO; and
- to assist the EOC to draw up proposals for legislative amendments (e.g. amendments to the SDO and the DDO) as necessary; and

(d) *Administration and Promotion Division*

- to provide secretarial support to the EOC and its Committees;
- to provide administrative support to the EOC Secretariat;
- to arrange for research and survey projects on matters of concern to the EOC;
- to arrange for publicity and public education programmes such as seminars, conferences and workshops; and
- to establish and maintain contacts with non-governmental organisations and other interested parties.

7. The EOC will appoint its own staff on terms and conditions determined by the Commission. In line with present subvention policy, the EOC shall not offer terms and conditions which are superior to those provided by Government to comparable grades in the civil service. The proposed staffing structure of the EOC, which is subject to agreement of the Commission, is at Enclosure 1. The salary scales of the posts involved at or above the rank of Assistant Secretary are at Enclosure 2. In estimating the resource requirements of the EOC, we have taken into account the functions and powers of the Commission as well as the experience of other similar statutory bodies.

Encl. 1
Encl. 2

FINANCIAL IMPLICATIONS

8. Based on the above staffing structure, we estimate that the EOC will require an annually recurrent expenditure of \$66.5 million, made up as follows -

/Salaries

	\$ million
Salaries and allowances	97
Office rentals, air-conditioning and management fees	97
General expenses	
Publicity and public education	
Research expenses	
Total	194

9. SHA aims to bring the EOC into operation by 1996. We estimate that the Commission will require a subvention of \$5 million to cover the operating cost for the remainder of the current financial year. Subject to Members' approval, we shall provide the necessary supplementary provision in 1995-96 under delegated authority and include sufficient provision in the 1996-97 draft Estimates.

10. In addition, the EOC will require setting up costs of about \$6 million for fitting out its office, procurement of office furniture and equipment and buying two vehicles. If Members approve the creation of the new recurrent account subventions subhead for the EOC, SHA will approach the Secretary of the Treasury for the creation, under delegated authority, of a new capital account commitment of \$6 million for this purpose.

BACKGROUND

BACKGROUND INFORMATION

11. Since the enactment of the SDO and the DDO, we have set up a special team of ten staff headed by a Chief Executive Officer in the Home Affairs Branch to prepare for the establishment of the EOC. Its work includes identifying suitable office accommodation, estimating staff and other resource requirements and developing policies and procedures for the operation of the Commission, personnel and accounting systems and the handling of complaints. In addition, the preparatory team is conducting general background research to facilitate the EOC to prepare codes of practice on employment matters which will provide practical guidance to employers and employees to comply with the law.

12. We briefed the LegCo Panel on Home Affairs on the preparatory work relating to the setting up of the EOC on 2 November 1995.

Home Affairs Branch
November 1995

PROPOSED SIGNING

Chairperson (D9)

Personal Assistant (MPS 28-33)

Chief Executive (D3)

Personal Secretary I (MPS 16-21)

Gender Division
Director (D7)

Personal Secretary I (MPS 16-21)

1 Chief Assistant Secretary (MPS 45-49)

3 Senior Assistant Secretaries (MPS 34-44)

1 Assistant Secretary (MPS 28-33)

Disability Division
Director (D2)

Personal Secretary I (MPS 16-21)

1 Chief Assistant Secretary (MPS 45-49)

3 Senior Assistant Secretaries (MPS 34-44)

1 Assistant Secretary (MPS 28-33)

Legal Services Division
Legal Adviser (DL2)

Personal Secretary I (MPS 16-21)

1 Deputy Legal Adviser (MPS 45-49)

2 Assistant Legal Advisers (MPS 37-44)

Administration & Promotion
Division
Principal Assistant Secretary (D1)

Personal Secretary II (MPS 4-15)

1 Senior Assistant Secretary (Administration) (MPS 34-44)

2 Senior Assistant Secretaries (Promotion) (MPS 34-44)

1 Assistant Secretary (Administration) (MPS 28-33)

1 Assistant Secretary (Promotion) (MPS 28-33)

1 Clerical Officer I (MPS 16-21)

5 Clerical Officers II (MPS 3-15)

4 Office Assistants (MPS 1-6)

1 Chauffeur (MPS 6-10)

1 Driver (MPS 6-8)

2 Typists (MPS 2-10)

2 Personal Secretaries II (MPS 4-15)

1 Typist (MPS 2-10)

2 Personal Secretaries II (MPS 4-15)

1 Typist (MPS 2-10)

1 Personal Secretary II (MPS 4-15)

1 Accountant (MPS 30-44)

1 Senior Chinese Language Officer (MPS 34-44)

1 Chinese Language Officer (MPS 28-33)

1 Clerical Officer I (MPS 16-21)

1 Chinese Word Processing Officer (MPS 3-15)

Total number of posts at officer grade . 36
Total number of posts : 66

**Proposed salary scales for the Chairperson and
staff of the Equal Opportunities Commission**

<u>Rank</u>	<u>Pay Points</u>
Chairperson	Point D8 of Government Directorate Pay Scale (\$157,250)
Chief Executive	Point D3 of Government Directorate Pay Scale (\$111,100-\$114,400-\$117,750)
Director	Point D2 of Government Directorate Pay Scale (\$95,550-\$98,550-\$101,450)
Legal Adviser	Point D2 of Government Directorate Pay Scale (Legal Group) (\$95,550-\$98,550-\$101,450)
Principal Assistant Secretary	Point D1 of Government Directorate Pay Scale (\$80,450-\$82,850-\$85,400)
Deputy Legal Adviser	Points 45-49 of Government Master Pay Scale (\$62,665-\$72,195)
Chief Assistant Secretary	Points 45-49 of Government Master Pay Scale (\$62,665-\$72,195)
Senior Assistant Secretary	Points 34-44 of Government Master Pay Scale (\$39,300-\$60,475)
Senior Chinese Language Officer	Points 34-44 of Government Master Pay Scale (\$39,300-\$60,475)
Assistant Legal Adviser	Points 32-44 of Government Master Pay Scale (\$36,490-\$60,475)
Accountant	Points 30-44 of Government Master Pay Scale (\$33,290-\$60,475)
Assistant Secretary	Points 28-33 of Government Master Pay Scale (\$30,365-\$38,210)
Chinese Language Officer	Points 28-33 of Government Master Pay Scale (\$30,365-\$38,210)

19 JUL 2004

PRESS STATEMENT

EQUAL OPPORTUNITIES

A group of legislators launched a new initiative on equal opportunities today with the announcement of plans to reintroduce the Equal Opportunities Bills that were defeated at 2nd reading in Legco in July.

The group also announced plans to amend the Sex Discrimination Ordinance, among other things removing the \$150,000 limit on damage awards for employment discrimination, and empowering the courts to order reinstatement of workers dismissed because of their sex.

Legislators vowing in a press conference to take the new legislation forward included Lau Chin-shek, Emily Lau, Christine Loh and Elizabeth Wong. They were accompanied by former legislator Anna Wu, who sponsored the defeated bills last term.

After a series of recent strategy meetings, the legislators now aim to introduce a total of 4 private member's bills. They plan to steer the bills through Legco in time to report the results to the United Nations, in the supplementary report on Hong Kong requested by the U.N. Human Rights Committee for 31 May 1996.

Unionist Lau Chin-shek will sponsor the first bill, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, which covers the controversial areas of age and sexuality as well as family responsibility. The bill adopts several changes suggested by the Legco Bills Committee that considered it last term, such as permitting mandatory retirement ages and excluding marriage and adoption from the law against sexuality discrimination.

Elizabeth Wong will sponsor the second bill on race discrimination, the Equal Opportunities (Race) Bill.

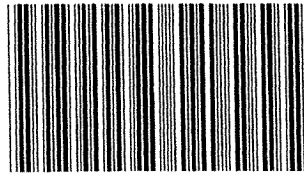
The third bill, the Sex and Disability Discrimination (Miscellaneous Provisions) Bill, will be sponsored by Christine Loh and Emily Lau. The bill amends the sex and disability discrimination laws passed in June and July to widen their remedies for victims of discrimination and to strengthen enforcement by the Equal Opportunities Commission. The bill also requires both laws to come into operation on 1st June 1996 at the latest, and sets a one-year time limit (extendable for another year) on the Small House Policy, forcing the Administration to face the difficult problem of reforming the Policy as a whole.

A fourth bill will follow, covering discrimination on the basis of religious or political beliefs, union membership and "spent" criminal convictions.

Drafting on the first two bills is nearing completion and they are expected to go to the Government's Law Draftsman soon for certification.

13 December 1995

(For enquiries, call Eric Chow: tel. 2367-7632, pager 7112-8163 a/c760,
or Adam Mayes: tel. 2521-6820, pager 7899-6289 a/c777)



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